



City of St. Helena
Regular City Council Meeting
Tuesday, August 23, 2022 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

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.

Simultaneous Spanish interpretation services during meetings can be scheduled upon request. To ensure interpreters are available, requests must be made at least 72 hours in advance by calling the Office of the City Clerk at (707) 968-2640 or emailing cityclerk@cityofsthelena.org. The schedule of upcoming meetings and published meeting agendas can be found on the City of St. Helena website at <https://sthelena.civicweb.net/portal/>.

Servicios de interpretación en español durante la reunión pueden ser solicitados por el público. Para asegurar que los intérpretes estén disponibles, los servicios tienen que ser solicitados al menos 72 horas antes de la reunión llamando a la oficina de la Secretaria de la Ciudad al (707) 968-2640 o por correo electrónico a cityclerk@cityofsthelena.org.

El horario de las reuniones publicadas y próximas puede ser localizado en el sitio de web de la Ciudad en <https://sthelena.civicweb.net/portal/>.

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1. CALL TO ORDER
2. ROLL CALL
Mayor: Geoff Ellsworth, Vice Mayor: Paul Dohring, City Council Members: Anna Chouteau, Eric Hall and Lester Hardy
3. PLEDGE OF ALLEGIANCE
4. ADOPTION OF THE AGENDA
5. PUBLIC FORUM:
Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 4 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Council Members for clarifications may be posed and answered, and Council Members may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.
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. 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)

- 7.1. Response Letter to 2021-2022 Napa County Civil Grand Jury Report Titled: Napa County's Climate Action Committee: Where's the Action? 7 - 33

CEQA Determination: Not a CEQA project

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

Recommendation:

Approve the City's response and authorize the Mayor to sign and submit response letter for the 2021-22 Napa County Civil Grand Jury Report for the 2021-22 Napa County's Climate Action Committee: Where's the Action?

[Staff Report - Pdf](#)

- 7.2. Consideration and proposed adoption of a resolution (1) approving temporary street closures of Oak Avenue, Adams Street, Tainter Street, and the Oak Avenue City parking lot; (2) Authorizing possession of open alcoholic beverages on public streets and parking lots within the event space; and (3) waiving the Encroachment Permit fee for the Hometown Harvest Festival on October 15, 2022. 35 - 40

CEQA Determination: Not a CEQA project

Prepared By: Dave Jahns, Parks & Recreation Director

Recommendation:

Staff recommends City Council adopt the attached Resolution.

[Staff Report - Pdf](#)

- 7.3. Consideration and Proposed Approval of a Resolution approving extension of License Agreement #22WSR0249N between the National Oceanic and Atmospheric Administration (NOAA) Office of Atmospheric Research and the City of St. Helena for the continued placement of a precipitation radar and gauge at the Louis Stralla Water Treatment Plant 41 - 49

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

Prepared By: Eric Janzen, Assistant Public Works Director

Recommendation:

Staff recommends City Council adopt the attached resolution.

[Staff Report - Pdf](#)

- 7.4. Consideration of Second Reading and Waiver and Adoption of a Safe Firearm Storage Ordinance 51 - 59

CEQA Determination: Not a CEQA project

Prepared By: Chris Hartley, Chief of Police

Recommendation:

Conduct the second reading of the proposed Safe Firearm Storage Ordinance, adopt by title only and waive further reading.

[Staff Report - Pdf](#)

- 7.5. Consideration of approval of a Resolution approving out-of-state travel for City Manager Anil Comelo, to attend the 2022 ICMA 108th Annual Conference to be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio 61 - 64
- CEQA Determination: Not a CEQA project
Prepared By: Cindy Tzafoopoulos, City Clerk
Recommendation:
Approve the attached resolution.
[Staff Report - Pdf](#)
- 7.6. Consideration and Proposed approval of a Resolution: (1) approving of a two-year lease agreement for four Automatic License Plate Readers (ALPR's) from Flock Safety for a total of \$26,800 and (2) authorizing a budget increase of \$26,800 to COPS grant fund account number 244-4900-2215 for the lease payments. 65 - 108
- CEQA Determination: Exempt
Prepared By: Justin Tharp, Lieutenant
Recommendation:
Staff recommends approval of the attached resolution.
[Staff Report - Pdf](#)
[Public Comment Oakland Privacy](#)
- 7.7. Consideration and proposed approval of a resolution approving the Professional Services Agreement with Pacific Tree Care. In an amount not-to-exceed \$50,624 for the removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Rd an approximately 1 acre area of City owned property. 109 - 128
- CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)
Prepared By: Clayton Church, Public Works Operations Manager
Recommendation:
Staff recommends City Council adopt the attached resolution.
[Staff Report - Pdf](#)
- 7.8. Consideration and proposed approval of a resolution authorizing: 129 - 141
1. Flying the Italian flag on the City's ceremonial flagpole during the month of October 2022 for Italian Heritage Month; and
 2. Temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 1, 2022, from 12:00 pm to 6:00 pm; and
 3. Mobile food truck(s) to be parked on Railroad Avenue in the 72-hour No Parking area and wine and beer vendors in Lyman Park during the Festa Italiana event; and
 4. Waiving of the Encroachment Permit and Lyman Park Rental Permit fees for the Festa Italiana event on October 1, 2022.

CEQA Determination: Not a CEQA project
Prepared By: Chantel Delay, Administrative Assistant
Recommendation:
Staff recommends City Council adopt the attached Resolution.
[Festa Italiana - Pdf](#)

- 7.9. July 2022 Review and Forecasting of City Water Supply Availability 143 - 148

CEQA Determination: Exempt
Prepared By: Ian Dale, Environmental Services Tech
Recommendation:
Receive and file.
[Staff Report - Pdf](#)

8. PUBLIC HEARINGS

- 8.1. Introduction and first reading of an Ordinance adding Section 3.04.055 Standards of Conduct Pertaining to Procurement to St. Helena Municipal Code Chapter 3.04 Purchase of Supplies, Equipment and Services and Procedures for Public Works Projects. 149 - 198

CEQA Determination: Not a CEQA project
Prepared By: Mandy Kellogg, Administrative Services Director
Recommendation:
Introduce and conduct the first reading of an Ordinance adding Section 3.04.055 Standards of Conduct Pertaining to Procurement to St. Helena Municipal Code Chapter 3.04, by title only and waive further reading.
[Staff Report - Pdf](#)

- 8.2. Consideration and Proposed approval of a Resolution adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB148 for the Funding, Acquisition, and Use of Military Equipment 199 - 221

CEQA Determination: Not a CEQA project
Prepared By: Chris Hartley, Chief of Police
Recommendation:
Recommend Approval of a Resolution Adopting the St. Helena Police Department Policy 707 "Military Equipment".
[Staff Report - Pdf](#)

9. ADJOURNMENT

The next Regular City Council meeting is scheduled for September 13, 2022, at 6:00 p.m.

This agenda was posted at City Hall, 1572 Railroad Avenue, and at Vintage Hall, 465 Main Street, St. Helena, California on August 15, 2022.



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.



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Response Letter to 2021-2022 Napa County Civil Grand Jury Report Titled: Napa County's Climate Action Committee: Where's the Action?

CEQA Determination: Not a CEQA project

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

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On June 13, 2022, the Napa County Civil Grand Jury issued its Final Investigative Report, "Napa County's Climate Action Committee: Where's the Action?" (Attachment 1). The City participates in the County of Napa Climate Action Committee and has appointed two (2) elected officials from the City Council, Mayor Geoff Ellsworth and Council Member Anna Chouteau, as representatives to this regional body. The City has allocated funding per the Joint Powers Agreement to fund its pro-rata share of the costs of the Climate Action Committee (CAC). The CAC is staffed by representatives from the County of Napa and consultants contracted to support its objectives. David Morrison, Napa County Director of Planning, Building and Environmental Services who provides staff support to the CAC has provided a framework response to the Grand Jury report.

Under Penal Code section 933(c), the City has 90 days from the date of the report to submit its responses to the Presiding Judge of the Superior County. This report was submitted on June 13, 2022 and the City has until September 11, 2022 to respond. The response must come from the City Council. For each finding, the City Council must state that it agrees, disagrees in whole, or disagrees in part. If the City Council disagrees, it must provide an explanation for the disagreement.

For each recommendation, the City Council must state: (1) that it has been implemented, with a summary of the implementation action, (2) that it has not yet been implemented, with a timeframe for future implementation, (3) that further analysis is needed, with an explanation, parameters for analysis, and a timeframe for completion, or (4) that it will not be implemented because it is unwarranted or unreasonable, with an explanation why.

The City of St. Helena has carefully reviewed and considered the findings and recommendations of the Napa County Grand Jury in its report dated June 13, 2022 entitled: "Napa County's Climate Action Committee: Where's the Action?" The Grand Jury requested the City Council's responses to the findings and recommendations in the report. The information in the Discussion section below and the attached letter (Attachment 2) provides those responses pursuant to California Penal Code section 933.05, subdivisions (a) and (b).

DISCUSSION **FINDINGS:**

F1: The CAC has not been effective in developing and implementing actions for county-wide programs to combat climate change.

The City Council respectfully disagrees with this Finding. The Grand Jury does not define by what standard the Climate Action Committee ("CAC" or "Committee") would be considered effective, or how the Committee has performed compared to that standard. The comment is unsubstantiated opinion, rather than a finding based upon empirical evidence.

Developing countywide programs to reduce greenhouse gas emissions is a process. The Committee is following the same process as that taken by the Sonoma Regional Climate Protection Authority, which is cited several times by the Grand Jury as the model that should be followed. The Authority prepared an updated greenhouse gas emission, considered a range of action items to achieve the target goals, and assisted member agencies in implementing those action items. The Committee is at an earlier stage than the Authority, which was formed in 2009. In contrast, the Committee only began meeting less than three years ago.

Within the short time of the Committee's operation, much has been done to lay down the foundation for effective climate action. The individual members of the Committee have all adopted Climate Emergency Resolutions and all members have adopted, or are in the process of preparing, Climate Action Plans. The municipalities participating in the Committee have adopted a Joint Powers Agreement, establishing the composition and operations for the Committee as well as an ongoing funding commitment. The Committee has secured a grant and is in the final process of updating the 2009 regional greenhouse gas emission inventory, which will include specific actions that can be taken by member agencies to reduce greenhouse gas emissions. The Committee has also directed staff to begin work on an Electric Vehicle Charging Station plan, to determine how the member

agencies will meet the goals established by the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment.

The Committee has been meeting for a total of 33 months. During that time, Napa has experienced two major wildfires, a pandemic, and a continuing severe drought. A great deal has been accomplished in a short time, despite numerous challenges.

The City has independently adopted a Climate Emergency proclamation along with adoption of its General Plan, which includes specific sustainability elements.

F2: Interviews of Napa CAC members confirmed that the Napa County CAC has decided not to take any major steps toward greenhouse gas (GHG) reduction until the GHG study is released.

The City Council agrees with this Finding. The Committee will consider a range of potential climate change actions as a part of the regional greenhouse gas inventory update. Once the Committee has determined the current levels of greenhouse gas emissions (both regionally and by individual jurisdiction as well as source sector) and the targets needed to comply with future milestones, then it will have the information needed to consider actions tailored to address the specific sources and where they occur. To take action absent this information would be regulating based on anecdote. Any implementation of actions developed without this scientific framework would be subject to legal challenge and would not be accepted as adequate evidence if used in environmental analysis by member agencies.

The Grand Jury suggests in their report that, “Models of well-developed countywide plans that have implemented such methods are available from nearby counties such as Sonoma County. Napa does not have to reinvent the wheel. It can and should take cues from these other neighboring jurisdictions.” This is hardly a reasonable comparison. Sonoma County is 125% larger than Napa County and has a population 3.5 times the size of Napa County. Despite this size difference, Napa has more cultivated farmland than Sonoma, accounting for 8% of total land area, compared to only 3% in Sonoma.

The Sonoma County Regional Climate Protection Authority adopted its Climate Mobilization Strategy in 2021, three years after updating its regional greenhouse gas emission inventory in 2018. The Strategy did not borrow from other neighboring jurisdictions, but studied and utilized the best available science in determining its status and how best to reach the adopted goals over a 10-year timeframe. The Authority coordinates with member agencies to assist them in developing and implementing those measures that will have the greatest impact in reducing greenhouse gas emissions within their respective jurisdictions. The Committee is following the same path as that taken by the Authority: prepare an updated greenhouse gas emission, consider a range of action items to achieve the target goals, and assist member agencies in implementing those action items.

F3: Interviews revealed that the CAC was generally unfamiliar with the EV charging station subsidy programs currently available through the California Energy Commission and the Bay Area Air Quality Management District.

The City Council respectfully disagrees with this Finding. Over the past two years, the Committee has reviewed and discussed electric vehicle charging station grant programs on numerous occasions. At the April 24, 2020, meeting the Committee reviewed several potential electric vehicle charging station grant programs, including the Marin Clean Energy Charging program, the Bay Area Air Quality Management District Charge! program, and the California Energy Commission Electric Vehicle Infrastructure Project program. On May 22, 2020, the Committee reviewed a list of programs offering incentives for residents and businesses to purchase electric vehicles. On February 26, 2021, the Committee received a presentation from the California Hydrogen Business Council on hydrogen vehicles and fueling stations. On July 23, 2021, the Committee reviewed the number of existing electric vehicle charging stations, the goals of the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment, and available incentives including the Marin Clean Energy grant program. The July discussion continued into the meetings of October 22 and November 19, providing a summary of available grant programs, including the California Energy Commission Electric Vehicle Infrastructure Project program.

The Grand Jury is not specific regarding which subsidy programs are not being considered by the Committee and did not go into detail regarding the cost or eligibility of recent grant programs. For instance, the Charge! program offered by the Bay Area Air Quality Management District offered earlier this year, provides \$7 million to offset a portion of the cost of new public charging stations at qualifying facilities. However, the Charge! program only funds 50% to 80% of the cost of installation. Applicants must pay all up-front costs and at least 15% of the total project costs. With a minimum grant award of \$1 million, local jurisdictions would have to pay between \$150,000 and up to \$500,000 to participate in the subsidy. Environmental review, administrative costs, and maintenance are not eligible for funding. In addition, 60% of all funds awarded by this program are required to be spent within Environmental Justice communities, which excludes several of the Climate Action Committee members.

The Rural Electric Vehicle Charging grant provided by the California Energy Commission offers \$4.8 million to local jurisdictions to install charging stations in rural areas. However, Napa County and other Bay Area jurisdictions are ineligible for the program due to high number of existing charging stations in those areas.

The California Energy Commission also recently awarded a grant program of \$6 million for the Charging Access for Reliable On-Demand Transportation Services (CARTS) program. The grant supports electric vehicle charging stations for high mileage on-demand transportation services including services such as ride-hailing, taxis, and meal and grocery delivery. Each region was allotted one project up to \$2 million, with a 50% match required from the applicant, again requiring significant funding from local jurisdictions.

The California Energy Commission is in the process of developing the application process for Block Grants for Electric Vehicle Charging Incentive Projects. The qualification criteria, amount of subsidy, and other details are still being developed. It is expected that the application period will open late in 2022. The County applied for and was awarded \$20,000 in 2020 under this program to install additional charging stations at the Third Street Parking Garage, but was unable to meet the accelerated timelines required by the Commission.

The California Capital Access Program Electric Vehicle Charging Station Financing Program offered by the State Treasurer closed earlier this year. It provided \$2 million to fund a 10-15% rebate on the cost of installing charging stations for small businesses, and would not have applied to the Committee or its members.

The City has independently approved two (2) public EV charging stations that were installed and funded through an agreement with EVgo, who is a third-party electric vehicle service provider.

F4: The CAC struggles with a lack of county-wide GHG mitigation funding. However, it has not placed a priority on having an experienced, effective grant and funding pursuit individual on staff to seek and secure GHG reduction grants, even though grant subsidies for programs like EV charging stations currently exist.

The City Council respectfully disagrees with this Finding. The member agencies of the Committee have allocated and reserved collectively \$168,000 for the Committee over the past two years. These funds are in addition to the \$50,000 in grant funding secured from the Bay Area Air Quality Management District. These monies have paid for staff to support the operations of the Committee, including the successful pursuit of one grant and ongoing monitoring of other available grant programs. Of course, this is all supplementary to the expenditures made by each jurisdiction in developing and implementing their individual climate action plans.

As stated in the response to F3 above, grant subsidies for electric vehicle charging stations are expensive and member agencies do not always qualify. Moreover, the Committee relies on funding provided by the member agencies; it does not have a separate revenue source. Participation in grant programs require match funds and/or administrative costs, as well as long-term continuation of effort. This funding depends on budgetary decisions by City and Town councils, as well as the Board of Supervisors, balanced against other competing social needs and interests.

The City has independently allocated funds in its 2022/2023 budget to fund the Committee and the Green House Gas (GHG) Inventory Project.

F5: Past studies have stated that the two largest GHG emission categories are Transportation and Buildings. The Grand Jury's interviews confirm that these two

categories are expected to remain the top two items in the GHG study currently underway. The CAC in its three years of existence has not defined and proposed any action items to address the top two categories of emissions.

The City Council respectfully disagrees with this Finding. The Grand Jury report is correct in that staff anticipates that Building Energy Use and On-Road Transportation will likely be the two largest categories of greenhouse gas emissions in the upcoming regional inventory. Both issues are largely regulated by the State of California through the Uniform Building Code and the Vehicle Emission Standards. While there are additional actions that can supplement the State's efforts, the Grand Jury is asking the Climate Action Committee and its member jurisdictions to take action without knowing the extent of the problem or the goal that is to be achieved.

More importantly, taking regulatory action always involves the potential for litigation, and it is the duty of the jurisdiction taking action to make its case as to why any new regulations are required, whether they are proportional to the impact, whether they are effective, and what standard will be achieved. In the absence of an updated greenhouse gas emission inventory, the Committee and its members would be acting in the absence of any context, and if the resulting regulations are overly burdensome or inequitably fall on some members of the community more than others, they would be exposing themselves and the general public to the potential for lengthy and expensive litigation.

As a part of the scope of work for the updated regional greenhouse gas emission inventory, the Committee has directed the consultant to identify and evaluate specific greenhouse gas reduction actions for the following sectors: transportation, building and other energy use, waste reduction and material consumption, carbon sequestration, water conservation, and food consumption. These actions will be evaluated by the Committee later this year and forwarded to the individual member agencies for consideration and implementation.

The City has in its adopted General Plan, a sustainability element independently adopted and will review that element in conjunction with the Green House Gas (GHG) Inventory Project once complete.

Recommendations

R1: The CAC should increase the sense of urgency in implementing GHG emission reduction actions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The recommendation does not indicate what timeline should be used for implementation, nor does it define what steps should be taken to "increase the sense of urgency." The State has established specific milestones for local jurisdictions to reduce greenhouse gas emissions: a 90% reduction below 1990 levels by 2035, and net zero emissions by 2045. These goals are more immediate than the 2050 net zero goal

established by Federal agencies, the United Nations, and the Intergovernmental Panel on Climate Change (IPCC).

In addition, there is much being done already to achieve these goals. The individual member agencies of the Committee have all adopted Climate Emergency Resolutions, and all members have adopted, or are in the process of preparing, Climate Action Plans. The municipalities participating in the Committee have adopted a Joint Powers Agreement, establishing the composition and operations for the Committee, as well as an ongoing funding commitment. The Committee has secured a grant and is in the final process of updating the 2009 regional greenhouse gas emission inventory, which will include specific actions that can be taken by member agencies to reduce greenhouse gas emissions. The Committee has also directed staff to begin work on an Electric Vehicle Charging Station plan, to determine how the member agencies will meet the goals established by the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment.

The Committee has been meeting for a total of 33 months. During that time, Napa has experienced two major wildfires, a pandemic, and a continuing severe drought. A great deal has been accomplished in a short time, despite numerous challenges.

R2: The CAC should create monitoring protocols that seek to identify what its individual members have set as goals and to identify whether they have met meaningful standards consistent with those goals. These should be formalized and reported to the CAC on a quarterly basis.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. Using individual climate action plans as the basis for monitoring progress towards greenhouse gas reduction goals would require a significant level of effort due to the different timelines and methodologies used by each jurisdiction. For example, both American Canyon's 2012 Climate Action Plan and Calistoga's 2014 Climate Action Plan have a greenhouse reduction goal of 2020, but no goals beyond that date. The City of Napa's 2012 Sustainability Plan has goals for 2030, 2040, and 2050, but it looks only at municipal operations and not at community sources of greenhouse gas emissions. Yountville's 2016 Climate Action Plan has a goal of 2030, St. Helena's 2019 General Plan has goals of 2030 and 2040, and the draft County 2019 Climate Action Plan has goals of 2030 and 2050. Beyond the lack of common timelines used, how each jurisdiction calculates emissions also varies. Different methodologies, definitions, and data sources have been used, as climate modeling has changed greatly over the past 10 years. Lastly, not all jurisdictions have action items that have quantitative reductions in emissions associated with them. Several of the plans have qualitative action items and are not clear as to how reduction goals will be achieved. The value of a single integrated inventory is that all jurisdictions can be analyzed using the same information and modeling to create a basis for comparison, as well as the opportunity to determine how collaborative actions can gain greater reduction through effective collaboration.

The Committee is established as a collaborative effort that allows each member agency to retain local control within its jurisdiction. Consequently, the City and Town Councils and Board of Supervisors are held accountable by their respective constituents for meeting greenhouse gas reduction goals. Staff is not aware of any regional climate action committee (including the Sonoma County Regional Climate Protection Authority) that monitors member agencies for progress towards meeting each jurisdiction's climate action goals. It is unclear what added value monitoring by the Committee would provide or what steps, if any, would be taken by the Committee for any member that was not meeting "meaningful standards" as established by the Committee.

R3: The CAC should provide a detailed prioritized list of potential projects for possible grant funding and either retain or designate a current staff person as a grant researcher and writer to identify and seek grants from any possible source.

This recommendation has been implemented, as it pertains to the City. Staff to the Committee have already secured one \$50,000 grant and continue to search for other appropriate potential funding opportunities, where local agencies qualify and where funding to support and implement the grant has been allocated at the direction of the member agencies of the Committee.

The City has independently allocated funds in its 2022/2023 budget to fund the Committee, is currently working on an ordinance banning gas-powered leaf blowers, and has allocated funds to provide grants to help implement that effort.

R4: The CAC should restructure itself to provide authority over and accountability of its member jurisdictions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The Committee is established as a collaborative effort that allows each member agency to retain local control within its jurisdiction. The Grand Jury is proposing a restructuring of the Committee to convert it into a regional climate agency, with the ability to enforce and regulate within member jurisdictions.

The Grand Jury describes, "...the problem of each jurisdiction going its own way and operating on a non-collaborative course." They advocate for the creation of a new bureaucracy, where power over climate change can be centralized and enforced. Certainly, such an approach can lead to greater and faster action. However, the Grand Jury does not discuss the disadvantages of such an approach. A regional agency would be able to enforce actions against a member agency, regardless of the fiscal or economic impact on the jurisdiction. Solutions that work in a City of 75,000 may be equally applied in a Town of less than 4,000, or a rural community where they may not be effective or relevant. Residents and businesses who may be disproportionately and adversely affected by new regulations would not have a place to appeal any decision and would not be able to directly vote for the decision makers. If this model were the most effective approach, it seems that the State would have created a centralized regulatory agency to administer climate change requirements throughout California, but that has not occurred.

The sources of greenhouse gas emissions, patterns of community development, demographics, and lifestyles of communities in Napa County are very diverse. A uniform, top-down strategy to expedite action on the reduction of greenhouse gas emissions can lead to oversimplification and may instead impede progress by focusing scarce resources enforcing a “one-size-fits-all” solution.

Moreover, City staff are unaware of any region within the State of California that has adopted such a model. The Sonoma County process referred to in the Grand Jury report is not binding on member jurisdictions. The countywide plan is made available for each municipality to consider on its own. It should be noted that an appeal of the Superior Court decision regarding the California Environmental Quality Act document for the Sonoma countywide climate action plan was not pursued because member agencies did not unanimously support continued action. As a result, an Environmental Impact Report for the Sonoma countywide climate plan was never certified. The other examples of regional climate agencies that staff are familiar with are also advisory; none have legal authority over the participating jurisdictions. The Grand Jury is advocating for a new agency with powers over climate action planning and implementation that has not been attempted anywhere in California. At a minimum, a great deal more thought and consideration should be applied to the question, rather the casual support given to such a radical idea by the Grand Jury.

R5: To benefit its work, the CAC should consider the following actions: (A) Reducing the number of CAC members, currently from 12 (2 per jurisdiction), to 6 (1 per jurisdiction) to facilitate faster action, use of advisors and plan development; and (B) Utilize county citizens familiar with GHG emission reduction strategies to assist the CAC in the preparation of recommended actions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The Grand Jury does not point to any evidence in their report to demonstrate that a smaller Committee would be more effective. The two examples cited in their report do not support this conclusion. The Sonoma County Climate Action Committee is similar to Napa County and has two representatives from each jurisdiction for a total of 24 members (compared to Napa’s 12 members). It should be noted that the Sonoma Regional Climate Authority, which the Sonoma Climate Action Committee advises, also has 12 members. There is no reference to a Contra Costa Climate Action Committee. It is assumed the reference in the Grand Jury report is to the Contra Costa County Sustainability Commission, which has 17 members. In addition, the Mendocino County Climate Action Advisory Committee has 15 members. Other than a passing reference by the Grand Jury to “...an ungainly body of mostly elected officials...,” the report offers no constructive criticism or facts to support their unsubstantiated recommendation.

The Committee has an extensive history of considering input from county residents and interested parties regarding greenhouse gas emission reduction strategies. On August 28, 2020, the Committee heard a presentation from Napa Climate Now! regarding budget conscious climate actions. On February 26, 2021, the Committee heard a presentation from the California Hydrogen Business Council, on hydrogen vehicles and fueling stations

for local governments. On March 26, 2021, the Committee heard a presentation on the Napa Green program. On April 23, 2021, the Committee heard a presentation on forest health from the Napa County Resource Conservation District. On May 28, 2021, the California Land Stewardship Institute gave a presentation to the Committee on the Climate Adaptation Certification, a comprehensive science and winegrower collaboration to benefit agriculture and the environment. On June 25, 2021, the Committee heard a presentation from the Napa County Bicycle Coalition regarding Safe Routes to School: Parent Perception Research. On July 23, 2021, Napa Climate Now! made a second presentation to the Committee on a Reusable Foodware and Waste Reduction Ordinance. On October 22, 2021, Napa Schools gave a presentation to the Committee. On April 22, 2022, the Committee heard from City of Napa staff regarding solid waste and recycling programs and potential projects. On July 26, 2022, Community Climate Solutions gave a presentation on the Napa County Climate Challenge website.

The Committee will continue to seek out and encourage ideas from local residents and organizations and will welcome public comment on the proposed greenhouse gas reduction action items that will be included with the updated regional inventory.

The City welcomes and appreciates the Grand Jury's interest in the City's operations, as well as the opportunity to respond to the findings and recommendations contained in the report.

FISCAL IMPACT

None.

RECOMMENDED ACTION

Approve the City's response and authorize the Mayor to sign and submit response letter for the 2021-22 Napa County Civil Grand Jury Report for the 2021-22 Napa County's Climate Action Committee: Where's the Action?

ATTACHMENTS

[Attachment 1 - Napa County Civil Grand Jury 2021-2022 Climate Action Committee Report](#)

[Attachment 2 - City of St. Helena Grand Jury Response](#)

NAPA COUNTY CIVIL GRAND JURY

2021-2022

FINAL INVESTIGATIVE REPORT

June 13, 2022

NAPA COUNTY'S CLIMATE ACTION COMMITTEE:

WHERE'S THE ACTION?

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SUMMARY

The 2021-2022 Napa Grand Jury undertook to examine the workings and accomplishments of the Napa County “Climate Action Committee,” now functioning under a formal cooperative Joint Powers Agreement (JPA). The Grand Jury concluded that the committee in its present form is not fulfilling the goals and responsibilities set forth in either its origin document or the JPA that currently governs its operation. While potentially well intentioned, it has failed to provide timely measurable goals and action plans to its constituent jurisdictions. It has accomplished little since its first public meeting in November 2019, notwithstanding that its members frequently express the need for concerted, coordinated efforts to address the climate emergency confronting the world.

BACKGROUND

After examining the status of Napa County’s Climate Action Plan (CAP), the previous 2017-2018 Napa County Grand Jury concluded that it remained a “work in progress,” notwithstanding that it had been proposed ten years previously. At the time of that investigation, climate change was described as an immediate and significant health, environmental, economic, and national security danger that would likely have planetary consequences.¹ Since the date of that Grand Jury report, the potential consequences of greenhouse gas emissions (GHG), in the estimation of the majority of the scientific community, has risen to the level of a planetary *emergency*.²

One of the findings of the previous Grand Jury was that there was the lack of climate action planning coordination existent between the jurisdictional communities within Napa County. Whether or not related to that finding and the recommendation that such a collaborative structure be created, the six Napa County governmental jurisdictions subsequently passed resolutions to form a Climate Action Committee (CAC) in June 2019. After much debate, the jurisdictions agreed to create a Joint Powers Agreement structure that was described in some meetings as a “middle of the road” solution which left the committee in an advisory capacity only. The 2021-2022 Grand Jury undertook an evaluation of that committee’s workings seeking to determine whether it has lived up to the modest goals it set for itself and, further, to determine whether the Climate Action Committee in its present iteration provides the Napa Valley community with the leadership necessary to effectively address the climate emergency which is upon us.

METHODOLOGY

In preparing this report about the Napa Climate Action Committee (CAC), the Grand Jury interviewed seven CAC members and several county and local jurisdiction staff members. The

¹ 2017-2018 Napa Grand Jury Final Report: Napa County Climate Action Plan – A Work in Progress.

² UN News, April 2022: “UN climate report: It’s ‘now or never’ to limit global warming to 1.5 degrees;” Scientific American, April 12, 2021: “We Are Living in a Climate Emergency, and We’re Going to Say So.”

Grand Jury also interviewed various Napa County community members active and knowledgeable in the promotion of Green House Gas (GHG) reduction efforts.

Monthly CAC meetings, mostly through the CAC video recordings were reviewed, along with articles in the Napa Register and Saint Helena Star about local climate action activities. Finally, the Grand Jury also reviewed websites of the following Agencies to better understand and follow their actions:

- California Air Resources Board (CARB)
- Bay Area Air Quality Management District (BAAQMD)
- California Energy Commission
- Upper Valley Waste Management District
- California Building Standards Commission
- Napa County 2018 Draft Climate Action Plan
- Charge Point Website
- EVGO Website
- State of California Public Utilities Commission
- Contra Costa County Climate Action Committee
- Sonoma County Climate Action Committee

DISCUSSION

This investigation sought to determine how effective Napa’s Climate Action Committee had been in coordinating and implementing county-wide programs seeking to address the effects of greenhouse gas emissions and to determine whether it provided meaningful assistance to the various member entities in their individual efforts to do so. As the investigation proceeded, the Grand Jury expanded its inquiry to consider whether the current CAC structure and charter can be effective in accomplishing its stated mission.

The CAC is the only body focused on county-wide climate change mitigation activities. The original resolutions upon which the Committee was formed proposed that the Committee would identify countywide goals and strategies for addressing climate change, including an updated greenhouse gas (GHG) inventory, countywide goals and timelines, and common GHG reduction standards for each jurisdiction to adopt independently and that it would “develop cost estimates and funding opportunities for shared projects”³ The Committee held its first public meeting in November 2019. In the January 2020 meeting, much discussion occurred about what the Committee should be and what it could be. The prevailing sentiment from the Committee members was that climate change was an emergent situation that required action rather than promises. One person suggested that the Committee might more accurately be identified as the “Emergency Climate Action Committee.” As another member pointed out, people come together best when they are confronted with an emergency that requires co-dependent conduct and that such an

³ Proclamation: “Countywide Commitment to Address Climate Change,” June 2019; Napa County Board of Supervisors Board Agenda Letter, April 20, 2021; Recitals in Cooperative Joint Powers Agreement to Fund and Administer The Napa Countywide Climate Action Program, adopted April 20, 2021

emergency is now in front of us. Unfortunately, that cooperative action-based spirit, to which Committee members have repeatedly given lip service, has not been backed with concrete action.

Nowhere is the lack of action, as opposed to rhetoric, better demonstrated than by the committee's path to organizing itself. Notwithstanding the fact that there was general agreement at the Committee's first public meeting in November 2019 that there was a need for an integrated plan within the County that would provide real, rather than aspirational, goals and a system to monitor the progress toward those goals, the Committee spent the next *fifteen months* developing an agreed upon Joint Powers Agreement (JPA). In the end, this JPA essentially preserved the independence of each jurisdiction within it and dictated that the organization would be advisory only. Although the Committee received presentations on various subjects during those intervening months and entertained public comment urging it to take action on the subject of GHG reduction, its only actual accomplishment was eventually to agree on funding an updated GHG inventory, a project that had been on the books for the County for many years.⁴

Similarly, the Committee initially identified the potential need for a collaborative approach to developing an Electric Vehicle (EV) charging station infrastructure in Napa Valley. It sought and was provided an inventory of the number, location and type of existing EV charging stations at its April 24, 2020 meeting. Even so, development of plans and budgets for EV charging expansion and procurement did not proceed. Moreover, CAC members as a group did not appear to be aware of the details and extent of EV charging station subsidy programs currently available through the California Energy Commission and the Bay Area Air Quality Management District. It was not until its most recent meeting (April 2022) that the Committee reached a general agreement on retaining a consultant to create an EV charging plan, a process estimated to take an additional six to nine months. Even so, that recommendation needs to return to each jurisdiction for its approval of funding before the RFP (Request for Proposal) process to retain such a consultant can begin.

In the course of its interviews, the Grand Jury was repeatedly told that much of the delay in completing action items was due to the lack of a current GHG inventory (now due in August/September 2022). All interviewees agreed, however, that percentage-wise, the new inventory will likely mirror the results of the 2009 inventory. By far the largest contributors to GHG in Napa Valley are transportation (including agricultural vehicles) and buildings. Essentially, the targets for GHG reduction have not and will not change. Nonetheless, the CAC has made no significant attempts to promote programs that would address these sectors since its inception in 2019. Neither has it sought out cooperation from, or the significant expertise existent in, the agricultural sector. It has thus failed to consider vineyard-related hydrocarbon emissions that might be addressed on a collaborative basis.

Further, the Grand Jury observed that, although most of the cities and towns within Napa County have some sort of Climate Action Plan or a commitment to complete one in the near future, there is absolutely no mechanism in place to determine whether such plans are current with technology and science, nor is there any monitoring to determine if the goals and actions to be taken have been actually accomplished. There is thus no plan underway to determine what potential efficiencies and cost savings might be accomplished by county-wide cooperation on various potential GHG mitigations. Models of well-developed county-wide plans that have implemented such methods

4 The County's existent GHG inventory was completed in 2009 and is based on data from 2005.

are available from nearby counties such as Sonoma County. Napa does not have to “reinvent the wheel.” It can and should take cues from these other neighboring jurisdictions.⁵

The attitude of each jurisdiction in Napa County is dominated by a tendency of wanting to ‘go their own way,’ examining and adopting programs that only make sense for each of them. The Grand Jury concluded that the CAC is not living up to its charter of “identifying mutually agreed upon climate goals and action items for consideration by the individual Member Agencies.” It has failed to recommend intelligent county-wide programs to address the climate change impact of transportation and buildings, and ways of measuring them, the only way of making progress towards realistic targets.

In its previous report of the still incomplete Napa County Climate Action Plan, the 2017-2018 Grand Jury observed:

“Almost to a person, there is agreement that a collaborative effort by all the County jurisdictions is the preferred method of dealing with climate change issues, yet, presently all are “going it alone.” They point to unaligned interests making consensus difficult to achieve as the reason. Many say their individual efforts are too far down the road now to make a joint project a reality, and don’t want the possible recriminations of being thought to be the one(s) that put the brakes on ongoing efforts”.⁶

Apparently, little has changed in the past four years. The various jurisdictions continue to have cooperation issues when action, rather than rhetoric is called for.

The Grand Jury’s investigation found that the CAC’s structure contributes to its lack of success. It is an ungainly body of mostly elected officials, limited by its advisory status. It lacks vision and county-wide leadership to bring the different jurisdictions together to adopt and address a set of common goals and to monitor the member jurisdictions’ progress. The individual CAC members express the intent to address climate change with new programs but their inability to agree on a structure that would elevate this body to something more than an “advisory only” status has blunted the committee’s impact and prevented it from addressing GHG issues on a timely county-wide basis.

In fairness, the Grand Jury observed that the CAC has provided a single point of contact with the public on the issue of GHG reduction. Potentially, individuals and group representatives no longer need to attend meetings at six different jurisdictions to make themselves heard on the subject. Yet this is blunted to some extent by the problem of each jurisdiction going its own way and operating on a non-collaborative course. The latter would be minimized if authority for GHG mitigation actions was centralized in the CAC.

⁵ See for example: Regional Climate Protection Authority (Sonoma County) at <https://rcpa.ca.gov/what-we-do/climate-action-2020/> Imbedded link to “Regional Climate Action Plan”

⁶ 2017-2018 Napa County Grand Jury Final Report, p. 9.

FINDINGS

- F1. The CAC has not been effective in developing and implementing actions for county-wide programs to combat climate change.
- F2. Interviews of Napa CAC members confirmed that the Napa County CAC has decided not to take any major steps toward greenhouse gas (GHG) reduction until the GHG study is released.
- F3. Interviews revealed that the CAC was generally unfamiliar with the EV charging station subsidy programs currently available through the California Energy Commission and the Bay Area Air Quality Management District.
- F4. The CAC struggles with a lack of county-wide GHG mitigation funding. However, it has not placed a priority on having an experienced, effective grant and funding pursuit individual on staff to seek and secure GHG reduction grants, even though grant subsidies for programs like EV charging stations currently exist.
- F5. Past studies have stated that the two largest GHG emission categories are Transportation and Buildings. The Grand Jury's interviews confirm that these two categories are expected to remain the top two items in the GHG study currently underway. The CAC in its three years of existence has not defined and proposed any action items to address the top two categories of emissions.

RECOMMENDATIONS

- R1. The CAC should increase the sense of urgency in implementing GHG emission reduction actions.
- R2. The CAC should create monitoring protocols that seek to identify what its individual members have set as goals and to identify whether they have met meaningful standards consistent with those goals. These should be formalized and reported to the CAC on a quarterly basis.
- R3. The CAC should provide a detailed prioritized list of potential projects for possible grant funding and either retain or designate a current staff person as a grant researcher and writer to identify and seek grants from any possible source.
- R4. The CAC should restructure itself to provide authority over and accountability of its member jurisdictions.

R5. To benefit its work, the CAC should consider the following actions:

- Reducing the number of CAC members, currently from 12 (2 per jurisdiction), to 6 (1 per jurisdiction) to facilitate faster action, use of advisors and plan development.
- Utilize county citizens familiar with GHG emission reduction strategies to assist the CAC in the preparation of recommended actions.

RESPONSES

The following responses under Penal Code sections 933 and 933.05 are requested from the following elected city officials:

REQUIRED RESPONSES

- Town Council of Yountville
- City Councils of Napa, American Canyon, St. Helena and Calistoga
- The Napa County Board of Supervisors
- The Climate Action Committee, a Joint Powers Agreement Authority under California law



City of St. Helena
*"We will conduct city affairs on behalf of our citizens
 using an open and creative process."*

1572 Railroad Avenue
 St. Helena, CA 94574
 Phone: (707) 967-2792
 Fax: (707) 963-7748

www.cityofsthelema.org

August 23, 2022

The Honorable Cynthia P. Smith
 Presiding Judge of the Civil Grand Jury
 The Superior Court of California, County of Napa
 825 Brown Street
 Napa, CA 94559

Napa County Civil Grand Jury
 c/o Foreperson
 1754 Second Street, Suite D
 Napa, CA 94559

Re: Response to Napa County Grand Jury Report Dated June 13, 2022 Entitled:
 "Napa County's Climate Action Committee: Where's the Action?"

Dear Judge Smith and Foreperson:

The City of St. Helena has carefully reviewed and considered the findings and recommendations of the Napa County Grand Jury in its report dated June 13, 2022 entitled: "Napa County's Climate Action Committee: Where's the Action?" The Grand Jury requested the City Council's responses to the findings and recommendations in the report. This letter provides those responses pursuant to California Penal Code section 933.05, subdivisions (a) and (b).

FINDINGS:

F1: The CAC has not been effective in developing and implementing actions for county-wide programs to combat climate change.

The City Council respectfully disagrees with this Finding. The Grand Jury does not define by what standard the Climate Action Committee ("CAC" or "Committee") would be considered effective, or how the Committee has performed compared to that standard. The comment is unsubstantiated opinion, rather than a finding based upon empirical evidence.

Developing countywide programs to reduce greenhouse gas emissions is a process. The Committee is following the same process as that taken by the Sonoma Regional Climate Protection Authority, which is cited several times by the Grand Jury as the model that should be followed. The Authority prepared an updated greenhouse gas emission, considered a range of action items to achieve the target goals, and assisted member agencies in implementing those action items. The Committee is at an earlier stage than the Authority, which was formed in 2009. In contrast, the Committee only began meeting less than three years ago.

Within the short time of the Committee's operation, much has been done to lay down the foundation for effective climate action. The individual members of the Committee have all adopted Climate Emergency Resolutions and all members have adopted, or are in the process of preparing, Climate Action Plans. The municipalities participating in the Committee have adopted a Joint Powers Agreement, establishing the composition and operations for the Committee as well as an ongoing funding commitment. The Committee has secured a grant and is in the final process of updating the 2009 regional greenhouse gas emission inventory, which

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will include specific actions that can be taken by member agencies to reduce greenhouse gas emissions. The Committee has also directed staff to begin work on an Electric Vehicle Charging Station plan, to determine how the member agencies will meet the goals established by the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment.

The Committee has been meeting for a total of 33 months. During that time, Napa has experienced two major wildfires, a pandemic, and a continuing severe drought. A great deal has been accomplished in a short time, despite numerous challenges.

The City has independently adopted a Climate Emergency proclamation along with adoption of its General Plan, which includes specific sustainability elements.

F2: Interviews of Napa CAC members confirmed that the Napa County CAC has decided not to take any major steps toward greenhouse gas (GHG) reduction until the GHG study is released.

The City Council agrees with this Finding. The Committee will consider a range of potential climate change actions as a part of the regional greenhouse gas inventory update. Once the Committee has determined the current levels of greenhouse gas emissions (both regionally and by individual jurisdiction as well as source sector) and the targets needed to comply with future milestones, then it will have the information needed to consider actions tailored to address the specific sources and where they occur. To take action absent this information would be regulating based on anecdote. Any implementation of actions developed without this scientific framework would be subject to legal challenge and would not be accepted as adequate evidence if used in environmental analysis by member agencies.

The Grand Jury suggests in their report that, “Models of well-developed countywide plans that have implemented such methods are available from nearby counties such as Sonoma County. Napa does not have to reinvent the wheel. It can and should take cues from these other neighboring jurisdictions.” This is hardly a reasonable comparison. Sonoma County is 125% larger than Napa County and has a population 3.5 times the size of Napa County. Despite this size difference, Napa has more cultivated farmland than Sonoma, accounting for 8% of total land area, compared to only 3% in Sonoma.

The Sonoma County Regional Climate Protection Authority adopted its Climate Mobilization Strategy in 2021, three years after updating its regional greenhouse gas emission inventory in 2018. The Strategy did not borrow from other neighboring jurisdictions, but studied and utilized the best available science in determining its status and how best to reach the adopted goals over a 10-year timeframe. The Authority coordinates with member agencies to assist them in developing and implementing those measures that will have the greatest impact in reducing greenhouse gas emissions within their respective jurisdictions. The Committee is following the same path as that taken by the Authority: prepare an updated greenhouse gas emission, consider a range of action items to achieve the target goals, and assist member agencies in implementing those action items.

F3: Interviews revealed that the CAC was generally unfamiliar with the EV charging station subsidy programs currently available through the California Energy Commission and the Bay Area Air Quality Management District.

The City Council respectfully disagrees with this Finding. Over the past two years, the Committee has reviewed and discussed electric vehicle charging station grant programs on numerous occasions. At the April 24, 2020, meeting the Committee reviewed several potential electric vehicle charging station grant programs, including the Marin Clean Energy Charging program, the Bay Area Air Quality Management District Charge! program, and the California Energy Commission Electric Vehicle Infrastructure Project program. On May 22, 2020, the Committee reviewed a list of programs offering incentives for residents and businesses to purchase electric vehicles. On February 26, 2021, the Committee received a presentation from the California Hydrogen Business Council on hydrogen vehicles and fueling stations. On July 23, 2021, the Committee reviewed the number of existing electric vehicle charging stations, the goals of the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment, and available incentives including the Marin Clean Energy grant program. The July discussion continued into the meetings of October 22 and November 19, providing a summary of available grant programs, including the California Energy Commission Electric Vehicle Infrastructure Project program.

The Grand Jury is not specific regarding which subsidy programs are not being considered by the Committee and did not go into detail regarding the cost or eligibility of recent grant programs. For instance, the Charge! program offered by the Bay Area Air Quality Management District offered earlier this year, provides \$7 million to offset a portion of the cost of new public charging stations at qualifying facilities. However, the Charge! program only funds 50% to 80% of the cost of installation. Applicants must pay all up-front costs and at least 15% of the total project costs. With a minimum grant award of \$1 million, local jurisdictions would have to pay between \$150,000 and up to \$500,000 to participate in the subsidy. Environmental review, administrative costs, and maintenance are not eligible for funding. In addition, 60% of all funds awarded by this program are required to be spent within Environmental Justice communities, which excludes several of the Climate Action Committee members.

The Rural Electric Vehicle Charging grant provided by the California Energy Commission offers \$4.8 million to local jurisdictions to install charging stations in rural areas. However, Napa County and other Bay Area jurisdictions are ineligible for the program due to high number of existing charging stations in those areas.

The California Energy Commission also recently awarded a grant program of \$6 million for the Charging Access for Reliable On-Demand Transportation Services (CARTS) program. The grant supports electric vehicle charging stations for high mileage on-demand transportation services including services such as ride-hailing, taxis, and meal and grocery delivery. Each region was allotted one project up to \$2 million, with a 50% match required from the applicant, again requiring significant funding from local jurisdictions.

The California Energy Commission is in the process of developing the application process for Block Grants for Electric Vehicle Charging Incentive Projects. The qualification criteria,

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amount of subsidy, and other details are still being developed. It is expected that the application period will open late in 2022. The County applied for and was awarded \$20,000 in 2020 under this program to install additional charging stations at the Third Street Parking Garage, but was unable to meet the accelerate timelines required by the Commission.

The California Capital Access Program Electric Vehicle Charging Station Financing Program offered by the State Treasurer closed earlier this year. It provided \$2 million to fund a 10-15% rebate on the cost of installing charging stations for small businesses, and would not have applied to the Committee or its members.

The City has independently approved two (2) public EV charging stations that were installed and funded through an agreement with EVgo, who is a third-party electric vehicle service provider.

F4: The CAC struggles with a lack of county-wide GHG mitigation funding. However, it has not placed a priority on having an experienced, effective grant and funding pursuit individual on staff to seek and secure GHG reduction grants, even though grant subsidies for programs like EV charging stations currently exist.

The City Council respectfully disagrees with this Finding. The member agencies of the Committee have allocated and reserved collectively \$168,000 for the Committee over the past two years. These funds are in addition to the \$50,000 in grant funding secured from the Bay Area Air Quality Management District. These monies have paid for staff to support the operations of the Committee, including the successful pursuit of one grant and ongoing monitoring of other available grant programs. Of course, this is all supplementary to the expenditures made by each jurisdiction in developing and implementing their individual climate action plans.

As stated in the response to F3 above, grant subsidies for electric vehicle charging stations are expensive and member agencies do not always qualify. Moreover, the Committee relies on funding provided by the member agencies; it does not have a separate revenue source. Participation in grant programs require match funds and/or administrative costs, as well as long-term continuation of effort. This funding depends on budgetary decisions by City and Town councils, as well as the Board of Supervisors, balanced against other competing social needs and interests.

The City has independently allocated funds in its 2022/2023 budget to fund the Committee and the Green House Gas (GHG) Inventory Project.

F5: Past studies have stated that the two largest GHG emission categories are Transportation and Buildings. The Grand Jury's interviews confirm that these two categories are expected to remain the top two items in the GHG study currently underway. The CAC in its three years of existence has not defined and proposed any action items to address the top two categories of emissions.

The City Council respectfully disagrees with this Finding. The Grand Jury report is correct in that staff anticipates that Building Energy Use and On-Road Transportation will likely be the two

largest categories of greenhouse gas emissions in the upcoming regional inventory. Both issues are largely regulated by the State of California through the Uniform Building Code and the Vehicle Emission Standards. While there are additional actions that can supplement the State's efforts, the Grand Jury is asking the Climate Action Committee and its member jurisdictions to take action without knowing the extent of the problem or the goal that is to be achieved.

More importantly, taking regulatory action always involves the potential for litigation, and it is the duty of the jurisdiction taking action to make its case as to why any new regulations are required, whether they are proportional to the impact, whether they are effective, and what standard will be achieved. In the absence of an updated greenhouse gas emission inventory, the Committee and its members would be acting in the absence of any context, and if the resulting regulations are overly burdensome or inequitably fall on some members of the community more than others, they would be exposing themselves and the general public to the potential for lengthy and expensive litigation.

As a part of the scope of work for the updated regional greenhouse gas emission inventory, the Committee has directed the consultant to identify and evaluate specific greenhouse gas reduction actions for the following sectors: transportation, building and other energy use, waste reduction and material consumption, carbon sequestration, water conservation, and food consumption. These actions will be evaluated by the Committee later this year and forwarded to the individual member agencies for consideration and implementation.

The City has in its adopted General Plan, a sustainability element independently adopted and will review that element in conjunction with the Green House Gas (GHG) Inventory Project once complete.

Recommendations

R1: The CAC should increase the sense of urgency in implementing GHG emission reduction actions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The recommendation does not indicate what timeline should be used for implementation, nor does it define what steps should be taken to "increase the sense of urgency." The State has established specific milestones for local jurisdictions to reduce greenhouse gas emissions: a 90% reduction below 1990 levels by 2035, and net zero emissions by 2045. These goals are more immediate than the 2050 net zero goal established by Federal agencies, the United Nations, and the Intergovernmental Panel on Climate Change (IPCC).

In addition, there is much being done already to achieve these goals. The individual member agencies of the Committee have all adopted Climate Emergency Resolutions, and all members have adopted, or are in the process of preparing, Climate Action Plans. The municipalities participating in the Committee have adopted a Joint Powers Agreement, establishing the composition and operations for the Committee, as well as an ongoing funding commitment. The Committee has secured a grant and is in the final process of updating the 2009 regional greenhouse gas emission inventory, which will include specific actions that can be taken by

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member agencies to reduce greenhouse gas emissions. The Committee has also directed staff to begin work on an Electric Vehicle Charging Station plan, to determine how the member agencies will meet the goals established by the California Energy Commission Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment.

The Committee has been meeting for a total of 33 months. During that time, Napa has experienced two major wildfires, a pandemic, and a continuing severe drought. A great deal has been accomplished in a short time, despite numerous challenges.

R2: The CAC should create monitoring protocols that seek to identify what its individual members have set as goals and to identify whether they have met meaningful standards consistent with those goals. These should be formalized and reported to the CAC on a quarterly basis.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. Using individual climate action plans as the basis for monitoring progress towards greenhouse gas reduction goals would require a significant level of effort due to the different timelines and methodologies used by each jurisdiction. For example, both American Canyon's 2012 Climate Action Plan and Calistoga's 2014 Climate Action Plan have a greenhouse reduction goal of 2020, but no goals beyond that date. The City of Napa's 2012 Sustainability Plan has goals for 2030, 2040, and 2050, but it looks only at municipal operations and not at community sources of greenhouse gas emissions. Yountville's 2016 Climate Action Plan has a goal of 2030, St. Helena's 2019 General Plan has goals of 2030 and 2040, and the draft County 2019 Climate Action Plan has goals of 2030 and 2050. Beyond the lack of common timelines used, how each jurisdiction calculates emissions also varies. Different methodologies, definitions, and data sources have been used, as climate modeling has changed greatly over the past 10 years. Lastly, not all jurisdictions have action items that have quantitative reductions in emissions associated with them. Several of the plans have qualitative action items and are not clear as to how reduction goals will be achieved. The value of a single integrated inventory is that all jurisdictions can be analyzed using the same information and modeling to create a basis for comparison, as well as the opportunity to determine how collaborative actions can gain greater reduction through effective collaboration.

The Committee is established as a collaborative effort that allows each member agency to retain local control within its jurisdiction. Consequently, the City and Town Councils and Board of Supervisors are held accountable by their respective constituents for meeting greenhouse gas reduction goals. Staff is not aware of any regional climate action committee (including the Sonoma County Regional Climate Protection Authority) that monitors member agencies for progress towards meeting each jurisdiction's climate action goals. It is unclear what added value monitoring by the Committee would provide or what steps, if any, would be taken by the Committee for any member that was not meeting "meaningful standards" as established by the Committee.

R3: The CAC should provide a detailed prioritized list of potential projects for possible grant funding and either retain or designate a current staff person as a grant researcher and writer to identify and seek grants from any possible source.

This recommendation has been implemented, as it pertains to the City. Staff to the Committee have already secured one \$50,000 grant and continue to search for other appropriate potential funding opportunities, where local agencies qualify and where funding to support and implement the grant has been allocated at the direction of the member agencies of the Committee.

The City has independently allocated funds in its 2022/2023 budget to fund the Committee, is currently working on an ordinance banning gas-powered leaf blowers, and has allocated funds to provide grants to help implement that effort.

R4: The CAC should restructure itself to provide authority over and accountability of its member jurisdictions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The Committee is established as a collaborative effort that allows each member agency to retain local control within its jurisdiction. The Grand Jury is proposing a restructuring of the Committee to convert it into a regional climate agency, with the ability to enforce and regulate within member jurisdictions.

The Grand Jury describes, "...the problem of each jurisdiction going its own way and operating on a non-collaborative course." They advocate for the creation of a new bureaucracy, where power over climate change can be centralized and enforced. Certainly, such an approach can lead to greater and faster action. However, the Grand Jury does not discuss the disadvantages of such an approach. A regional agency would be able to enforce actions against a member agency, regardless of the fiscal or economic impact on the jurisdiction. Solutions that work in a City of 75,000 may be equally applied in a Town of less than 4,000, or a rural community where they may not be effective or relevant. Residents and businesses who may be disproportionately and adversely affected by new regulations would not have a place to appeal any decision and would not be able to directly vote for the decision makers. If this model were the most effective approach, it seems that the State would have created a centralized regulatory agency to administer climate change requirements throughout California, but that has not occurred. The sources of greenhouse gas emissions, patterns of community development, demographics, and lifestyles of communities in Napa County are very diverse. A uniform, top-down strategy to expedite action on the reduction of greenhouse gas emissions can lead to oversimplification and may instead impede progress by focusing scarce resources enforcing a "one-size-fits-all" solution.

Moreover, City staff are unaware of any region within the State of California that has adopted such a model. The Sonoma County process referred to in the Grand Jury report is not binding on member jurisdictions. The countywide plan is made available for each municipality to consider on its own. It should be noted that an appeal of the Superior Court decision regarding the California Environmental Quality Act document for the Sonoma countywide climate action plan was not pursued because member agencies did not unanimously support continued action. As a result, an Environmental Impact Report for the Sonoma countywide climate plan was never certified. The other examples of regional climate agencies that staff are familiar with are also advisory; none have legal authority over the participating jurisdictions. The Grand Jury is

advocating for a new agency with powers over climate action planning and implementation that has not been attempted anywhere in California. At a minimum, a great deal more thought and consideration should be applied to the question, rather the casual support given to such a radical idea by the Grand Jury.

R5: To benefit its work, the CAC should consider the following actions: (A) Reducing the number of CAC members, currently from 12 (2 per jurisdiction), to 6 (1 per jurisdiction) to facilitate faster action, use of advisors and plan development; and (B) Utilize county citizens familiar with GHG emission reduction strategies to assist the CAC in the preparation of recommended actions.

This recommendation will not be implemented by the City, as it is not warranted or reasonable. The Grand Jury does not point to any evidence in their report to demonstrate that a smaller Committee would be more effective. The two examples cited in their report do not support this conclusion. The Sonoma County Climate Action Committee is similar to Napa County and has two representatives from each jurisdiction for a total of 24 members (compared to Napa's 12 members). It should be noted that the Sonoma Regional Climate Authority, which the Sonoma Climate Action Committee advises, also has 12 members. There is no reference to a Contra Costa Climate Action Committee. It is assumed the reference in the Grand Jury report is to the Contra Costa County Sustainability Commission, which has 17 members. In addition, the Mendocino County Climate Action Advisory Committee has 15 members. Other than a passing reference by the Grand Jury to "...an ungainly body of mostly elected officials...", the report offers no constructive criticism or facts to support their unsubstantiated recommendation.

The Committee has an extensive history of considering input from county residents and interested parties regarding greenhouse gas emission reduction strategies. On August 28, 2020, the Committee heard a presentation from Napa Climate Now! regarding budget conscious climate actions. On February 26, 2021, the Committee heard a presentation from the California Hydrogen Business Council, on hydrogen vehicles and fueling stations for local governments. On March 26, 2021, the Committee heard a presentation on the Napa Green program. On April 23, 2021, the Committee heard a presentation on forest health from the Napa County Resource Conservation District. On May 28, 2021, the California Land Stewardship Institute gave a presentation to the Committee on the Climate Adaptation Certification, a comprehensive science and winegrower collaboration to benefit agriculture and the environment. On June 25, 2021, the Committee heard a presentation from the Napa County Bicycle Coalition regarding Safe Routes to School: Parent Perception Research. On July 23, 2021, Napa Climate Now! made a second presentation to the Committee on a Reusable Foodware and Waste Reduction Ordinance. On October 22, 2021, Napa Schools gave a presentation to the Committee. On April 22, 2022, the Committee heard from City of Napa staff regarding solid waste and recycling programs and potential projects. On July 26, 2022, Community Climate Solutions gave a presentation on the Napa County Climate Challenge website.

The Committee will continue to seek out and encourage ideas from local residents and organizations and will welcome public comment on the proposed greenhouse gas reduction action items that will be included with the updated regional inventory.

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The City welcomes and appreciates the Grand Jury's interest in the City's operations, as well as the opportunity to respond to the findings and recommendations contained in the report.

Sincerely,

Geoff Ellsworth, Mayor
On Behalf of the City Council
City of St. Helena



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a resolution (1) approving temporary street closures of Oak Avenue, Adams Street, Tainter Street, and the Oak Avenue City parking lot; (2) Authorizing possession of open alcoholic beverages on public streets and parking lots within the event space; and (3) waiving the Encroachment Permit fee for the Hometown Harvest Festival on October 15, 2022.

CEQA Determination: Not a CEQA project

Prepared By: Dave Jahns, Parks & Recreation Director

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

The Hometown Harvest Festival is an annual event implemented by the St. Helena Parks & Recreation Department, in partnership with various community-based organizations and local vendors. The event has historically taken place on the third Saturday of October on Oak Avenue and surrounding streets and parking lots. The event is free to attend and all community members and visitors are welcome.

DISCUSSION

This year's annual Hometown Harvest Festival celebration is scheduled to take place on Saturday October 15, 2022. With City Council's approval of the proposed resolution, the event will include the following festivities:

Community Fun Run:

- Time: 7:00am – 9:00am
- Location: Adams St. (between Oak Ave. and Kearney St.)

Pet PAWrade:

- Time: 9:00am – 12:00pm
- Location: Oak Ave. (between Pine St. and Adams St) & Adams St. (between Oak Ave. and Kearney St.)

Harvest Festival

- Time: 11:00am – 4:00pm
- Location: Oak Ave. (between Adams St and Spring St.), Oak Ave. City parking lot, and Tainter St. (between Oak Ave. and Kearney St.)
- Includes arts & crafts vendors, food and beverage sales, live music, interactive family activities, and community informational booths

Staff will implement the following precautionary traffic control measures to ensure a safe event for attendees and limit the impact the proposed road closures have on the community:

- Electronic sign boards will be placed around the proposed street closures to notify the community in advance of the event.
- No parking signage will be placed within the proposed street closure area 72-hours in advance of the event.
- City staff will directly notify and provide details of potential impacts to the businesses and residents adjacent to the event area in advance of the event.
- City staff in the Parks & Recreation, Public Works, and Police Departments will be working day-of the event.
- City staff will supply, set-up, and remove traffic control items (signage, barricades, traffic cones, vehicle blockades) to limit any potentially dangerous vehicle/pedestrian interface.
- Event team will abide by all conditions of the encroachment permit and traffic safety conditions as stipulated by the Public Works and Police Departments.

Historically, local non-profit organizations have sold alcoholic beverages at this event, including St. Helena Kiwanis Foundation, St. Helena Rotary Club, and St. Helena Oddfellows. Staff intends to once again work in partnership with a local non-profit to provide this service this year. The organization(s) will meet all insurance and responsible service requirements as stipulated by City Staff, St. Helena Police Department, and the Department of Alcoholic Beverage Control.

FISCAL IMPACT

All staff time and associated event costs will be funded from approved FY 22-23 departmental budgets. As a City-run event that directly benefits the community, Staff recommends the City Council waive the encroachment fee, which is currently set at a rate of \$500.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached Resolution.

ATTACHMENTS

[2022 Hometown Harvest Festival Resolution](#)

CITY OF ST. HELENA

RESOLUTION NO. 2022 - ____

RESOLUTION (1) APPROVING TEMPORARY CLOSURES OF OAK AVENUE, ADAMS STREET, TANTER STREET, AND THE CITY PARKING LOT ON OAK STREET; (2) AUTHORIZING POSSESSION OF OPEN ALCOHOLIC BEVERAGES ON SPECIFIC PUBLIC STREETS; AND (3) WAIVING ENCROACHMENT FEES FOR THE HOMETOWN HARVEST FESTIVAL FESTIVITIES ON OCTOBER 15, 2022

RECITALS

- A. The St. Helena Recreation Department is requesting temporary closures of Oak Avenue (between Spring St. and Pine St.), Adams Street (between Oak Ave. and Kearney St.), Tainter Street (between Oak Ave. and Kearney St.), and the City parking lot on Oak Street (1304 Oak Ave.) for the Hometown Harvest Festival on October 15, 2022;
- B. Closure of City streets and lots within the event area will provide adequate space for Harvest Festival activities to take place and create a safe environment for event attendees, staff, and vendors;
- C. City staff will work in partnership with local non-profit organizations to sell beer and wine at the event. The St. Helena Municipal Code Section 9.04.010 authorizes the City Council to allow possession of open alcoholic beverages on public streets or any private or public off-street parking lot;
- D. In consideration of the benefits this event provides the St. Helena community, the City Council desires to waive the Encroachment Permit fee for the event, with the understanding that event organizers will follow all permit requirements and the general conditions applicable to said permit;
- E. Section 21101(e) of the California Vehicle Code provides that local authorities may, by resolution, temporarily close a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designated by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

RESOLUTION

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

1. The City Council finds that the temporarily closing City streets for the Hometown Harvest Festival will provide a safe and conducive environment for City staff to implement an event that directly benefits the community, and authorizes closures of the following streets and parking lots on October 15, 2022:
 - Oak Avenue, between Spring Street and Pine Street, from 6:00am – 12:00pm
 - Oak Avenue, between Spring Street and Adams Street, from 6:00am – 6:00pm
 - Adams Street, between Oak Avenue and Kearney Street, from 6:00am – 6:00pm
 - Tainter Street, between Oak Avenue and Kearney Street, from 6:00am – 6:00pm
 - City parking lot located at 1304 Oak Avenue from 6:00am – 6:00pm
2. The possession of open containers of beer and wine is permitted on public streets and parking lots encompassed by the event.
3. City Council desires to waive the Encroachment Permit fee for the event.
4. The City insurance policy covers this event at no additional cost to the City.
5. The City Manager is authorized to provide appropriate levels of City staff support to accomplish street closures and associated event activities.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 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 - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and Proposed Approval of a Resolution approving extension of License Agreement #22WSR0249N between the National Oceanic and Atmospheric Administration (NOAA) Office of Atmospheric Research and the City of St. Helena for the continued placement of a precipitation radar and gauge at the Louis Stralla Water Treatment Plant

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

Prepared By: Eric Janzen, Assistant Public Works Director

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

Approved By: Anil Comelo, City Manager

BACKGROUND

During the period from February 2012 to April 2013, the National Oceanic and Atmospheric Administration (NOAA) operated a precipitation monitoring site gauge at the Louis Stralla Water Treatment Plant (LSWTP) at a no-cost site license, and compensated the City of St. Helena for electrical usage.

In 2014, NOAA partnered with the California Department of Water Resources to deploy ten precipitation radars throughout the State of California to provide flood forecasting data and determined that LSWTP would work well for this purpose. NOAA contacted staff to make formal term arrangements for the placement of the additional equipment at the same location as the gauge. The additional equipment would utilize approximately 250 square feet of space and data collection would continue for five to ten years.

On May 14, 2014, the City Council authorized approval of Resolution No. 2014-26, which approved a temporary no-cost site license for in order to allow staff to work with NOAA and its General Counsel to work on a longer-term lease agreement.

On July 28, 2015, City Council authorized Resolution No. 2015-83, extending the License Agreement with NOAA until October 2015.

On June 27, 2017, City Council authorized Resolution No. 2017-87 approving a five-year License Agreement #17WBR0007 with NOAA to utilize the LSWTP for precipitation radars and related weather monitoring equipment.

DISCUSSION

This agreement renews an existing agreement from 2017 that has expired this year. Staff has negotiated a five-year extension to the agreement with NOAA. The NOAA equipment does not interfere with any current operations at the Louis Stralla Water Treatment Plant and the equipment has been onsite for approximately ten years without any problems. Included in Attachment 3 is a description of the property and premises and the existing NOAA equipment is shown in Attachment 4.

Staff recommends a five-year extension of this agreement. This would allow NOAA to continue placement of a precipitation radar and gauge at the Louis Stralla Water Treatment Plant.

FISCAL IMPACT

The five-year agreement will require NOAA to cover electrical usage used by the equipment.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached resolution.

ATTACHMENTS

[Attachment 1: Resolution NOAA Agreement](#)

[Attachment 2: City Agreement with NOAA Draft](#)

[Attachment 3: Exhibit A Description of Property and Premises](#)

[Attachment 4: Exhibit B NOAA Equipment at LSWTP](#)

CITY OF ST. HELENA

RESOLUTION NO. 2022 -

Authorizing the City Manager to execute a five-year License Agreement #22WSR0249N with National Oceanic and Atmospheric Administration (NOAA) Office of Atmospheric Research for the continued placement of a precipitation radar and gauge at the Louis Stralla Water Treatment Plant

RECITALS

- A. During the period from February 2012 to April 2013, NOAA operated a precipitation monitoring site (gauge) at the Louis Stralla Water Treatment Plant (LSWTP); and
- B. In 2014, NOAA partnered with the California Department of Water Resources to deploy ten precipitation radars throughout the State of California to provide flood forecasting data and determined that LSWTP would work well for this purpose; and
- C. NOAA contacted staff to make formal term arrangements for the placement of the additional equipment at the same location as the gauge; and
- D. On May 14, 2014, the City Council authorized approval of Resolution No. 2014-26 which approved a temporary no-cost site license for which would allow staff to work with NOAA and its General Counsel to work on a longer term lease agreement; and
- E. Resolution No. 2015-83 extended the agreement with NOAA until October 2015; and
- F. On June 27, 2017, City Council authorized Resolution No. 2017-87 extending the License Agreement #17WBR0007 with NOAA for five-years; and
- G. The current five-year agreement expired this year, and staff has worked with NOAA to renew the existing agreement from 2017; and
- H. The City wishes to continue to work with NOAA and is extending the agreement for another five years.

RESOLUTION

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

1. Authorize the City Manager to execute a five-year License Agreement #22WSR0249N with National Oceanic and Atmospheric Administration (NOAA) in substantial conformance with the draft version contained in the August 23,

2022 City Council agenda packet, subject to the review and approval by the City Attorney.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 2022, by the following vote:

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

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaferopoulos, City Clerk

	U.S. GOVERNMENT LICENSE FOR REAL PROPERTY	
DATE OF LICENSE: July 28, 2022		LICENSE NO: 22WSR0249N
This License is made and entered into between: The City of St. Helena whose address is: 1572 Railroad Avenue St. Helena, CA 94574 hereinafter called the "Licensor", and the United States of America, hereinafter called the "Government". Witnesseth: The parties hereto, for the mutual undertakings of the parties and consideration hereinafter mentioned, covenant and agree as follows: 1. <u>Premises.</u> Licensor owns or controls improved land located at the Louis Stralla Water Treatment Plant, 410 Crystal Springs Rd., St. Helena, CA 94559 and Napa County (the "Property"). Licensor licenses to the Government and the Government licenses from the Licensor a portion of the Property consisting of approximately 200 square feet of improved land (the "Premises"). The approximate geographic coordinates of the Premises are Latitude 38.554501, Longitude -122.485001. Exhibit A further describe the Property and Premises. 2. <u>Term.</u> This License begins on July 11, 2022, and ends on July 31, 2032, subject to the termination and other rights as may be hereinafter set forth. The parties may agree to enter into a succeeding ground license after this License ends, with the Government's property (e.g., improvements, equipment) remaining the property of the Government. 3. <u>Rent and Transfer of Funds.</u> The Government shall pay the Licensor no monetary consideration in the form of rent. Nothing in this License shall constitute an obligation of the Government to transfer its funds to the Licensor or others. 4. <u>Termination.</u> This License is revocable at will by either party. Should this License be revoked prior to the agreed upon expiration date, then, the parties will coordinate the removal of the Government's equipment. 5. <u>Use.</u> The Government may use the Premises for any lawful purpose, such as for installing, operating, maintaining, repairing, and replacing its equipment (e.g., for the purpose of installing, operating, and maintaining a snow-level radar system observing platform consisting of a trailer mounted FMCW radar and a small weather station) as may be necessary in order to carry out the Government's mission. The Government shall have the right to make alterations, additions, and improvements to the Premises and Government property as may be necessary in order to carry out the Government's mission. 6. <u>Utility Connection.</u> The Government shall have right-of-way to connect to all necessary utilities (e.g., for maintaining power, telecommunications, cabling, and fuel lines to the Premises); all rights-of-way to be over or under the Property may be by routes reasonably determined to be the most convenient to the Government. The Government is responsible for funding its connection to the Premises and shall arrange for connection to existing utilities through separate agreements. 7. <u>Operations, Maintenance & Utilities.</u> (a) The Government will keep and maintain the Government's equipment in good condition, reasonable wear and tear excepted. (b) The Licensor shall maintain, repair, and keep in good and tenantable condition the Premises, as well as the access to the Premises. (c) The Licensor is not responsible for providing the Government with utilities or any additional services; therefore, the Government shall be responsible for obtaining and paying for its own utilities and additional services.		

U.S. GOVERNMENT LICENSE FOR REAL PROPERTY
DOC NOAA 2020 V1 (DEC)

8. **Taxes and Assessments.** The Government shall not be responsible for the payment of any taxes, assessments, or fees levied on the Property or on the Government's property (e.g., equipment).
9. **Access.** For the duration of this License, and at no cost to the Government, the Licensor is responsible for ensuring the Government, its employees, contractors, subcontractors, licensees and other authorized representatives shall have access (rights of ingress and egress) to the Premises at all times (i.e., 24 hours per day and 7 days per week). The Licensor shall be responsible for securing any easement, right of entry, or other access agreement necessary to ensure the Government's access to the Premises from a nearby public roadway. When applicable, the Licensor shall provide the Government with at least two keys or the combination or code for any security fencing. The Government may, at its own expense, erect a fence or other barrier to restrict access to the Premises.
10. **Hazardous Materials.** The Premises shall be free of hazardous materials according to applicable environmental laws and regulations.
11. **Government Property.** Licensor covenants and agrees that none, nor any part, of the Government's property (e.g., equipment, buildings, fixtures, improvements) placed in, on, upon or affixed to the Premises shall become, or be considered part of, the Premises. The Government's property shall remain the property of the Government, unless disposed of or abandoned by the Government in accordance with applicable federal laws and regulations. Said disposal or abandonment will also need to be coordinated among the parties.
12. **Authority to License.** Licensor covenants that Licensor's interest in the Property is sufficient to enter into this License and Licensor's signatory has full authority to bind the Licensor to all terms and conditions of this License; the Government may reasonably request evidence of said interest and authority.
13. **Claims.** For the purposes of this License, the Government is considered to be self-insured. The Government agrees to promptly consider and adjudicate any claims which may arise out of use of the Licensor's Property/Premises by the Government or duly authorized representatives or contractors of the Government and to pay for any damage or injury as may be required by applicable law. Such adjudication may be pursued under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., the Federal Employees' Compensation Act, 5 U.S.C. § 8101 et seq., or such other legal authority as may be pertinent.
14. **Correspondence.**

Correspondence to the Licensor shall be sent to:	Correspondence to the Government shall be sent to:
Mark A. Rincon-Ibarra, Public Works Director City of St. Helena Public Works Department 1572 Railroad Avenue St. Helena, CA 94574 Direct: (707) 968-2629 mrincon@cityofsthelelena.org	Thomas Ayers NOAA/OAR/PSL 325 Broadway, R/PSL Boulder, CO 80305-3328 303.497.6012 With a copy to: Real Property Contracting Officer NOAA/OCAO/RPMD Western Region 7600 Sand Point Way NE – Building 1 206.526.6422

15. **Successors Bound.** This License shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.
16. **Quiet Enjoyment.** Licensor agrees that the Government shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this License, without hindrance from Licensor or anyone claiming rights by, through or under Licensor. In support of the Government's mission of collecting, studying, and reporting on meteorological conditions, the Licensor agrees to share any potential development plans with the Government to avoid damaging any Government improvements including the Government's utility lines, grading and access.
17. **Exhibits and Attachments.** The following are attached and made a part hereof:
 - A. Exhibit "A", Description of the Property and Premises (1 page)
 - B. Exhibit "B", Description of equipment (1 page)

18. <u>Unique Requirements.</u> None	
19. <u>Prior Transaction.</u> This License succeeds License number 17WBR0007N.	
In Witness Whereof, the parties to this License evidence their agreement to all terms and conditions set forth herein by their signatures below.	
LICENSOR: THE CITY OF ST. HELENA	
BY _____ Signature	_____ Name (Print), Title, & Date
IN THE PRESENCE OF:	
BY _____ Signature	_____ Name (Print), Title, & Date
UNITED STATES OF AMERICA:	
Signature _____ Department of Commerce	_____ Thomas E Ayers Name (Print)

**NOAA/OAR MONITORING SITE
LOUIS STRALLA WATER TREATMENT PLANT (ST. HELENA), CALIFORNIA**

**EXHIBIT "A" TO LICENSE #22WSR0249N
DESCRIPTION OF THE PROPERTY AND PREMISES**

LOUIS STRALLA WATER TREATMENT PLANT:

Latitude: 38.554501; Longitude: -122.485001

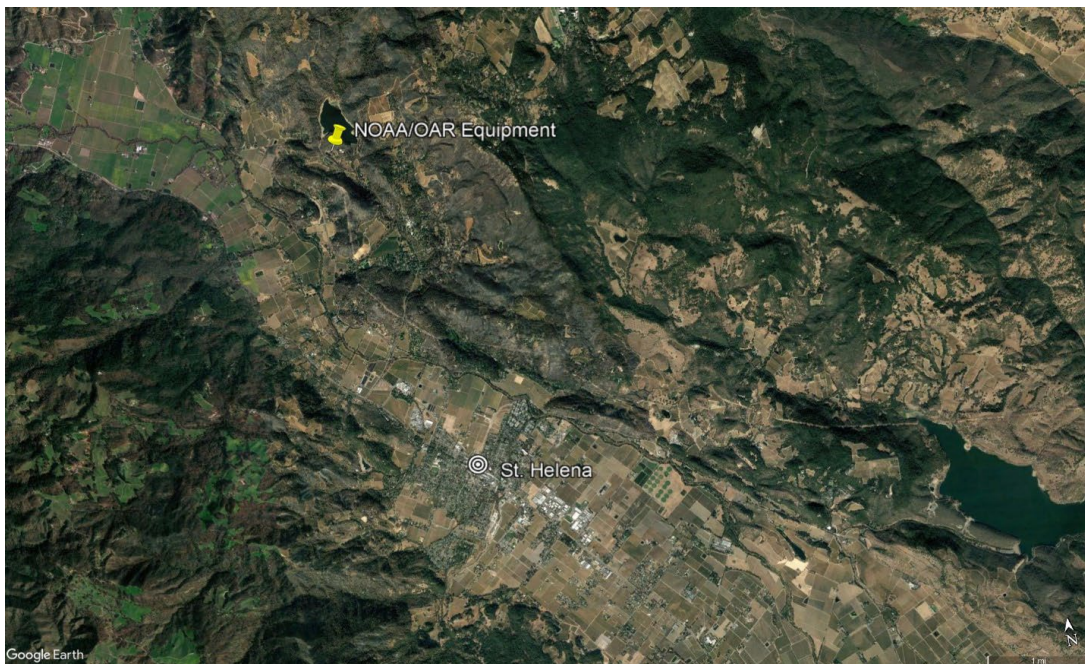
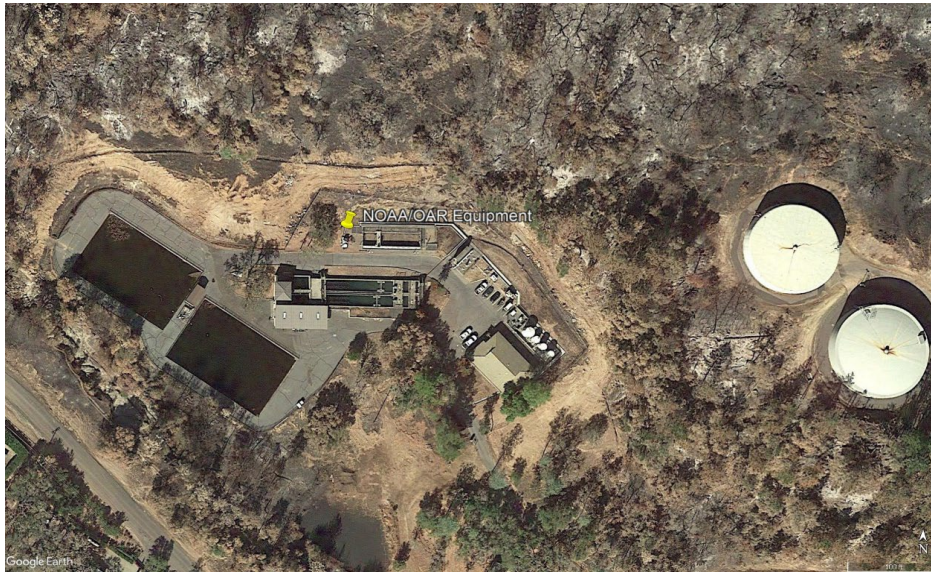


Exhibit "A" to Lease #22WSR0249N

Page 1 of 1

NOAA/OAR MONITORING SITE
LOUIS STRALLA WATER TREATMENT PLANT (ST. HELENA), CALIFORNIA

EXHIBIT "B" TO LEASE #22WSR0249N
GOVERNMENT'S EQUIPMENT

Government's Equipment:

Observation platform consisting of a trailer-mounted FMCW radar and a small weather station.





Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration of Second Reading and Waiver and Adoption of a Safe Firearm Storage Ordinance

CEQA Determination: Not a CEQA project

Prepared By: Chris Hartley, Chief of Police

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

One small child dies almost every day in this country after finding an unsecured firearm in their own home or in a relative's home or while playing at a friend's house. Two older children, particularly teens, die every day in this country by suicide from an unsecured firearm they obtain from their home or another family member's home. In addition, 80% of school mass shootings are done by current or former students, using an unsecured firearm obtained from their own home or a relative's home. A Safe Storage ordinance has become more urgent than ever during COVID, given the dramatic rise in gun sales. Combined with more time spent sheltering at home and the increase in mental health issues, we have seen a shocking 43% increase in unintentional deaths of small children and a 9% increase in teen suicides.

Research shows that keeping guns securely stored does not hinder self-protection - a gun can be accessed within seconds - but it does prevent unintentional deaths of children and teen suicides, by as much as 85% depending on the type of storage. Storing firearms in a securely locked container can also prevent guns from being easily stolen in a home robbery. A Department of Justice (DOJ) approved safe storage device can be obtained for as little as \$40 so the cost is not prohibitive, and trigger locks are often given out free at police stations.

Some people are under the impression that the California Penal Code (25100) already addresses this issue; however, it does not. This section of the Penal Code does not define how to safely store a firearm and it does not apply to all homes. For example, parents often hide their guns (feeling this makes them safe) rather than locking them up, but studies show 70% of children know the location of these hidden guns in their own home and many have even handled them.

Many cities and towns up and down California have already adopted Safe Storage ordinances.

The introduction and first reading was conducted at the regular City Council meeting of August 9, 2022.

DISCUSSION

The City of St. Helena does not presently regulate gun storage within residential locations and improperly stored firearms may result in accidental firearm injuries and/or deaths, particularly in homes with children. Additionally, having a loaded or unlocked firearm in the home has been associated with an increased risk of firearm-related injury and death, as well as theft of the firearm. Keeping a firearm locked when it is not being carried ensures that it cannot be accessed or used by others without the owner's knowledge or permission, decreasing the risk that the gun will be used to commit suicide, homicide, or inflict injury, whether intentionally or unintentionally. Both the International Association of Chiefs of Police and the American Academy of Pediatrics recommend the safe storage of firearms.

When considering the penalty for violating the Safe Storage Ordinance, The City of St. Helena supports a civil penalty, rather than a criminal penalty which is reflected in the attached ordinance. Cities and towns early on in the process of adopting safe storage ordinances did often adopt a criminal penalty – that is, a misdemeanor; however, more recently cities and towns have adopted a civil only penalty.

The St. Helena Police Department currently provides free gun locks to citizens and readily takes possession of any firearms or ammunition turned in by the community for destruction. The St. Helena Police Department will be sponsoring a gun safety booth during both the National Night Out event and the Harvest Festival to promote gun safety as well as provide education to the community of the ordinance. Both of these events held annually and will support both community awareness and education.

Because of the inherent risks of not keeping a firearm locked, staff recommends the City Council adopt an ordinance adding sections to the Municipal Code regarding safe firearm storage as outlined in the attached Ordinance.

FISCAL IMPACT

None

RECOMMENDED ACTION

Conduct the second reading of the proposed Safe Firearm Storage Ordinance, adopt by title only and waive further reading.

ATTACHMENTS

[Attachment 1 - Mothers Letter of Request for a Gun Safe Storage Ordinance](#)

[Attachment 2 - St. Helena Ordinance re Safe Firearm Storage-c1](#)

Mothers Demand Action request that St Helena adopt a Safe Storage Ordinance which would require all firearms in a residence be securely stored in a locked container or disabled with a trigger lock. One small child dies almost every day in this country after finding an unsecured firearm in their own home or in a relative's home or while playing at a friend's house. Two older children, particularly teens, die every day in this country by suicide from an unsecured firearm they obtain from their home or another family member's home. In addition, 80% of school mass shootings are done by current or former students, using an unsecured firearm obtained from their own home or a relative's home. **A Safe Storage ordinance has become more urgent than ever during Covid, given the dramatic rise in gun sales. Combined with more time spent sheltering at home and the increase in mental health issues, we have seen a shocking 43% increase in unintentional deaths of small children and a 9% increase in teen suicides.**

Research shows that keeping guns securely stored does NOT hinder self-protection- a gun can be accessed within seconds- but it DOES prevent unintentional deaths of children and teen suicides, by as much as 85% depending on the type of storage. Storing firearms in a securely locked container can also prevent guns from being easily stolen in a home robbery. A DOJ- approved safe storage device can be obtained for as little as \$40 so the cost is not at all prohibitive, and trigger locks are often given out free at police stations.

Some people are under the impression that the California Penal Code (25100) already addresses this issue but it definitely does not. It does not define how to safely store a firearm and it doesn't apply to all homes. For example, parents often hide their guns (feeling this makes them safe) rather than locking them up, but studies show 70% of children know the

location of these hidden guns in their own home and many have even handled them.

Many cities and towns up and down California have already adopted Safe Storage ordinances. We hope that St Helena will do the same.

When considering the penalty for violating the Safe Storage Ordinance, Moms Demand Action supports a civil penalty, rather than a criminal penalty. We suggest a fine or community service. This is because we feel people of color may be disproportionately affected by this law and we also think a criminal penalty is unnecessary. Most firearm owners are law abiding and will follow the law if it is simply in place. We feel having this ordinance on the books will ultimately help to change our culture, much like the seat belt law did in the 1980's. Towns early on in the process of adopting safe storage ordinances did often adopt a criminal penalty – that is, a misdemeanor-- but more recent towns have adopted a civil only penalty. We therefore ask that if you move forward with this ordinance, that a civil penalty be adopted.

ORDINANCE NO. 2022-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST.
HELENA ADDING CHAPTER 9.18, "SAFE FIREARM STORAGE," TO
TITLE 9 OF THE ST. HELENA MUNICIPAL CODE**

WHEREAS, the City of St. Helena, California ("City") does not presently regulate firearm storage within residential locations; and

WHEREAS, firearm injuries have a significant adverse public health and safety impact nationally, regionally, and locally; and

WHEREAS, improperly stored firearms may result in accidental firearm injuries and/or deaths, particularly in homes with children; and

WHEREAS, in California, numerous people die each year from injuries related to firearms, and many more are hospitalized for non-fatal gunshot wounds; and

WHEREAS, having a loaded or unlocked firearm in the home has been associated with an increased risk of firearm-related injury and death, as well as theft of the firearm; and

WHEREAS, a firearm stored while loaded or unlocked increases the risk of an accidental shooting, and has been associated with higher risks of suicide; and

WHEREAS, quick access to a loaded firearm heightens the risk that a young person's impulsive decision to commit suicide will be carried out without reflection or seeking help, and that the impulsive attempt will be fatal; and

WHEREAS, utilizing gun locks or lock boxes when storing firearms in the home reduces the risk of firearm injury and death, as well as theft; and

WHEREAS, keeping a firearm locked when it is not being carried ensures that it cannot be accessed or used by others without the owner's knowledge or permission, decreasing the risk that the gun will be used to commit suicide, homicide, or inflict injury, whether intentionally or unintentionally; and

WHEREAS, the International Association of Chiefs of Police and the American Academy of Pediatrics recommend the safe storage of firearms; and

WHEREAS, both gun control and gun rights activists, including the National Rifle Association, endorse the use of locking devices when storing firearms to ensure that unauthorized and untrained persons cannot access firearms to inflict injury or cause death; and

WHEREAS, requiring stored, unsupervised firearms to be secured with gun locks or in a locked container does not substantially burden the right or ability to use firearms for self-defense in the home; and

WHEREAS, the City Council finds that requiring safe storage of firearms would constitute a sensible safety regulation and would not be unduly burdensome for firearm owners.

THE CITY COUNCIL OF THE CITY OF ST. HELENA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are incorporated as though set forth in this section.

SECTION 2. Adoption. Chapter 9.18, containing sections 9.18.010 through 9.18.040, is hereby added to the St. Helena Municipal Code, to read as follows:

“Chapter 9.18 SAFE FIREARM STORAGE

- 9.18.010 Definitions.
- 9.18.020 Prohibitions.
- 9.18.030 Exceptions.
- 9.18.040 Penalty.

- 9.18.010 Definitions.

A. “Firearm” means a firearm as defined in California Penal Code Section 16520, as amended from time to time.

B. “Locked container” means a locked container as defined in California Penal Code Section 16850, as amended from time to time, and is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices.

C. “Residence” means any structure intended or used for human habitation, including but not limited to houses, apartments, condominiums, rooms, in-law units, accessory dwelling units, motels, hotels, single room occupancy units (SROs), timeshares, mobile homes, and recreational and other vehicles where human habitation occurs.

D. “Trigger lock” means a trigger lock that is listed on the California Department of Justice’s roster of approved firearms safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm or to the physical characteristics of the firearm that match those listed on the roster for use with the device under California Penal Code Section 23635.

- 9.64.020 Prohibitions.

No person shall keep a firearm within any residence unless the firearm is stored in a locked container or disabled with a trigger lock.

- 9.64.030 Exceptions.

A. The requirements of section 9.64.020 do not apply when a firearm is carried on the person of, or is otherwise in the immediate control and possession of, an individual in accordance with applicable local, state, and/or federal laws.

B. This Chapter does not apply when a firearm is carried on the person of, or is otherwise in the immediate control and possession of a peace officer (as defined in California Penal Code sections 830 et seq., as may be amended from time to time).

C. It is not the intention of this Chapter to regulate any conduct if the regulation of such conduct has been preempted by state or federal law.

9.64.040 Penalty.

Every violation of this Chapter shall constitute an infraction and shall be punished in accordance with Section 1.20.010.”

SECTION 3. CEQA. The adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be determined that the proposed project will not have a significant adverse effect on the environment, the project is not subject to CEQA. This Ordinance sets requirements for safe storage of firearms in residential locations, and does not propose nor authorize any action or specific project that would have the potential to cause a significant adverse effect on the environment.

SECTION 4. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 5. Publication; Effective Date. This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

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 Tzaopoulos, City Clerk

I, CINDY TZAFPOULOS, 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 - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration of approval of a Resolution approving out-of-state travel for City Manager Anil Comelo, to attend the 2022 ICMA 108th Annual Conference to be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzaopoulos, City Clerk

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

DISCUSSION

The 2022 ICMA 108th annual conference will be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio. The annual conference brings the local government community together for unparalleled leadership and professional development, networking, and best-in-class programming.

City Manager Anil Comelo is registered to attend the ICMA annual conference in September.

City Council Resolution 85-44 requires City Council approval for staff to travel out of state for meetings, training, or conferences.

FISCAL IMPACT

Registration \$750, Lodging \$1,321.88 and Flight \$507.96 for a total in the amount of \$2,579.84 to be paid from 101-4200-2155.

RECOMMENDED ACTION

Approve the attached resolution.

ATTACHMENTS

[Attachment 1 - Resolution - Out-of-state travel](#)

CITY OF ST. HELENA

RESOLUTION NO. 2022-__

Resolution Authorizing Out-of-State Travel for City Manager Anil Comelo, to attend the 2022 ICMA 108th Annual Conference to be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio

RECITALS

- A. City Council Resolution 85-44 requires City Council approval for staff to attend out-of-state meetings and training; and
- B. The 2022 ICMA 108th annual conference will be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio; and
- C. The annual conference brings the local government community together for unparalleled leadership and professional development, networking, and best-in-class programming; and
- D. The total approximate training costs to the City is \$2,600 which includes registration, hotel, ground transportation, and per diem costs; and
- E. Funds for the training are included in the FY 2022-23 adopted budget.

RESOLUTION

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

- 1. Travel is not a CEQA project; and
- 2. Approves out-of-state travel for City Manager Anil Comelo, to attend the 2022 ICMA 108th Annual Conference to be held September 17-21, at the Greater Columbus Convention Center, Columbus, Ohio.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 2022, by the following vote:

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

Councilmember Hardy: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and Proposed approval of a Resolution: (1) approving of a two-year lease agreement for four Automatic License Plate Readers (ALPR's) from Flock Safety for a total of \$26,800 and (2) authorizing a budget increase of \$26,800 to COPS grant fund account number 244-4900-2215 for the lease payments.

CEQA Exempt
Determination:

Prepared By: Justin Tharp, Lieutenant

Reviewed By: Chris Hartley, Chief of Police

Approved By: Anil Comelo, City Manager

BACKGROUND

The St. Helena Police Department (SHPD) is responsible for the safety and security of the community and visitors to the City. The SHPD's ability to facilitate a high quality of life for the community and visitors is enhanced through the deployment of SHPD staff and the use of emerging technologies. Typical SHPD staffing is consists of two Officers per a shift providing for 24 hours a day, 7 days per week, 365 days per year coverage. These Officer's patrol the City at random, and may not be in the vicinity during the commission of a crime. Because officers in any community are not omnipresent, many police agencies utilize Automatic License Plate Readers (ALPRs) to assist Officers with the investigation and prosecution of crimes that occur in the City of St. Helena. While, crimes are thoroughly investigated in order to seek prosecution by the District Attorney's Office, having access to ALPR data can increase the ability to investigate, identify, and subsequently prosecute criminals.

DISCUSSION

Automatic License Plate Readers (ALPRs) greatly improve community safety, efficiency, and prosecution. There are numerous past investigations that could have benefited from

the implementation of ALPRs including major incidents this year, such as the Hit and Run on Main Street at Spring Street and the Robbery on the 1200 block of Adams Street.

SHPD has researched and identified the Flock Safety (Flock) ALPR system as the best ALPR solution for St. Helena based on the following:

- Flock's program is an all-inclusive model for deploying leased ALPR cameras with an annual flat lease fee of \$2,500 per a camera which includes maintenance of the camera, including repair and/or replacement if necessary. Camera's are solar or direct power and report collected data via a cellular connection.
- Flock allows for cancellation of services and lease agreement, at any time.
- Flock is Criminal Justice Information Services (CJIS) complaint, provides cloud-based hosting, unlimited user licenses, ongoing software enhancements, camera set-up, mounting, and shipping and handling.
- Flock's data retention and data privacy access policies provide strict individual user access, a limited 30-day data search capability, and is able to provide full audit logs compliant with Federal and State Legislation.
- Locally, Flock cameras are currently in use by the Napa County by the Sheriff's Department and was recently approved for installation by the Calistoga City Council. Flock is also extensively used by Solano County and Lake County Law Enforcement Agencies.
- As a member of the Flock ALPR system, SHPD will have access to the data and search capabilities to all cameras in the Flock system.
- Data collected by SHPD's four cameras is owned by the City and any requests for release needs to be approved by SHPD, through the City's established Public Request policies.
- Flock provides a transparency portal app which allows the sharing of SHPD's ALPR policy, search audits, and level of activity on the City's ALPRs.

How Flock Works

Flock provides crime-fighting technology (camera and software) under a service subscription model. Flock has a flat annual fee that includes: ALPR camera hardware, hardware maintenance, ALPR software, software updates and unlimited users, 30 days of unlimited data storage, LTE connectivity, solar panels, poles, mounting equipment, and monitoring. Flock provides all supplies and equipment under a standard operating procedures and complies with all government regulations and workplace safety guidelines. If the SHPD chooses not to renew their agreement, Flock will remove all cameras.

Flock is a public safety operating system that helps communities and law enforcement in over one thousand cities nationwide work together to eliminate/reduce crime, protect privacy and mitigate bias.

Flock is the only fully integrated ALPR one-stop solution from the production, delivery and installation of the cameras. The camera utilizes motion capture to start and stop

recording with machine learning and artificial intelligence, which allows Flock to capture vehicle characteristics without the need for a reflective license plate. The cameras can capture and process 30,000 vehicles per a day and capture two (2) lanes of traffic simultaneously with a single camera from a vertical mast, powered by a solar power. Flock analyzes vehicle license plate, vehicle color, and vehicle make, objects (such as a rack, unique hub cap, camper shell, etc.) based on image analytics (not car registration data), which also protects against stolen/removed license plates.

The software transmits alerts for hot plates (stolen vehicles/plates, vehicles) with the capability of the plate state match, and can set up alerts based on vehicle description without the need for a license plate. The software makes actionable evidence available when needed that is easily searchable by vehicle type, make, model, color, timeframe, partial/full license plate, and object detection. This technology will allow the SHPD to more accurately detect and stop the actual vehicle used in a crime, instead of similar looking vehicles. This will not only save law enforcement time in the investigation of criminal activity, but also help prevent the unnecessary stops and detentions of motorist who are driving vehicles which may look similar in appearance to wanted vehicles, but are truly uninvolved in the criminal activity associate with the actual suspect vehicle.

Flock focuses on objective evidence (vehicle license plates) by capturing car features (make, model, color, license plate, state of license plate, timestamp.) People's privacy is protected by not using facial recognition technology and not recording any personally identifiable information such as names, addresses, or phone numbers. SHPD will own their own data and Flock does not sell the data to third parties. The camera footage is stored, secured, and encrypted in AWS Government Cloud and automatically deleted every thirty (30) day on a rolling basis. The camera only takes still photos, and there is no live video stream. The system is not monitored and is not used for surveillance purposes.

Flock is scalable and ALPR cameras can be deleted, added, and moved as deemed necessary by SHPD management.

Privacy

Concerns regarding privacy have been raised, specifically how the data will be used. To address privacy within their system Flock has the following: (1) an audit component to their system, allowing SHPD management to track users (Officers/Dispatchers) and their stated justification for use. (2) the cameras do not utilize facial recognition technology, (3) California law pursuant to the California Values Act mandates that data collected on the cameras are not shared with the Immigration and Customs Enforcement; and (4) data not collected as evidence or part of an investigation, is purged by Flock after 30 days. Additionally, the SHPD will implement a Automated License Plate Reader (ALPR) policy prior to deployment of the ALPR's. Attached is the draft SHPD Automated License Plate Reader (ALPR) Policy. Flock provides a "Transparency Portal" website where the public can view SHPD's Policy, Vehicles Detected, Hot Listed Vehicles (Wanted, Stolen, Etc.), and a spreadsheet showing why and when the system was accessed. No private

information is listed on the "Transparency Portal" website. Please see attached example of Piedmonts Police Department's "Transparency Portal" website.

Locations

SHPD is recommending four cameras are placed in the following location:

- Southbound State Route 29 at the northern City limits.
- Northbound State Route 29 at the southern City limits.
- Eastbound Pope Street at Silverado Trail
- Eastbound Pratt Avenue at Silverado Trail

It is recommended two of the Flock ALPR Cameras are placed within the state-highway right-of-way within the City limits. The California Department of Transportation, commonly known as Caltrans, allows for the installation of law enforcement ALPR cameras either as an independent or standalone structure; or affixed to their poles, structures or other Caltrans owned facilities adjacent to state highways. Caltrans recognize the importance ALPR cameras to either deter, or aid in the investigation of illegal activities and lead to safer and more efficient state highway system for the traveling public.

In accordance with SHMC Section 3.04.140 Section B - SHPD is recommending Flock as the Sole Source vendor for the ALPR cameras. Flock is the sole manufacture and distributor of the Flock Safety Automatic License Plate Recognition (ALPR) cameras. Flock is the sole provider of the comprehensive monitoring, processing, and machine vision services that integrate with the Flock cameras. Attached is the Flock Safety Sole Source Letter.

FISCAL IMPACT

The total two year cost of the Flock Safety Automatic License Plate Reader (ALPR) is \$26,800. The first year total is \$14,300 which includes the installation of all hardware, training of SHPD staff, equipment lease and data storage. The second year and recurring total is \$12,500, which includes the equipment lease, data storage and software maintenance and updates. A budget increase of \$26,800 to COPS grant fund account number 244-4900-2215 is recommended for the Fiscal Year 2022-2023 Budget. The 6/30/2023 estimated fund balance for COPS is \$266,963.

RECOMMENDED ACTION

Staff recommends approval of the attached resolution.

ATTACHMENTS

[CA - Saint Helena PD - Law Enforcement Agreement](#)

[Flock Safety - Sole Source Letter 2022 \(1\)](#)

[ALPR Policy - St. Helena DRAFT](#)

[Resolution Flock Safety](#)

[Piedmont CA PD Transparency Portal](#)

**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Agency**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Agency: CA - Saint Helena PD Legal Entity Name:	Contact Name: Justin Tharp
Address: 1480 Main St Saint Helena, California 94574	Phone: (707) 967-2850 E-Mail: jtharp@cityofsthelena.org
Expected Payment Method:	Billing Contact: (if different than above)

Initial Term: 24 months Renewal Term: 24 months	Billing Term: Annual payment due Net 30 per terms and conditions
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Name	Price	QTY	Subtotal
Flock Safety Advanced Search <25 Falcons	\$2,500.00	1.00	\$2,500.00
Professional Services - Falcon/Sparrow, Advanced Implementation	\$750.00	1.00	\$750.00
Professional Services - Falcon, Standard Implementation	\$350.00	3.00	\$1,050.00
Falcon Camera	\$2,500.00	4.00	\$10,000.00

(Includes one-time fees)

Year 1 Total \$14,300.00

Recurring Total: \$12,500.00

Special terms:

- N/A

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Agency: CA - Saint Helena PD

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the Order Form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution for automatic license plates, video and audio detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, video, image, and recording data (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (as defined below) (“**Notifications**”);

WHEREAS, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from Non-Agency End Users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, Flock deletes all Footage on a rolling thirty (30) day basis, excluding Wing Replay which is deleted after seven (7) days. Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“**Permitted Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree that this Agreement, and any addenda attached hereto or referenced herein, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Agency Data**” means the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2 “**Agency Generated Data**” means the messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, other information or materials posted, uploaded, displayed, published, distributed, transmitted, broadcasted, or otherwise made available on or submitted through the Wing Suite.

1.3. “**Agency Hardware**” means the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.4. “**Aggregated Data**” means information that relates to a group or category of individuals, from which any potential individuals’ personal identifying information has been permanently “anonymized” by commercially available standards to irreversibly alter data in such a way that a data subject (i.e., individual person or impersonal entity) can no longer be identified directly or indirectly.

1.5 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.6 “**Deployment Plan**” means the strategic geographic mapping of the location(s) and implementation of Flock Hardware, and/or other relevant Services required under this Agreement.

1.7 “**Documentation**” means text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.8 “**Embedded Software**” means the software and/or firmware embedded or preinstalled on the Flock Hardware or Agency Hardware.

1.9 “**Falcon Flex**” means an infrastructure-free, location-flexible license plate reader camera that enables the Agency to self-install.

1.10 “**Flock Hardware**” means the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services.

1.11 “**Flock IP**” means the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.12 “**Flock Safety Falcon™**” means an infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.

1.13 “**Flock Safety Raven™**” means an audio detection device that provides real-time alerting to law enforcement based on programmed audio events such as gunshots, breaking glass, and street racing.

1.14 “**Flock Safety Sparrow™**” means an infrastructure-free license plate reader camera for residential roadways that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.

1.16 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Agency Hardware in the course of and provided via the Services.

1.17 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e. NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.18 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.19 below.

1.19 “**Installation Services**” means the services provided by Flock for installation of Agency Hardware and/or Flock Hardware, including any applicable installation of Embedded Software on Agency Hardware.

1.20 “**Non-Agency End User(s)**” means any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.21 “**Services**” or “**Flock Services**” means the provision, via the Web Interface, of Flock’s software applications for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.22 “**Support Services**” means Monitoring Services, as defined in Section 2.10 below.

1.23 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.24 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services, in accordance with the terms of this Agreement.

1.25 “**Wing Suite**” means the Flock interface which provides real-time access to the Flock Services, location of Flock Hardware, Agency Hardware, third-party cameras, live-stream video, Wing Livestream, Wing LPR, Wing Replay, alerts and other integrations.

1.26 “**Wing Livestream**” means real-time video integration with third-party cameras via the Flock interface.

1.27 “**Wing LPR**” means software integration with third-party cameras utilizing Flock’s Vehicle Fingerprint Technology™ for license plate capture.

1.28 “**Wing Replay**” means enhanced situational awareness encompassing Footage retention, replay ability, and downloadable content from Hot Lists integrated from third-party cameras.

1.29 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the Order Form, and any Authorized End Users to access and download via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage) which makes the Services available to Agency and Authorized End Users. Warranties provided by said third Party service providers are the agency’s sole and exclusive remedy and Flock’s sole and exclusive liability with regard to such third-Party services, including without limitation hosting the web interface. Agency agrees to comply with any acceptable use policies and other terms of any third-Party service provider that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Flock Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Term in connection with its use of the Services as contemplated herein, and under Section 2.5 below.

2.4 Wing Suite License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Wing Suite software and interface.

2.5 Usage Restrictions.

2.5.1 Flock IP. The Permitted Purpose for usage of the Flock Hardware, Agency Hardware, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency. Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Flock Hardware, Documentation, or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Agency's rights under Sections 2.1, 2.2, 2.3, or 2.4.

2.5.2. Flock Hardware. Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Except for Falcon Flex products, which are designed for self-installation, Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.5.2, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

2.6 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.7 Suspension.

2.7.1 Service Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP by Agency; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose ("**Service Suspension**"). Agency shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit.

2.7.2 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Agency and to provide updates regarding resumption of access to Flock Services. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Agency or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted. For example, in the event of a Service Interruption lasting five (5) continuous days, Agency will receive a credit for five (5) free days at the end of the Term.

2.8 Installation Services.

2.8.1 Designated Locations. For installation of Flock Hardware, excluding Falcon Flex products, prior to performing the physical installation of the Flock Hardware, Flock shall advise Agency on the location and positioning of the Flock Hardware for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Flock Hardware ("**Designated Location**") and collaborate with Agency to design the Deployment Plan confirming the Designated Locations. Flock shall have final discretion on location of Flock Hardware. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. After installation, any subsequent changes to the Deployment Plan ("**Reinstalls**") will incur a charge for Flock's then-

current list price for Reinstalls, as listed in the then-current Reinstall policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment fees. For clarity, Agency will receive prior notice and provide approval for any such fees. These changes include but are not limited to re-positioning, adjusting of the mounting, re-angling, removing foliage, replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock shall have full discretion on decision to reinstall Flock Hardware.

2.8.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although Flock Hardware is designed to utilize solar power, certain Designated Locations may require a reliable source of 120V or 240V AC power. In the event adequate solar power is not available, Agency is solely responsible for costs associated with providing a reliable source of 120V or 240V AC power to Flock Hardware. Flock will provide solar options to supply power at each Designated Location. If Agency refuses recommended solar options, Agency waives any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar power. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state, or local taxes including property, license, privilege, sales, use, excise, gross receipts, or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Flock Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Flock Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment, or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency (“**Agency Installation Obligations**”). In the event that a Designated Location for Flock Hardware requires permits, Flock may provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Flock Hardware from the temporary alternate location to the permitted location at no additional cost. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

2.8.3 Flock’s Obligations. Installation of Flock Hardware shall be installed in a workmanlike manner in accordance with Flock’s standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Following the initial installation of the Flock Hardware and any subsequent Reinstalls or maintenance operations, Flock’s obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of Flock Hardware for the length of the Term and will receive access to the Footage for a period of seven (7)

business days after the initial installation for quality control and provide any necessary maintenance. Labor may be provided by Flock or a third-party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware. Notwithstanding anything to the contrary, Agency understands that Flock will not provide installation services for Falcon Flex products.

2.8.4 Ownership of Hardware. Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.9 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

2.10 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Flock will use commercially reasonable efforts to respond to requests for support. Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at support@flocksafety.com, at no additional cost. Notwithstanding anything to the contrary, Agency is solely responsible for installation of Falcon Flex products. Agency further understands and agrees that Flock will not provide monitoring services or on-site services for Falcon Flex.

2.11 Special Terms. From time to time, Flock may offer certain Special Terms related to guarantees, service and support which are indicated in the proposal and on the Order Form and will become part of this Agreement, upon Agency's prior written consent. To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.12 Upgrades to Platform. Flock may, in its sole discretion, make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock's products or services to its agencies, (b) the competitive strength of, or market for, Flock's products or services, (c) such platform or system's

cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not materially change any terms or conditions within this Agreement.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Flock will assist Agency Authorized End Users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone and must protect the security of its account and password. Unless otherwise stated and defined in this Agreement, Agency may not designate Authorized End Users for persons who are not officers, employees, or agents of Agency. Authorized End Users shall only use Agency-issued email addresses for the creation of their User ID. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Flock Hardware or Agency Hardware, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to

protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event will a Party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third Party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third Parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third Party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations, but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data. As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to (i) use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.10 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Data as a part of the Aggregated Data, (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring for elected law enforcement Hotlists as well as provide Footage search access to law enforcement for investigative purposes only, and (iii) and obtain Aggregated Data as set forth below in Section 4.4. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion. Notwithstanding the foregoing, Flock automatically deletes Wing Replay after seven (7) days, during which time Agency may view, save and/or transmit such data to the relevant government agency prior to deletion. Flock does not own and shall not sell Agency Data.

4.3 Agency Generated Data in Wing Suite. Parties understand that Flock does not own any right, title, or interest to third-party video integrated into the Wing Suite. Flock may provide Agency with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Wing Suite, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Agency. Agency shall retain whatever legally cognizable right, title, and interest that Agency has in Agency Generated Data. Agency understands and acknowledges that Flock has no obligation to monitor or enforce Agency's intellectual property rights to Agency Generated Data. To the extent legally permissible, Agency grants Flock a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Generated Data for the sole purpose of providing Flock Services. Flock does not own and shall not sell Agency Generated Data.

4.4 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.5 Aggregated Data. Flock shall have the right to collect, analyze, and anonymize Agency Data and Agency Generated Data to create Aggregated Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right (during and after the Term hereof) to use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts. Parties understand that the aforementioned license is required for continuity of Services. No rights or licenses are granted except as expressly set forth herein. Flock does not sell Aggregated Data.

5. PAYMENT OF FEES

5.1.1 Wing Suite Fees. For Wing Suite products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period.

5.1.2 Falcon Fees. For Falcon products during the Term (as defined in Section 6.1), Agency will pay Flock fifty percent (50%) of the Usage Fee, the Implementation Fee as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of total fees, and Agency shall pay on or before 30th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30th day following receipt of invoice.

5.2 Notice of Changes to Fees. Flock reserves the right to change the fees or applicable charges and to institute new charges and fees on subsequent terms by providing sixty (60) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email).

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices must be received by Flock thirty (30) days after the receipt of invoice. If Agency is a non-tax-exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income. If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

6. TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Term**"). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

- a. For Wing Suite products: the Term shall commence upon execution of this Agreement and continue for one (1) year, after which, the Term may be extended by mutual consent of the Parties, unless terminated by either Party.
- b. For Falcon and Sparrow products: the Term shall commence upon first installation and validation of Flock Hardware.
- c. For Raven products: the Term shall commence upon first installation and validation of Flock Hardware.
- d. For Falcon Flex products: the Term shall commence upon execution of this Agreement.

6.2 Termination for Convenience. At any time during the agreed upon Term, either Party may terminate this Agreement for convenience. Termination for convenience of the Agreement by the Agency will be effective immediately. Termination for convenience by Agency will result in a one-time removal fee of \$500 per Flock Hardware. Termination for convenience by Flock will not result in any removal fees. Upon termination for convenience, a refund will be provided for Flock Hardware, prorated for any fees for the remaining Term length set forth previously. Wing Suite products are not subject to refund for early termination. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination.

6.3 Termination. Notwithstanding the termination provisions in Section 2.5.2, in the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period. Either Party may terminate this Agreement, without notice, (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

6.4 No-Fee Term. Flock will provide Agency with complimentary access to Hotlist alerts, as further described in Section 4.2 ("**No-Fee Term**"). In the event a Non-Agency End User grants Agency access to Footage and/or notifications from a Non-Agency End User, Agency will have access to Non-Agency End User Footage and/or notifications until deletion, subject to a thirty (30) day retention policy for all products except Wing Replay, which is subject to a seven (7) day retention policy. Flock may, in their sole discretion, provide access or immediately terminate the No-Fee Term. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine to impose a price per No-Fee Term upon thirty (30) days' notice to Agency. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

6.5 Survival. The following Sections will survive termination: 2.5, 2.6, 3, 4, 5, 6.4, 7.3, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 9.6.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a "**Defect**"), Agency must notify Flock's technical support as described in Section 2.10 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Flock Hardware provided that such inspection and test shall occur within a commercially reasonable time, but no longer than seven (7) business days after Agency

notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Flock Hardware at no additional cost to Agency. Absent a Defect, in the event that Flock Hardware is lost, stolen, or damaged, Agency may request that Flock replace the Flock Hardware at a fee according to the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Flock Hardware, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Flock Hardware and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Flock Hardware or Agency Hardware.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 if Agency has misused the Flock Hardware, Agency Hardware, or Service in any manner.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 9.6.

7.5 Insurance. Flock will maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of Flock's business risk. Certificates of Insurance can be provided upon request.

7.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-Party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, weather conditions or acts of hackers, internet

service providers or any other third Party acts or omissions. Force Majeure includes the novel coronavirus Covid-19 pandemic, and the potential spread of variants, which is ongoing as of the date of the execution of this Agreement.

8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 9.6.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.4 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.4 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complementary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees.

8.4 Indemnity. Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of Section 3.1, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third Party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.1 or this Agreement.

9. MISCELLANEOUS

9.1 Compliance With Laws. The Agency agrees to comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s). In the event Flock is legally compelled to comply with a judicial order, subpoena, or government mandate, to disclose Agency Data or Agency Generated Data, Flock will provide Agency with notice.

9.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

9.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchase of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

9.4 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>), Deployment Plan(s), and any attached addenda are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this

Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail.

9.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever. Flock shall at all times be and act as an independent contractor.

9.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State in which the Agency is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

9.7 Publicity. Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

9.8 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

9.9 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

9.10 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

9.11 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210
ATLANTA, GA 30318
ATTN: LEGAL DEPARTMENT
EMAIL: legal@flocksafety.com

AGENCY NOTICES ADDRESS:

ADDRESS:

ATTN:
EMAIL:



Sole Source Letter for Flock Safety™ ALPR Cameras and Solution

Flock Safety is the sole manufacturer and developer of the Flock Safety ALPR Camera. Flock Safety is also the sole provider of the comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety ALPR Camera.

The Flock Safety ALPR camera and devices are the only Law Enforcement Grade ALPR System to offer the following combination of proprietary features:

1. Vehicle Fingerprint Technology™:
 - Patented proprietary machine vision to analyze vehicle license plate, state recognition, and vehicle attributes such as color, type, make and objects (roof rack, bumper stickers, etc.) based on image analytics (not car registration data)
 - Machine vision to capture and identify characteristics of vehicles with a paper license plate and vehicles with the absence of a license plate
 - Ability to 'Save Search' based on description of vehicles using our patented Vehicle Fingerprint Technology without the need for a license plate, and set up alerts based on vehicle description
 - Only LPR provider with "Visual Search" which can transform digital images from any source into an investigative lead by finding matching vehicles based on the vehicle attributes in the uploaded photo
 - Falcon Flex™: an infrastructure-free, location-flexible license plate reader camera that is easy to self install. Falcon Flex ties seamlessly into the Flock ecosystem with a small and lightweight camera with the ability to read up to 30,000 license plates and vehicle attributes on a single battery charge
 2. Integrated Cloud-Software & Hardware Platform:
 - Ability to capture two (2+) lanes of traffic simultaneously with a single camera from a vertical mass
 - Best in class ability to capture and process up to 30,000 vehicles per day with a single camera powered exclusively by solar power
 - Wireless deployment of solar powered license plate reading cameras with integrated cellular communication weighing less than 5lbs and able to be powered solely by a solar panel of 60W or less
 - Web based footage retrieval tool with filtering capabilities such as vehicle color, vehicle type, vehicle manufacturer, partial or full license plate, state of license plate, and object detection
 - Utilizes motion capture to start and stop recording without the need for a reflective plate
-

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- Motion detection allows for unique cases such as bicycle capture, ATV, motorcycle, etc.
- On device machine processing to limit LTE bandwidth consumption
- Cloud storage of footage
- Covert industrial design for minimizing visual pollution

3. Transparency & Ethical Product Design:

- One-of-a-kind “Transparency Portal” public-facing dashboard that details the policies in place by the purchaser, as well as automatically updated metrics from the Flock system
- Built-in integration with NCMEC to receive AMBER Alerts to find missing children
- Privacy controls to enable certain vehicles to “opt-out” of being captured

4. Integrated Audio & Gunshot Detection:

- Natively integrated audio detection capabilities utilizing machine learning to recognize audio signatures typical of crimes in progress (e.g., gunshots)

5. Live Video Integration:

- Ability to apply computer vision to third-party cameras using Wing™ LPR, transforming them to evidence capture devices using the same Vehicle Fingerprint technology offered on the Flock Safety Falcon™ ALPR cameras
- Wing™ Livestream integrates live stream traffic cameras, publicly or privately owned livestream security cameras into one cloud-based situational awareness dashboard to increase response time in mission-critical incidents
- Manage various government intelligence including ALPR, livestream cameras, CAD, automatic vehicle location (AVL) on Flock Safety's Wing™ Suite
- Access Wing™ Replay to unlock enhanced situational awareness with 7-day footage retention, Hot List Live Video Instant Replay, and downloadable MP4

6. Partnerships:

- Flock Safety is the only LPR provider to officially partner with AXON to be natively and directly integrated into Evidence.com
 - Flock Safety is the only LPR provider to be fully integrated into a dynamic network of Axon's Fleet 3 mobile ALPR cameras for patrol cars and Flock Safety's Falcon cameras
 - Access to additional cameras purchased by our HOA and private business partners, means an ever-increasing amount of cameras and data at no additional cost
-

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7. Warranty & Service:

- Lifetime maintenance and support included in subscription price
- Flock Safety is the only fully integrated ALPR one-stop solution from production of the camera to delivery and installation
- Performance monitoring software to predict potential failures, obstructions, tilts, and other critical or minor issues

Thank you,



Garrett Langley CEO, Flock Safety

Policy

DRAFT

Automated License Plate Readers (ALPRs)

426.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage, and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

426.2 DEFINITIONS

- (a) **Automated License Plate Reader (ALPR):** A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) **ALPR Operator:** Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) **ALPR Administrator:** The Investigations Bureau Captain or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) **Hot List:** A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) **Vehicles of Interest:** Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) **Detection:** Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) **Hit:** Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

426.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the St. Helena Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the St. Helena Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Administrative Lieutenant. The Administrative Lieutenant will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

426.3.1 ALPR ADMINISTRATOR

The Administrative Lieutenant shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Only properly trained sworn officers, crime analysts, and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation is maintained. Continually working with the Custodian of Records on the retention and destruction of ALPR data.
- (f) Ensuring this policy and related procedures are conspicuously posted on the department's website.

426.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation; reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. Once an alert is received, the operator should confirm

that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)

- (f) **Hot Lists.** Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:

(1) **Verification of status on a Hot List.** An officer must receive confirmation, from a Vallejo Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(2) **Visual verification of license plate number.** Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR

Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

- (g) Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.
- (h) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Vallejo Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (1) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- (2) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- (3) Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
- (4) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
- (5) First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- criminal prosecution,
- civil liability, and/or
- administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

426.4 DATA COLLECTION AND RETENTION

The Administrative Lieutenant is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server should be stored for no longer than one year, and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR vendor, Flock Safety will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. Flock Safety will purge their data at the end of the 30 days of storage. However, this will not preclude St. Helena Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of St. Helena retention schedule mentioned above or outlined elsewhere.

Restrictions on use of ALPR Data: Information gathered or collected, and records retained by Flock Safety cameras will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

426.5 ACCOUNTABILITY and SAFEGUARDS

All data will be closely safeguarded and protected by both procedural and technological means. The St. Helena Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date, and time.
- (c) Persons approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.

- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) Every ALPR Detection Browsing Inquiry must be documented by either the associated St. Helena Police case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

426.6 POLICY

The policy of the St. Helena Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The St. Helena Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

462.7 ALPR DATA DETECTION BROWSING AUDITS

It is the responsibility of the Administrative Lieutenant or the Chief's designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least once during each calendar year. The Department will audit a sampling of the ALPR system utilization from the prior 12-month period to verify proper use in accordance with the above- authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during the preceding six-month period and determine if each inquiry meets the requirements established in policy section 462.5(e).

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be filed and retained by PSD.

426.8 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

- (a) The agency makes a written request for the ALPR data that includes:
 - (1) The name of the agency.
 - (2) The name of the person requesting.
 - (3) The intended purpose of obtaining the information.

- (b) The request is reviewed by the Chief of Police or the authorized designee and approved before the request is fulfilled.
- (c) The Chief of Police or the authorized designee will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The St. Helena Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).
- (d) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

426.9 TRAINING

The Administrative Lieutenant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

CITY OF ST. HELENA

RESOLUTION No. 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING
ST. HELENA POLICE DEPARTMENT TO ENTER INTO A TWO (2) YEAR LEASE
AGREEMENT FOR FOUR (4) FLOCK SAFETY CAMERAS IN THE AMOUNT NOT
EXCEED \$26,800**

WHEREAS, the Police Department requests to lease four (4) Automated License Plate Readers (ALPR) cameras to assist in the response, apprehension and investigation of criminals; and

WHEREAS, ALPR cameras have been found to be effective in deterring criminal activity and a significant tool in conducting criminal investigations; and

WHEREAS, the Police Department has identified Flock Safety to be a qualified and competent sole source vendor who provides ALPR cameras that meet the needs of the Police Department and;

WHEREAS, Flock Safety provides an all-inclusive model program for deploying leased ALPR cameras for a flat annual rate of \$2500 per a camera and will install, monitor, provide software, and maintain the wireless ALPR cameras; and

WHEREAS, Flock Safety is Criminal Justice Information Services Compliant, has full audit capabilities, and policies and protocols in place to protect privacy; and

WHEREAS, Flock Safety ALPR cameras are not “live” cameras, have no facial recognition capabilities and provides Transparency Portal App for the community to ensure the efficacy of the use of the cameras; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ST. HELENA DOES ORDAIN AS FOLLOWS: that the City Council of the City of St. Helena hereby authorize the City Manager to expend COPS Grant funds to enter into a 2 year lease agreement with Flock Safety for four (4) cameras for the Police Department in the amount not to exceed \$26,800 by increasing the budget from COPS grant funds, account #224-4900-2215.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of St. Helena, California, held on the 23rd day of August 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 Tzaopoulos, City Clerk

Piedmont CA PD

Transparency Portal

Last Updated: Fri Aug 12 2022

Overview

The Piedmont Police Department uses Flock Safety's Operating System to capture objective evidence without compromising on individual privacy. Piedmont PD utilizes retroactive search to solve crimes after they've occurred. Additionally, PPD utilizes real-time alerting of hotlist vehicles to capture wanted criminals. In an effort to be open with the public to demonstrate our proper usage and communicate what guardrails are in place, we have made the below policies and usage statistics available to the public.

Policies

-  **What's Detected**
Vehicles, License Plates
-  **What's Not Detected**
Facial recognition, People, Gender, Race
-  **Acceptable Use Policy**
Data is used for law enforcement purposes only. Data is owned by Piedmont PD and is never sold to 3rd parties.
-  **Prohibited Uses**
Immigration enforcement, traffic enforcement, harrassment or intimidation, usage based solely on a protected class (i.e. race, sex, religion), Personal use.
-  **Access Policy**
All system access requires a valid case number and is stored indefinitely. This data is regularly audited every 90 days.
-  **Hotlist Policy**
Hotlist hits are required to be human verified prior to action.

Usage

-  **Data retention**
60 days
-  **Number of owned cameras**
39
-  **External agencies who have access**
ACRATT -CA, Alameda CA PD, Antioch PD - CA, Atherton CA PD, Benicia CA PD, Citrus Heights PD- CA, City of Millbrae CA (SMCSO), Colma CA PD, Concord CA PD, Daly City CA PD, Danville CA PD, Dixon CA PD, El Cerrito CA PD, Elk Grove CA PD, Fairfield CA PD, Fremont CA PD, Hayward CA PD, Hercules CA PD, Hillsborough CA PD, Livermore CA PD, Lodi CA PD, Los Gatos Monte Sereno PD - CA, Marin County Sheriff CA PD, Milpitas CA PD, Morgan Hill CA PD, Napa County CA SO, NCRIC, Newark CA PD , Novato CA PD, Oakland CA PD, Oakley CA PD, Orinda CA PD, Pinole CA PD, Pleasanton CA PD, Redwood City CA PD, Richmond CA PD, Rio Vista CA PD, Rocklin CA PD, San Bruno CA PD, San Mateo CA PD, San Mateo County CA SO, San Pablo CA PD , San Ramon CA PD, Santa Clara PD - CA, Santa Maria CA PD, Sausalito CA PD, Solano County CA SO, Tracy CA PD, Vacaville CA PD, Walnut Creek CA PD
-  **Hotlists Alerted On**
NCIC, California SVS, NCMEC Amber Alert
-  **Vehicles detected in the last 30 days**
178,572



Hotlist hits in the last 30 days

1,225



Searches in the last 30 days

113



Search Audit

[Download CSV](#)

Additional Info

Full ALPR Policy

Piedmont PD's full ALPR policy can be found at the following link:

[https://www.ci.piedmont.ca.us/UserFiles/Servers/Server_13659739/File/Government/Departments/Police%20Department/Automated License Plate Readers ALPRs %20\(5\).pdf](https://www.ci.piedmont.ca.us/UserFiles/Servers/Server_13659739/File/Government/Departments/Police%20Department/Automated%20License%20Plate%20Readers%20ALPRs%20(5).pdf)

Disclaimer

The Piedmont Police Department is in the process of transitioning all of its cameras to Flock Safety and so the ALPR data reflected in the Transparency Portal is not reflective of all the data the Department is collecting.

Provided by [Flock Safety](#)



August 22, 2022

City Council of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574

Members: Geoff Ellsworth, Mayor, Paul Dohring, Vice-Mayor, Anna Chouteau, Lester Hardy,
Eric Hall

Dear Mayor Ellsworth and Honorable Members of the City Council,

We are writing to you with concerns about item 7.6 on the Consent Calendar for the upcoming August 23rd General City Council meeting regarding Automatic License Plate Readers (ALPRs)¹.

Oakland Privacy is a citizen's coalition that works regionally to defend the right to privacy, enhance public transparency, and increase oversight of law enforcement, particularly regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in privacy enhancing legislative efforts with several Northern California cities and regional entities. As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the implementation of equipment with respect for civil rights, privacy protections and community control.

The City of St. Helena and the surrounding region are considered quite safe and experience minimal crime. However, this item proposes a dragnet surveillance system similar to those used in urban areas like Vallejo or Oakland that suffer from much higher crime rates. Many would argue that installing such a system is fundamentally at odds with the City Council vision of "Preserving our historic, small-town, rural character".

1 <https://sthelena.civicweb.net/document/65728/Approval%20of%20a%20two%20year%20Lease%20and%20Installation%20o.pdf?handle=7061CC604BDC41B0888335F2353BBB0D>

ALPRs are a powerful and serious tool

ALPRs are not in the same category as other municipal infrastructure like street signs and speed bumps, and should not be treated as such by the Council. A CA State Auditor report showed that even in areas with much higher crime like Los Angeles, 99.9% of all ALPR data collected was of vehicles unrelated to criminal activity². This indiscriminate data collection is the very definition of a dragnet surveillance system, which is exactly what item 65-104 proposes.

Such a system captures and logs sensitive data about anyone who passes by, including more than just license plates. Flock safety states in the proposed Sole Source Letter³ that *“motion detection allows for unique cases such as bicycle capture, ATV, motorcycle, etc.”* The same letter also highlights that audio is also collected by stating *“natively integrated audio detection capabilities utilizing machine learning to recognize audio signatures ...”*

To install a citywide surveillance “fence” around St. Helena, as proposed, would be an unprecedented act in St. Helena’s history. In general, it is very difficult to install dragnet systems like these in a manner that is consistent with the principles of American democracy and a healthy civic life.

The public needs to lead this conversation

The vast majority of data collected would be of regular citizens going about their everyday lives. Because of this, it is imperative that the residents of St. Helena are both properly informed with advance notice, and given an opportunity to comment on this issue, specifically before the Council.

The City Council vision includes “Encouraging full civic participation and ongoing communication”⁴. Bulldozing this important issue through via the consent calendar is antithetical to this vision. There is no public emergency in St. Helena, or other special urgency that would justify skipping a proper public process for this sensitive issue. This is not a common administrative approval that minimally impacts the public. The only benefactor from cutting corners in the civic process is Flock Safety, the vendor, who undoubtedly wishes to have a signed contract as quickly as possible.

Important things are missing from the proposal

For a tool this powerful, regular and thorough auditing of the system with accountability to the Council and the general public is critical. The proposal states that the Administrative Lieutenant

² <https://www.auditor.ca.gov/reports/2019-118/summary.html>

³ <https://sthelena.civicweb.net/document/65728/Approval%20of%20a%20two%20year%20Lease%20and%20Installation%20o.pdf?handle=7061CC604BDC41B0888335F2353BBB0D#%5B%7B%22num%22%3A71%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C0%2C792%2C0%5D>

⁴ https://www.cityofsthelena.org/sites/default/files/fileattachments/city_council/page/98/vision_and_mission_statement.pdf

is responsible for auditing the system. However, this is the same person who would be largely responsible for any failings of security of the same system. This presents an enormous conflict of interest.

Furthermore, the details of the audit only require an investigation of 10 data samples for appropriate access auditing. The public should be informed not only if the reason for searching the ALPR database are considered valid, but what the reason actually was.

The details of the annual auditing process are severely lacking, and should be enumerated in far more detail, including frequency of access, percentage of data points relevant to crime, reasons for access, activity per camera, examples of camera field of view, and time delay between image capture and image retrieval by an officer to determine if the data retention period length is still appropriate.

The proposed consent item states that the cameras “*capture two (2) lanes of traffic simultaneously*”. This likely means that the fronts of vehicles are being captured, not just the rear plates, which means imagery straight into the vehicle interior is collected. You do not need to do “facial recognition” to assign a likely identity to a face when you have driver registration data. Simply correlating the face with the details of the car registration is all that is needed, and these systems provide exactly what is needed to do just that.

The claim for installing this system is that most crime will occur by the occupants of non-resident vehicles that enter or leave the city, yet Flock makes no mention of creating a “white list” for residents to add their vehicles to. This is entirely possible, and is done in, for example, Los Altos Hills⁵ which also uses Flock Safety ALPRs. Flock mentions this specifically in their proposed sole source letter as a feature of their product: “*Privacy controls to enable certain vehicles to “opt-out” of being captured*”. Why is this left out of the proposal?

A robust explanation is necessary for the proposed retention period for data. The staff report states that ALPRs would be useful in the city during past “*major incidents this year, such as the Hit and Run on Main Street at Spring Street and the Robbery on the 1200 block of Adams Street.*”

In what situation is it necessary to collect 30 days of blanket surveillance in order to help solve these kinds of crimes? For almost all cases, the usefulness of an ALPR is either immediate (detecting a stolen vehicle on a “hotlist”) or nearly immediate (a hit-and-run incident or robbery would likely trigger data retrieval in < 24 hrs). The 30 day default setting by the vendor is far too long, and mostly arbitrary. It may make more sense for a large urban city with a huge backlog of cases, but not a small town where the data would be accessed very quickly virtually in any scenario. It is imperative for privacy that the shortest retention period possible should be used, and a very clearly stated explanation should accompany it.

⁵ <https://www.losaltoshills.ca.gov/FormCenter/Automatic-License-Plate-Readers-ALPR-Opt-22/Automatic-License-Plate-Readers-ALPR-Opt-154>

Recommendations

- Remove this item from the consent calendar
- Schedule a special public meeting for the ALPR item with notice given at public, physical locations in the city 30 days in advance of the meeting.
- Reduce proposed data retention of non-evidentiary license plate reader scans to a maximum of 7 days.

Finally, if such systems are, indeed, going to be installed, there needs to be a Council-level evaluation periodically. The council needs to determine whether they are, in fact, reducing crimes, and if not, whether the usage should continue. In short, an ongoing, impartial analysis of the cost to benefit ratio of maintaining the equipment based on results.

The City of St. Helena should not make the same mistakes as neighboring jurisdictions by fast-tracking the approval of a pervasive and unprecedented surveillance system without giving the public a full opportunity to be a part of the process. There are many details with ALPR systems that can have very significant impacts on privacy and civil rights. Serious issues like this need to be actively discussed.

Again, we strongly urge you to please remove this item from the consent calendar and take action on the recommendations given above.

Sincerely,

Taylor Dahlke, PhD
On behalf of Oakland Privacy
4799 Shattuck Avenue
Oakland, CA 94609
Email: contact@oaklandprivacy.org
Web: <https://oaklandprivacy.org>



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution approving the Professional Services Agreement with Pacific Tree Care. In an amount not-to-exceed \$50,624 for the removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Rd an approximately 1 acre area of City owned property.

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

Prepared By: Clayton Church, Public Works Operations Manager

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On September 27, 2020, the City of St. Helena ("City") proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which affected both Napa and Sonoma Counties.

The Glass Fire burned near the City's Lower Reservoir and the perimeter of Tank 2 and in close proximity to critical assets that establish pressure zones vital to Public Water Supply and fire suppression. The area of Lower Reservoir has many dead trees, overgrown vegetation, and dangerous trees that lean over the roadway. The area is composed of approximately 30 acres. Within this area is the City's primary water storage tank known as Tank 2 a 2.7 MG reservoir, City's pump station known as Elmhurst Station which establishes pressure Zone 2 of the City's water system, Holmes pump station and Holmes tank that establish the City's pressure Zone 3 in the City's water system, and the City's Lower Reservoir (a raw water reservoir).

Since Fall of 2019, staff has conducted numerous iterations of vegetation abatement in the areas surrounding Tank 2, Holmes Pump Station, Holmes Tank, Elmhurst Pump Station, and areas surrounding Lower Reservoir in concurrence with surrounding neighbors contracting vegetation abatement up to City Property.

DISCUSSION

City Staff began to conduct vegetation abatement in the Fall of 2019 in the area of Lower Reservoir and Spring Mountain Road to the City Limits. This consisted of roadside clearing, brush, and undergrowth removal, creating defensible around critical infrastructure and on City property in close proximity to homes. Since Fall 2019 staff has phased the abatement work in the Spring Mountain Road area along with all other City owned sites.

At the conclusion of the Fall 2021 vegetation abatement work, staff identified an area on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Road. This area consists of approximately 1-acre and staff has deemed the area hazardous due to dead and failed trees, overgrown vegetation, and hazardous trees over the roadway. City Staff is currently not outfitted for the magnitude of work that needs to be done in this 1-acre area

Bieber Road serves as the only ingress and egress from the area for 12 homes and the only access to the City's Holmes Water Tank which serves Pressure Zone 3 of the City's water system. In event of a fire, like the 2020 Glass Fire, this approximate 1-acre area could impede access or evacuation. In the event of high winds or storms, failed trees in this 1-acre area could fail and block access, which may cause bodily harm to pedestrians and cause vehicular traffic. The City arborist and contract arborist confirm that the trees in this 1-acre area have failed and need to be removed. The removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway would create defensible space thus keeping the road clear and safe in the event of a fire or large storm. This would also ensure capability of evacuation and access to critical sites in the event of an emergency.

City staff requested quotes from Pacific Tree Care, Signature Tree Solutions, and Joe Branum Tree Care. All three contractors conducted a site visit with City staff to discuss scope of work and all three contractors provided quotes. A summary of the quotes from Pacific Tree Care, Signature Tree Solutions, and Joe Branum Tree Care are provided in the following table:

Vendor	Total Cost
Pacific Tree Care	\$50,624.00
Signature Tree Solutions	\$73,922.50
Joe Branum Tree Care	\$62,000.00

Based on quotes received, staff recommends City Council adopt a resolution approving a Professional Services Agreement with Pacific Tree Care in an amount not-to-exceed

\$50,624 for the removal of dead and failed trees, over grown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Road, an approximately 1-acre area of City owned property.

FISCAL IMPACT

The fiscal impact of the Professional Services Agreement is for a not-to-exceed amount of \$50,624. The City will fund this work with budgeted funds from the FY 2022/23 Public Works Operations budget.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached resolution.

ATTACHMENTS

[Attachment 1: Resolution](#)

[Attachment 2: PSA Pacific Tree Care](#)

CITY OF ST. HELENA

RESOLUTION No. 2022 -

Resolution authorizing the City Manager to execute a Professional Services Agreement with Pacific Tree Care for removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Road an approximate 1-acre area of City owned property for an amount not to exceed \$50,624

RECITALS

- A. On September 27, 2020, the City of St. Helena ("City") proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which affected both Napa and Sonoma Counties; and
- B. Public Works identified the need for fire abatement in the area of the City Owned Lower Reservoir as a priority; and
- C. On June 21, 2022 the City requested quotes for removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space; and
- D. On July 22, 2022, City staff received and reviewed three (3) quotes; and
- E. City staff found that Pacific Tree Care provided the lowest responsive and the best combination of qualifications, experience, and local knowledge for the project; and
- F. Pacific Tree Care has the appropriate equipment and experience required to complete the project; and

- G. Pacific Tree Care will meet the City's insurance requirements; and
- H. The removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the city owned property adjacent to Beiber Road was included in the Trees (101-50-26-2145), Utilities (561-50-31-21-45), and Streets (101-50-15-2145) operations budget; and
- I. Sufficient funding for services is available in the total approved operations budget for Fiscal Year 2022/23.

RESOLUTION

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

Authorizing the City Manager to execute a Professional Services Agreement with Pacific Tree Care for the removal of dead and failed trees, overgrown vegetation, and hazardous trees over the roadway to mitigate fire danger and create defensible space on the East side of Lower Reservoir adjacent to road commonly referred to as Bieber Road an approximate 1-acre area of City owned property.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 2022, by the following vote:

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

APPROVED: ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on August 23, 2022 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Pacific Tree Care (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Bieber Road Vegetation Abatement.

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 \$50,624.00, 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,

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Pacific Tree Care Bieber Road Vegetation Abatement 08232022

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

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

SECTION 5 – STANDARD OF PERFORMANCE

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

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

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

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

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

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(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

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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

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completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

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

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

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

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

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

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

SECTION 13 – SUSPENSION OF WORK

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

SECTION 14 – COMPLIANCE WITH LAW

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

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

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

B. Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services. Such records include, but are not limited to, correspondence,

internal memoranda, technical reports and investigations, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement.

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

SECTION 17 – LIMITATION OF LIABILITY

A. Consultant agrees that any liability of City arising in connection with this Agreement shall be limited exclusively to the City-entity identified as the “City” under this Contract. Under no circumstance shall any other City-entity be liable to Consultant under any theory, whether in contract, tort, or otherwise, and Consultant waives unconditionally any such claims. Consultant hereby waives and release other City-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 18 – COOPERATION BY CITY

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

SECTION 19 – NOTICES

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

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

To Consultant: Jacob Schneider
Pacific Tree Care
PO Box 34
Calistoga, CA 94515

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

SECTION 20 – TERMINATION

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

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

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

SECTION 21 – ATTORNEYS' FEES

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

SECTION 22 – ENTIRE AGREEMENT

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

SECTION 23 – SUCCESSORS AND ASSIGNS

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

SECTION 24 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the Services required under this Agreement. Consultant

Page 10 of 14

Pacific Tree Care Bieber Road Vegetation Abatement 08232022

shall notify City of any changes in Consultant's staff assigned to perform the Services required under this Agreement, prior to any such performance.

SECTION 25 – DEFAULT

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

SECTION 26 – WAIVER

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

SECTION 27 – LAW TO GOVERN; VENUE

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

SECTION 28 – SEVERABILITY

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

SECTION 29 – THIRD PARTY BENEFICIARIES

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

SECTION 30 – STATUTES OF LIMITATION

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

deficiencies, for which the applicable statute of limitation shall begin to run upon discovery of the defect and/or deficiency and its cause.

SECTION 31 – SPECIAL PROVISIONS

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

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

Consultant:

City:

By: _____
Name: Jacob Schneider
Title: Owner

By: _____
Name: Anil Comelo
Title: City Manager

Approved as to Form:

By: _____
Name: Ethan Walsh
Title: City Attorney

Exhibit A “Scope of Services”

Location and Limits of Work

Vegetation abatement of approximately 0.82 acres near the Lower Reservoir at the 2400 block Spring Mountain Road: APN 009-131-013-000

Project Understanding/ Description of Work

Pacific Tree Care will complete the following:

Fire abatement on east side of our Lower Reservoir between the reservoir and road commonly referred to as Bieber Road, included below is a map for reference. Mitigate fire hazard by addressing dead and failed trees, overgrown vegetation, and hazardous trees over the road.

Pacific Tree Care will provide a crew of four for ten days with a track chipper, mini-ex, and water wagon to reduce fuel load along Bieber Road. Chip mulch to be broadcast within the work area. Wood over 16" diameter to be left close to where trees now stand. All material will be left above the high-water mark of the reservoir. Disturbance of soil will be limited to avoid silt on the reservoir bank.

The work includes removal of such trees and chipping onsite above high-water mark thus reducing fuel and creating defensible space. Wood will be cut to 16" lengths and left onsite close to work area unless otherwise indicated.



Exhibit B
“Compensation”

The work described under the Exhibit A will be compensated as established by task. Additional costs will be incurred if metal is encountered within the wood. Down time at \$110/ hour, any damaged saw chains/chipper knives, and any subcontractor (i.e. crane) down time will also be billed at Time and Materials. Any work not included within the scope of this bid will be billed at time and materials rate of \$110 per employee, per hour, including travel. Total compensation for this agreement shall not exceed \$50,624.00.



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution authorizing:

1. Flying the Italian flag on the City's ceremonial flagpole during the month of October 2022 for Italian Heritage Month; and
2. Temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 1, 2022, from 12:00 pm to 6:00 pm; and
3. Mobile food truck(s) to be parked on Railroad Avenue in the 72-hour No Parking area and wine and beer vendors in Lyman Park during the Festa Italiana event; and
4. Waiving of the Encroachment Permit and Lyman Park Rental Permit fees for the Festa Italiana event on October 1, 2022.

CEQA Determination: Not a CEQA project

Prepared By: Chantel Delay, Administrative Assistant

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

Approved By: Anil Comelo, City Manager

BACKGROUND

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

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

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

DISCUSSION

Anthony Micheli is chairing the 2022 Festa Italiana community event, sponsored by Sons and Daughters of Italy of America. This event is to take place at Lyman Park from 12:00 pm to 6:00 pm on Saturday, October 1, 2022. The community event will start with the Italian National Anthem and host vendors such as Italian owned wineries, Italian beer, food truck(s), and other donated food and beverages will be available to the community. All food and beverages will be at no cost to the attendees through donations.

In honor of Italian Heritage month and in support of the event, Mr. Micheli has made the following requests (Attachment 1):

1. The Italian flag be flown on the City Ceremonial Flagpole for the month of October 2022; and
2. Temporary closure of street parking on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for the event; and
3. Approval of mobile food truck(s) to be parked on Railroad Avenue in the 72-hour No Parking area and wine and beer vendors in Lyman Park during the Festa Italiana event; and
4. The City waive the encroachment permit fee and the Lyman Park Gazebo rental fee.

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

FISCAL IMPACT

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

RECOMMENDED ACTION

Staff recommends City Council adopt the attached Resolution.

ATTACHMENTS

[Attachment 1 - Micheli Festa Italiana 2022](#)

[Attachment 2 - Encroachment Permit Application](#)

[Attachment 3- Resolution Italian Flag and Festa Italiana 2022](#)

City Manager and City Council Members,

I am requesting the City of St. Helena fly the Italian Flag at city hall main street for the month of October 2022. October is Italian Heritage Month. It is celebrated in many cities across the United States. Italians are the fifth largest ethnic group presently in America. They have contributed to making America the great country it is today.

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

Along with flying the Italian Flag, I will again be chairman of "Festa Italiana" in Lyman Park on October 1, 2022. The event will be sponsored again by Sons and Daughters of Italy in America. The party will be from 10am to 5pm. The event will start with the singing of the Italian National Anthem in Italian. I will ask our Italian and Swiss Italian winery owners to host a free wine tasting. There will be two food trucks on site. Donated food, pizza, desserts and Peroni beer will be provided. It is a free event with donations.

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

Other events include a ravioli dinner on October 15th at the Native Sons Hall at 6pm for 125 people. Then an Italian type movie at the Cameo later in October depending on Cathy Buck's schedule.

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

Thank You,

Anthony Micheli

ENCROACHMENT PERMIT APPLICATION

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



OFFICE USE ONLY

Encroachment Permit #: _____

Expiration Date: _____

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

Property and Work Description

Site Address: 1498 MAIN ST. LYMAN PARK
Related Building Permit Number _____ Work/Event Description: FESTA ITALIANA
HONORING ITALIAN HERITAGE, MUSIC-FOOD
WINE FOR FREE.

DIAGRAM OF PROPOSED ACTIVITY attach additional sheet if necessary

see attached

Estimated Start Date OCT. 1, 2022

Estimated Completion Date OCT. 1, 2022

Property Owner I

Owner Name: CITY OF ST. HELENA
Address: 1498 MAIN ST.
City: ST. HELENA State: CA Zip: 94574
Email: _____ Phone #: 707-967-2792

Contractor/Applicant *All communication from our office will be made to this person via email*

Company Name: SONS & DAUGHTERS OF ITALY Contact Name: ANTHONY MICHELI
IN AMERICA
Contractor License#: _____ Expires: _____
City of St. Helena Business License #: _____ Expires: _____
Address: 1125 CRINELLA DRIVE
City: ST. HELENA State: CA Zip: 94574
Email: ANTHONYMICHELI@YAHOO.COM Phone #: 707-486-3832

Applicant Check Off List Permit fees are due at the time of application and are **NON REFUNDABLE**.

Incomplete submittals will not be accepted. Encroachment Permit applications are reviewed on a weekly basis. Please allow up to TWO (2) weeks for approval.

Check Off Major

\$500.00 fee paid

Proof of Insurance Coverage

Copy of Civil Plans for Related Building Permit

Traffic Control Plans

Site Plans

USA Tag #

Conditions: _____

Check Off Minor

\$200.00 fee paid

Proof of Insurance Coverage

Copy of Civil Plans for Related Building Permit

Traffic Control Plans

Site Plans

Standards Attached: _____

Street Supervisor Approval Signature: _____ Date: _____

Water Supervisor Approval Signature: _____ Date: _____

Minimum Insurance Requirements;**General Liability****Major Permit 2 Million General Liability/4 million Aggregate****Minor Permit 1 Million General Liability/2 million Aggregate****Auto Liability****Major/Minor Permit 2 Million or Greater per Accident, Bodily Injury or Property Damage****Workers Comp****Major/Minor Permit 2 Million per Injury**

Special Circumstances May Arise Which Could Cause Changes to These Guidelines

Attach Certificate of Insurance (COI) AND Endorsements

The language in the Description section (bottom middle) must state the following: "The City of St. Helena, its agents, officers, officials, employees and volunteers" are named as additionally insured."

Disclosure Statement

NOTICE: This application will expire in 180 days from the date of submission if the permit is not pursued in good faith. The permit will expire if work is not started in 180 days or if work is abandoned for more than 180 days. A request for an extension of time must be submitted, in writing, to the Public Works Department within 180 days of issuance, or 180 days from the last approvable inspection.

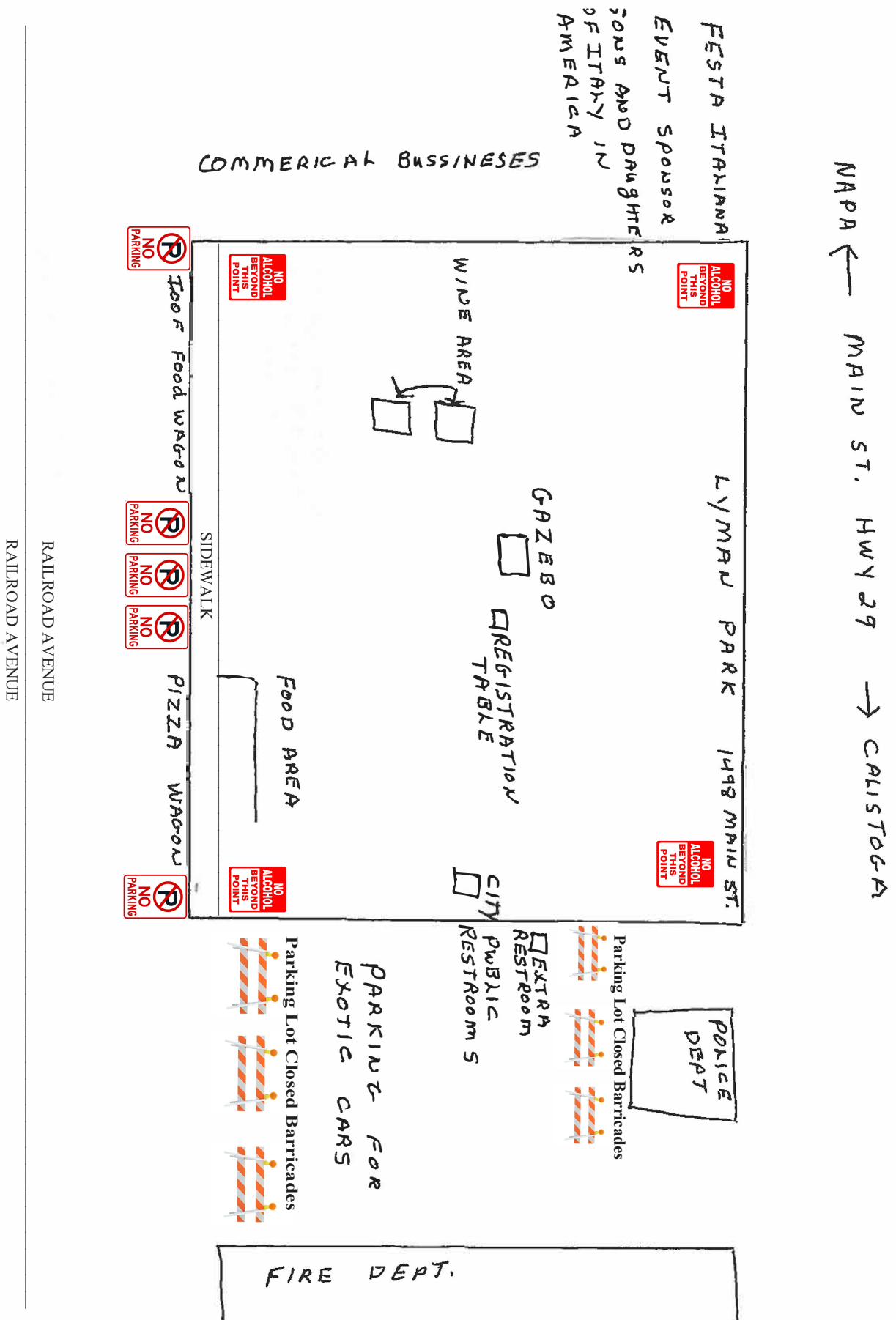
Permit fees are due at the time of application and are **NON REFUNDABLE**. Incomplete submittals will not be accepted.

I CERTIFY THAT IN THE PERFORMANCE OF THE WORK FOR WHICH THE PERMIT IS ISSUED WILL ADHERE TO THE CITY OF ST. HELENA CITY STANDARDS.

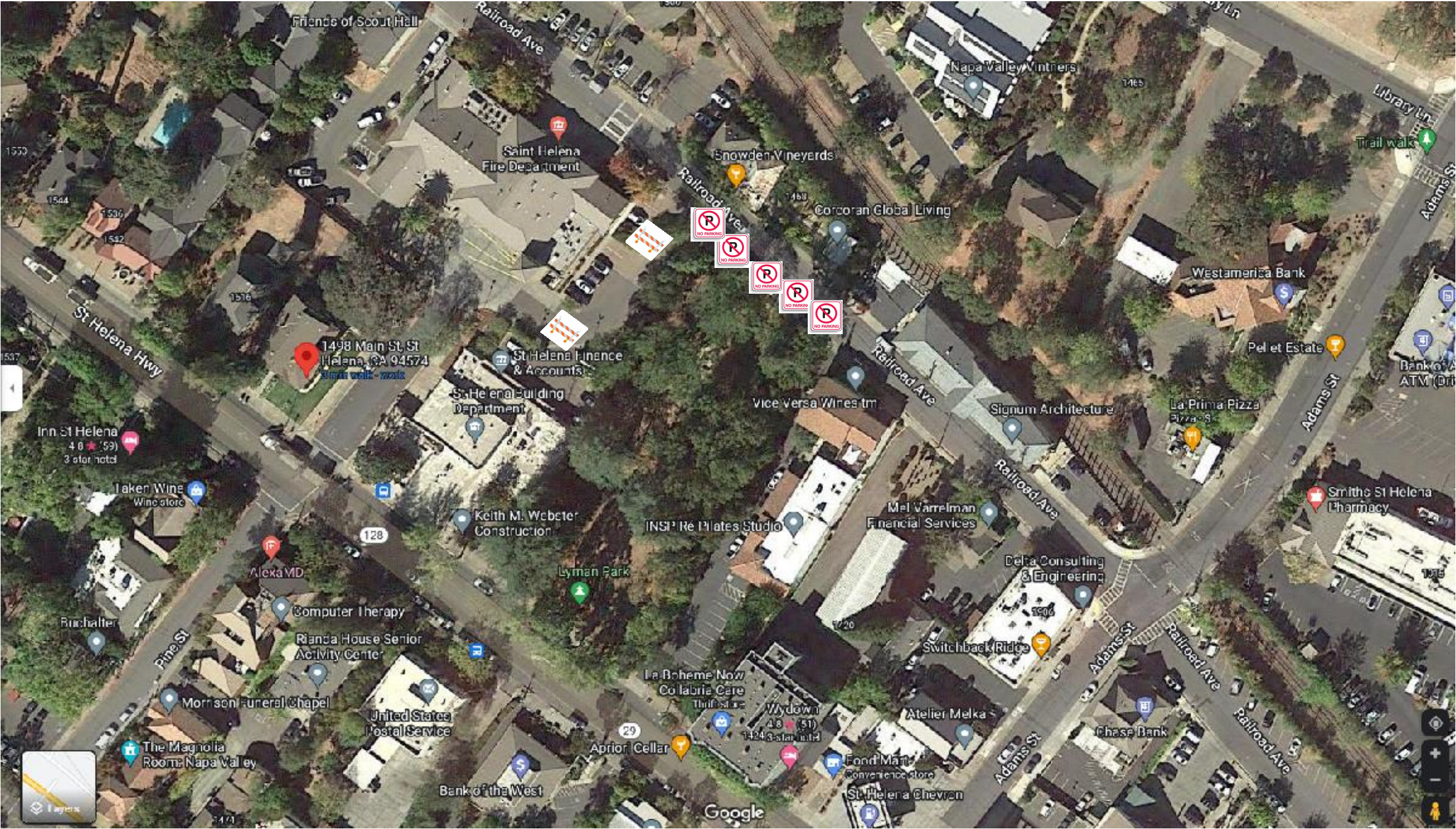
I (We) agree to save, indemnify, and hold harmless the City of St. Helena, its Agents, Officers, Officials, Employees, and Volunteers against judgments, costs and expenses which may in any way accrue against said City in consequence of the granting of this permit.

Signature: anthony meckeli Date: June 10, 2022

☐ Owner ☐ Contractor



Traffic Control Plan



72-hour "No Parking" signage on the westside of Railroad Avenue from the Fire Station to the end of Lyman Park 
Barricades at the entrances and the rear of the parking lot between Lyman Park and the Fire Station  (Exotic cars will be parked within the barricades of the parking lot between Lyman Park and the Fire Station)

c/o Carolyn Lawrence-Murphy 1473 Sulphur Springs St. Helena, CA 94574			INSURER A: INSURER B: INSURER C: INSURER F:				
COVERAGES			CERTIFICATE NUMBER:				
REVISION NUMBER:							
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR	TYPE OF INSURANCE	ADDL	SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCLN ☒ Liquor \$1,000,000	X		ACP7881421241	11/20/2021	11/20/2022	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000						
	VED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
	☒ GENERAL AGGREGATE LIMIT APPLIES PER ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER						GENERAL AGGREGATE \$ 2,000,000
	☐ UTILITY LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Per accident) \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$
	☐ WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? (Mandatory in NM) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE \$
							EL EACH ACCIDENT \$
							EL DISEASE - EA EMPLOYEE \$
							EL DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The City of St. Helena, its Agents, Officers, Officials, Employees, and Volunteers are named as additional insured on the General Liability per form CG 20 10 84 13. Proof of Hired and Non-Owned auto also included.							
CERTIFICATE HOLDER				CANCELLATION			
The City of St Helena, its agents, officers, officials, employees and volunteers 1480 Main Street Saint Helena, CA 94574				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE			

ACORD 25 (2014/03)

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From: Marianne Gentry mgentry@mivinsurance.com
 Subject: Sons of Italy-Certificate of Insurance
 Date: July 18, 2022 at 10:30 AM
 To: clawrence2844@icloud.com
 Cc: anthonymmicheli@yahoo.com



Hi Carolyn & Anthony,

Please find attached the certificate of insurance for The City of St. Helena.

If they or you need anything else, please let me know.

Marianne



Marianne Gentry
 Malloy Imrie & Vasconi Insurance Services, LLC
 t: 707-963-4273
 f: 707-963-4073
 e: mgentry@mivinsurance.com
 a: 1700 Second Street, Suite 110 Napa, CA 94559
 California License #0054782

MIV_INSURANCE_DISCLAIMER

The information in this E-mail message, and any files transmitted with it, is confidential and may be legally privileged. It is intended only for the use of the individual(s) named above. If you are the intended recipient, be aware that your use of any confidential or personal information may be restricted by state and federal privacy laws. If you, the reader of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute, or forward this E-mail message. If you have received this E-mail in error, please notify the sender and delete the material from any computer. Thank You

By making loss control visit(s), evaluations and/ or recommendations, Malloy Imrie & Vasconi Insurance Services, LLC and this Consultant have not and do not undertake or assume any duty to you or anyone else, including but not limited to:

- A) Identifying or reporting upon any hazard at your premises;
- B) Managing, controlling, or correcting any hazard; or
- C) Enforcing compliance with any local, state, or federal safety or health law.

Our recommendations may not address every possible loss potential, code violation, or exception to neither good practice nor will compliance with any submitted recommendations guarantee the fulfillment of your obligations as required by any local, state, or federal laws. Loss Control is a daily responsibility of your management. You are urged to implement and maintain your own safety and health management programs.

Malloy Imrie & Vasconi Insurance Services, LLC.



SONSOFI-01

MGENTRY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
 7/18/2022

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

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

PRODUCER Malloy Imrie & Vasconi Insurance Services, LLC 839 Adams Street Suite C St. Helena, CA 94574	<table border="1"> <tr> <td data-bbox="787 1675 1112 1711"> CONTACT NAME PHONE (A/C, Hk, Ext): (707) 963-2777 </td> <td data-bbox="1112 1675 1307 1711"> FAX (A/C, Hk) (707) 963-4073 </td> </tr> <tr> <td colspan="2" data-bbox="787 1711 1307 1753"> E-MAIL ADDRESS myagency@mivinsurance.com </td> </tr> <tr> <td colspan="2" data-bbox="787 1753 1307 1795"> INSURER(S) AFFORDING COVERAGE </td> </tr> <tr> <td data-bbox="787 1795 1226 1820"> INSURER A Nationwide Insurance Company of America </td> <td data-bbox="1226 1795 1307 1820"> NAIC # 25453 </td> </tr> <tr> <td colspan="2" data-bbox="787 1820 1307 1837"> INSURER B </td> </tr> </table>	CONTACT NAME PHONE (A/C, Hk, Ext): (707) 963-2777	FAX (A/C, Hk) (707) 963-4073	E-MAIL ADDRESS myagency@mivinsurance.com		INSURER(S) AFFORDING COVERAGE		INSURER A Nationwide Insurance Company of America	NAIC # 25453	INSURER B	
CONTACT NAME PHONE (A/C, Hk, Ext): (707) 963-2777	FAX (A/C, Hk) (707) 963-4073										
E-MAIL ADDRESS myagency@mivinsurance.com											
INSURER(S) AFFORDING COVERAGE											
INSURER A Nationwide Insurance Company of America	NAIC # 25453										
INSURER B											
INSURED Sons of Italy #2077											

CITY OF ST. HELENA

RESOLUTION NO. 2022-

The City of St. Helena City Council Authorizes: 1. Flying the Italian flag on the City's ceremonial flag pole during the month of October 2022 for Italian Heritage Month; and 2. All fees are waived for the encroachment permit and Lyman Park Gazebo reservation for the Festa Italiana community celebration to be held on October 1, 2022 from 12:00 pm to 6:00 pm; and 3. Authorizing temporary street parking closure on the westside of Railroad Avenue from the Fire House to the end of Lyman Park and the public parking lot between Lyman Park and the Fire House for Festa Italiana event on October 1, 2022 from 12:00 pm to 6:00 pm; and 4. Approval of mobile food truck(s) to be parked on Railroad Avenue in the street closure area and wine and beer vendors in Lyman Park during the Festa Italiana event.

RECITALS

- A. On May 28, 2019, the St. Helena City Council adopted policy P-CC-0001 Outdoor Display of Governmental and Non-Governmental Flags on City Property, which authorizes the display of non-governmental flags on City property.
- B. A request has been made by Mr. Anthony Micheli for the Italian flag to be flown during the month of October 2022 in honor of Italian Heritage Month.

- C. Mr. Micheli is chairing the October 1, 2022, Festa Italiana community event, sponsored by Sons and Daughters of Italy of America at Lyman Park from 12:00 pm to 6:00 pm.
- D. Section 21101(e) of the California Vehicle Code provides the local authorities may, by resolutions, temporarily close a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designated by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

RESOLUTION

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

1. Authorizes a ceremonial flag recognizing Italian Heritage Month during the month of October.
2. The City Council finds that the benefits derived from the temporary closing of street parking for the Festa Italiana community event outweigh the anticipated inconvenience and that the closing is necessary for the safety and protection of persons who are to use that portion of the street and parking lot during the temporary closing. The City Council authorizes closure of the following street parking and parking lot during the hours of the event:
 - The street parking westside of Railroad Avenue from the Fire House to the end of Lyman Park
 - The public parking lot between Lyman Park and the Fire House
3. The City Council authorizes the City Manager to waive the Encroachment Permit fee of \$200.00 and the \$50.00 Lyman Park Rental Permit fee for the Festa Italiana community event but does not waive the permit requirements and the General Conditions applicable to said permit. The event organizer would also be responsible for securing an ABC license if applicable.
4. Authorizes mobile food trucks to be parked on Railroad Avenue in the street closure area and wine

and beer vendors in Lyman Park during the Festa Italiana event.

Approved at a Regular Meeting of the St. Helena City Council on August 23, 2022, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember

Chouteau:

Councilmember Hall:

Councilmember

Hardy:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor
City Clerk

Cindy Tzafoopoulos,



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: CONSENT ITEMS

Subject: July 2022 Review and Forecasting of City Water Supply Availability

**CEQA Exempt
Determination:**

Prepared By: Ian Dale, Environmental Services Tech

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

The City of St. Helena publishes a monthly water report on the City website (www.cityofstheleena.org/publicworks/page/water-reports). The report includes the amount of water produced at the Louis Stralla Water Treatment Plant and the Stonebridge Potable Water Wells, and potable water delivered from the City of Napa. In addition to presenting data on the amount delivered monthly, the report includes year-to-date information and prior year data. Water elevation and capacity at the Bell Canyon Reservoir is included as well as information on rain and temperatures.

At the City Council meeting of July 27, 2021, the City Council requested City staff enhance the monthly water report to include a forecast of available water supply, consistent with the adopted Urgency Ordinance. This request is consistent with the City's Fiscal Year 2021-22 Council Goal to develop a Comprehensive Water Security Framework, and the recently developed Framework that includes a goal to "Maximize Conservation During Water Emergency" and subtask 1C to "provide customers with comparison of actual vs. projected water demand" as well as Framework Goal Improve Consumer Satisfaction and Confidence" and subtask 3C to "additional analytical tools to improve consumer confidence."

DISCUSSION

City staff has developed a forecasting tool to facilitate its ability to optimize water use and track water availability. Included as Attachment 1 is the Monthly Water Report for July 2022. The water produced for July 2022 is down by 32% when compared to the average of July 2018-2020. Below is a chart summarizing the water produced or delivered per source:

Water Produced or Delivered per Source

Source	Average (2018 - 2020) (Acre-Feet)	July 2021 (Acre-Feet)	July 2022 (Acre-Feet)
Bell Canyon	81	19	31
Stonebridge Wells	43	52	46
Napa Water	64	56	50
Total	188	127	127

Percent change from average of July 2018 - 2020: **-32%**

Percent change from July 2021: **0%**

Bell Canyon Reservoir

The City is still in drought conditions. Bell Canyon Reservoir has adequate water to support the City's needs through this calendar year with Phase I conservation measures in effect. The storage in Bell Canyon graph (Attachment 2) has been revised to include historic reservoir supply levels since July 2021. It also shows the water availability forecast through June 2024 based on the highest water usage during a non-drought year (FY 2019/20) and 10 inches of rainfall (lowest recorded).

As of August 1, 2022, Bell Canyon Reservoir elevation was at 413.55 feet representing approximately 1,767 acre feet (AF) and 74.1% capacity. Bell Canyon spillway level is 422 feet representing 2,383.69 acre feet in water supply volume. Below is a chart comparing Bell Canyon elevation levels, water supply availability in acre feet, and percent capacity of the reservoir on July 1st in 2020, 2021, and 2022.

Year	2020	2021	2022
Bell Canyon Elevation Level	405.14 Ft.	397.61 Ft.	413.55 Ft.
Acre Feet	1,235 AF	826 AF	1,767 AF
Percent Capacity	51.8%	34.6%	74.1%

As a follow up to the May 24th City Council meeting, staff developed a graph (Attachment 3) highlighting the relationship between the reservoir elevation level and water supply availability in acre feet. The graph shows the current status of the reservoir. Furthermore, the graph also displays the points where City Council decided to implement Phase I and Phase II drought restrictions in 2020.

Continued Water Conservation

California experienced two consecutive dry years 2020 and 2021 and drought conditions state-wide persist. Due to the combination of warmer-than-average temperatures and minimal precipitation in the state, the Department of Water Resources (DWR) declared 2021 as the fourth-driest year on record statewide. The record-breaking dry period in January and February 2022, and the absence of significant rains in March, have required DWR to reduce anticipated deliveries from the State Water Project (SWP). However, the reduction does not affect St. Helena as the City has multiple robust water sources not affected by the executive order. Water availability from the Bell Canyon reservoir is based on the City's State Water Rights permit and not the SWP. The City has not received any curtailment order from DWR nor does the City anticipate to receive one.

Due to the ongoing drought conditions, Phase I Water Emergency remains in effect. Staff will monitor State-wide and local drought conditions and provide updates on a monthly basis.

City of Napa Water Supply

Normal operations continue at Rutherford Pump Station (RPS) and the City is taking delivery of the allotment purchased from City of Napa. During the month of July 2022, Rutherford Pump Station was producing an average of 0.52 MG/day for a total of 50 acre feet (AF) for the month.

FISCAL IMPACT

Not applicable.

RECOMMENDED ACTION

Receive and file.

ATTACHMENTS

[Attachment 1: MWR July 1-31, 2022](#)

[Attachment 2: Storage in Bell Canyon Graph - July 2022](#)

[Attachment 3: Bell Canyon Reservoir Storage with Phase I & II](#)

CITY OF ST. HELENA
MONTHLY WATER REPORT

CC: CC ☒ X PC ☒ X FILE _____
 RECEIVED: _____ BY: _____

July 1-31, 2022

	LOUIS STRALLA WATER PLANT	STONEBRIDGE POTABLE WELLS	SBW IRRIGATION WATER	NAPA WATER	TK #1 & #2 ADJUST
AMOUNT PRODUCED in AF	31.44	46.02	1.13	49.58	0.00
AMOUNT PRODUCED in MG	10.24	14.99	0.37	16.15	0.00
PERCENT	24.7%	36.2%		39.0%	0.0%

WATER DELIVERY (AGGREGATE)

	THIS YEAR	LAST YEAR
TOTAL DELIVERY THIS PERIOD	41.75 MG	41.34 MG
MAXIMUM DAILY DELIVERY	n/a MG	2.11 MG
MINIMUM DAILY DELIVERY	n/a MG	0.54 MG
AVERAGE DAILY DELIVERY	1.17 MG	1.59 MG

WATER YEAR TOTALS

	THIS FISCAL YEAR	%	LAST FISCAL YEAR	%
LOUIS STRALLA WATER PLANT	31.44 AF	24.7%	19.60 AF	15.4%
	10.24 MG		6.38 MG	
NAPA WATER	49.58 AF	39.0%	55.70 AF	43.9%
	16.15 MG		18.14 MG	
STONEBRIDGE POTABLE WELLS	46.02 AF	36.2%	51.60 AF	40.7%
	14.99 MG		16.81 MG	
TOTAL WATER DELIVERY (ALL)	127.03 AF	100.0%	126.90 AF	100.0%

SBW IRRIGATION WATER

	THIS MONTH	THIS MONTH, LAST YR.
STONEBRIDGE APARTMENTS	0.24 MG/July 1 -31	0.444 MG/July 2-30
NAPA VALLEY COLLEGE	0.12 MG/July 1 -31	0.128 MG/July 2-30

WATER ELEVATION, CAPACITY & RAINFALL

	THIS FISCAL YEAR	LAST FISCAL YEAR
ELEVATION BELL CANYON RESERVOIR	413.55 FT.	397.61 FT.
MONTHLY RISE OR DROP	-1.35 FT.	-1.51 FT.
CAPACITY AT END OF PERIOD	575.66 MG	259.25 MG
PERCENT OF FULL CAPACITY	74.1 %	34.6 %
RAINFALL IN THIS PERIOD	0.00 IN	0.00 IN
TOTAL RAINFALL SEASON TO DATE	0.00 IN	0.00 IN

TEMPERATURES

	THIS YEAR	THIS MONTH, LAST YR.
DEGREES IN FAHRENHEIT	51 - 102	58-107
AVERAGE	76.5	77

REMARKS

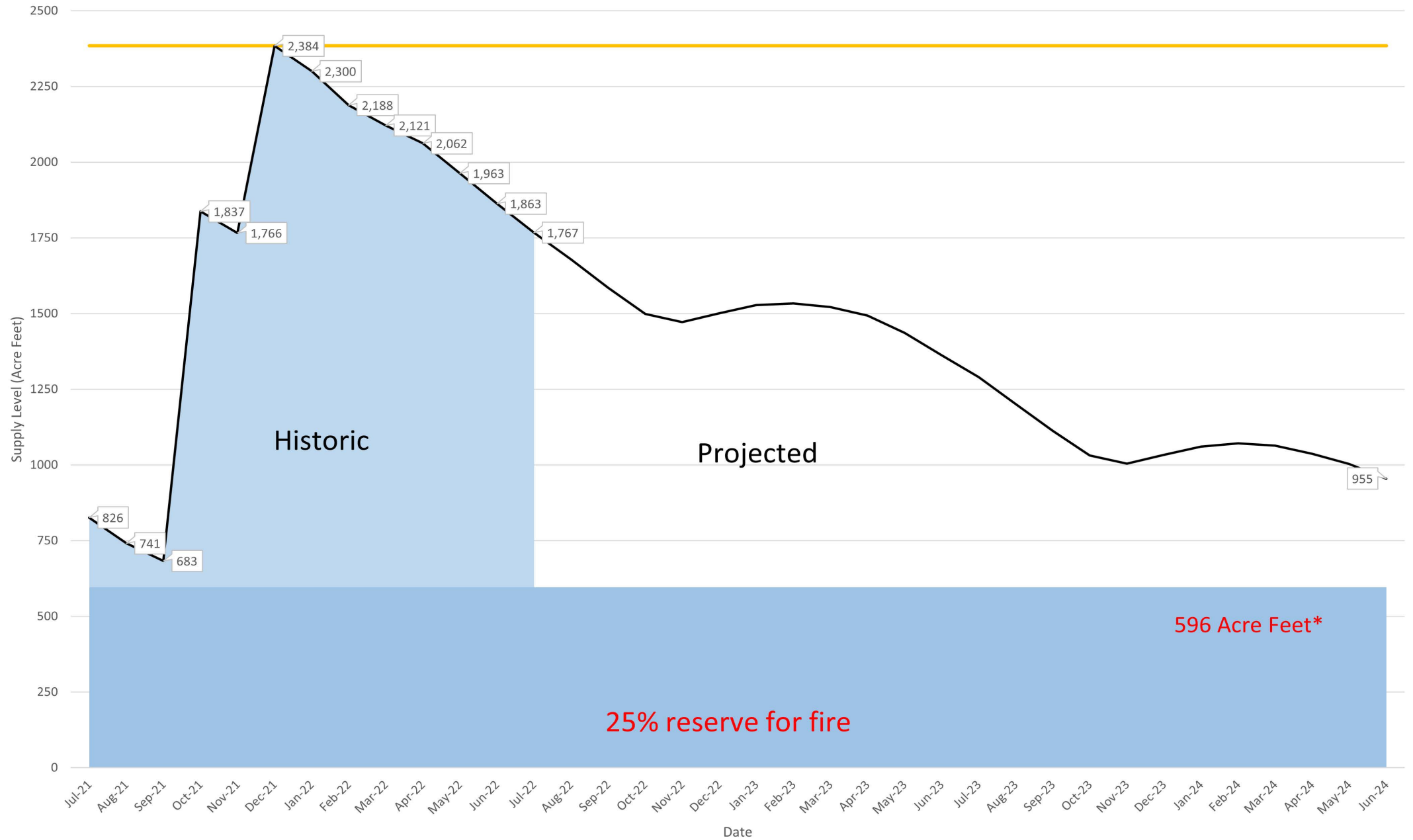
City of Napa Water Delivery: RPS producing an average of 0.52 MG/day during July 2022.

DISCLAIMER: The data presented in this report is approximate and for informational purposes only.

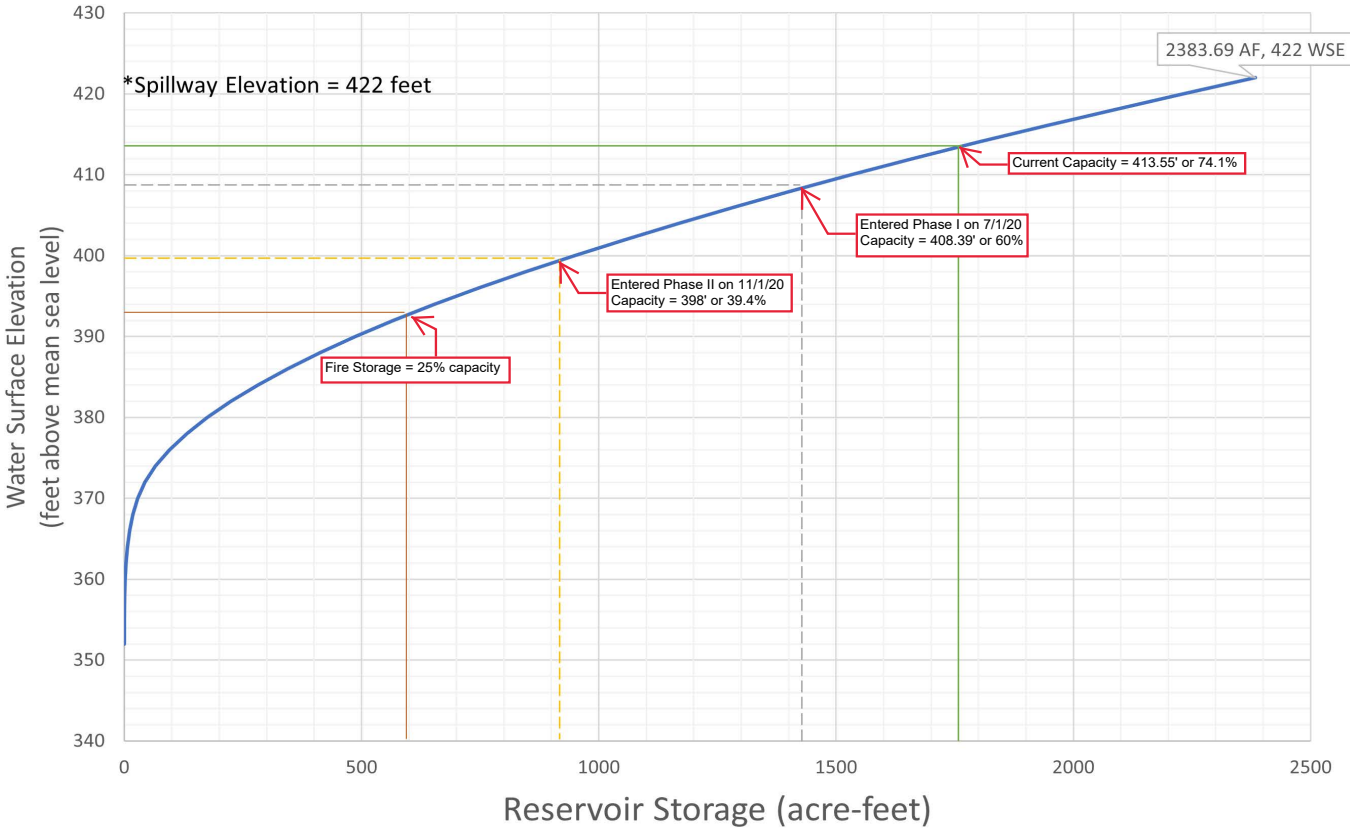
Updates will be provided if any errors are identified.

Bell Canyon Water Storage Forecast

Assumes: (1) Highest usage during non-drought year (FY2019/20)
 (2) 10" of Rainfall (Lowest Recorded)



Bell Canyon Reservoir Stage-Storage Relationship





Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: PUBLIC HEARINGS

Subject: Introduction and first reading of an Ordinance adding Section 3.04.055 Standards of Conduct Pertaining to Procurement to St. Helena Municipal Code Chapter 3.04 Purchase of Supplies, Equipment and Services and Procedures for Public Works Projects.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Administrative Services Director

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

The California Governor's Office of Emergency Services (Cal OES) notified the City they would be conducting a desk compliance assessment on the City's public assistance grant program related to the September 2020 wildfires.

All grants administered by Cal OES are subject to the many requirements found in federal and state laws, federal regulations (e.g., Code of Federal Regulations), federal requirements (e.g., Office of Management and Budget Circulars) and state policy guidance. Subrecipients (like the City of St. Helena) of these grant funds are also subject to periodic reviews in the forms of audits and monitoring to assure compliance with all applicable requirements. These reviews may result in the identification of noncompliance (findings).

Findings are discoveries that, within the context of any review process, represent operational deficiencies or errors, material program weaknesses, or unacceptable program liabilities that would probably result in questioned Grant Subaward costs or collectively characterize a significant risk to program integrity.

DISCUSSION

On April 14, 2022, Cal OES concluded a desk compliance assessment on the Public Assistance Grant Program, FEMA-4569-DR-CA, September 2020 Wildfires. Cal OES's assessment included reviewing documentation submitted to support expenditures and performing certain procedures as necessary to determine compliance with the Code of Federal Regulations (CFR) and program guidelines.

The findings identified the City did not have written standards of conduct pertaining to procurement included in the City's Municipal Code. As a result, the City must develop and implement written standards of conduct in accordance with the requirements contained in Title 2 CFR,220.318(c)(1), to ensure procurements and contracts are free from apparent or real conflicts of interest. Although, the City does have written standards of conduct in the employee handbook and each of the City's contracts, the language should be included in the City's Municipal Code.

The proposed ordinance adds Section 3.04.055 *Standards of Conduct Pertaining to Procurement* to the City's Municipal Code Chapter 3.04 Purchase of Supplies, Equipment and Services and Procedures for Public Works Projects as follows:

Section 3.04.055 Standards of Conduct Pertaining to Procurement.

No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. All City employees and persons in City service are required to adhere to applicable local, state, and federal conflict of interest requirements and prohibitions, including but not limited to the provisions of Article 4 of Title 1, Division 4, Chapter 1 of the Government Code, and Title 2 CFR,220.318(c)(1) General procurement standards.

FISCAL IMPACT

There is no fiscal impact to the first reading of the recommended changes to St. Helena Municipal Code Section 3.04.

RECOMMENDED ACTION

Introduce and conduct the first reading of an Ordinance adding Section 3.04.055 Standards of Conduct Pertaining to Procurement to St. Helena Municipal Code Chapter 3.04, by title only and waive further reading.

ATTACHMENTS

[Attachment 1: Ordinance with Exhibit A - Redline](#)

[Attachment 2: Ordinance with Exhibit A - Clean](#)

CITY OF ST. HELENA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, ADDING SECTION 3.04.055 STANDARDS OF CONDUCT PERTAINING TO PROCUREMENT TO ST. HELENA MUNICIPAL CODE CHAPTER 3.04 PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES AND PROCEDURES FOR PUBLIC WORKS PROJECTS

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

SECTION 1. Amendment of Chapter 3.04, Title 3 of the St. Helena Municipal Code.

Chapter 3.04, Title 3 of the St. Helena Municipal Code is hereby amended to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. Compliance with CEQA.

The City Council hereby finds that the action to adopt this ordinance to amend Chapter 3.04, title 3 of the St. Helena Municipal Code is not a Project subject to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA). Further, even if the adoption of the ordinance is found to be a Project subject to CEQA, it is nevertheless exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

SECTION 3. Severability.

The City Council hereby declares every section, paragraph, sentence, clause and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code.

It is the intention of the St. Helena City Council that the text in Exhibit A of this ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such as appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date.

This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 23rd day of August 2022, and was adopted at a regular meeting of the St. Helena City Council on the ____th day of ____, 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

I, CINDY TZAFPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and passed upon its first reading at a regular meeting of the City Council on the 23rd day of August, 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____th day of ____, 2022, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

EXHIBIT A

Chapter 3.04
PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES, AND PROCEDURES FOR
PUBLIC WORKS PROJECTS

Article 1

Generally

Sections:

- 3.04.010 Purpose—Objectives—Scope—Responsibilities.**
- 3.04.020 Definitions.**
- 3.04.030 Staging prohibited.**
- 3.04.040 Appeals.**

Article 2

Supplies, General Services and Equipment

Sections:

- 3.04.050 Purchasing officer—Powers and duties.**
- 3.04.060 Requisitions.**
- 3.04.070 Purchase orders.**
- 3.04.080 Contracts.**
- 3.04.090 Encumbrance of funds.**
- 3.04.100 Bidding procedures for various purchase amounts.**
- 3.04.110 Departmental purchases.**
- 3.04.120 Informal bid procedure.**
- 3.04.130 Formal bid procedure.**
- 3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.**
- 3.04.150 Cooperative purchasing with other agencies.**
- 3.04.160 Recycled supply products specification.**
- 3.04.170 Emergencies.**
- 3.04.175 Declared emergencies.**
- 3.04.180 Surplus supplies and equipment.**
- 3.04.190 Inspection and tests.**

Article 3

Public Works Projects

Sections:

- 3.04.200 Uniform construction cost accounting procedures.
- 3.04.210 Bidding procedures for various project amounts.
- 3.04.220 Negotiate contract or purchase order procedures.
- 3.04.230 Informal bidding procedures.
- 3.04.240 Formal bidding procedures.
- 3.04.250 Bonds.
- 3.04.260 No bids received.
- 3.04.270 Tie bids.
- 3.04.280 Rejection of bids.
- 3.04.290 Emergencies.
- 3.04.300 Prevailing wages required.
- 3.04.310 Pre-qualification of bidders.

Article 4

Professional Services

Sections:

- 3.04.320 Award of professional service contracts based upon competence.
- 3.04.330 Request for proposal/qualification.
- 3.04.340 Contracting authority.

Article 1

Generally

3.04.010 Purpose—Objectives—Scope—Responsibilities.

The purpose of this chapter is to establish an efficient procedure for the purchase of supplies, equipment, and services, and to establish a procedure for performing or contracting for the construction of public works consistent with state law. These procedures are intended to allow the city to obtain the best professional services, to acquire quality supplies, general services and equipment, to construct public works at the lowest possible cost commensurate with quality needed, and to exercise positive financial control over purchases and also to define authority for the purchasing function. These procedures apply to all city employees. These procedures apply to all purchases of supplies, equipment and services, including purchases made online or over the phone. Employees are responsible for reading and understanding the requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.90.010)

3.04.020 Definitions.

As used in this chapter:

“Bidder’s list” means a list of responsible prospective vendors capable of providing the items being bid upon.

“Contract” means an agreement, regardless of how titled, for the procurement of supplies, equipment or services, including without limitation a verbal or written agreement between the city and a contractor, the city and a service provider, and/or the city and a vendor.

“Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

“Equipment” means furnishings, machinery, vehicles, rolling stock, and other personal property used in the city’s business.

“General services” are services such as janitorial, uniform cleaning, maintenance work and other services which do not require any unique skill, special background, or training. Obtaining such services at the lowest cost is the single most important factor in selection, as opposed to personal performance.

“Maintenance work” means:

1. Routine, recurring, and usual work for the cleaning, preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
2. Minor repainting;
3. Resurfacing of streets and highways at less than one inch;
4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
5. Work performed to keep, operate, and maintain publicly owned water or waste disposal systems including, but not limited to, dams and reservoirs.

“Professional or special services” means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, consultant or those services such as computer services, and other services which require special performance criteria, specific experience, training, personal judgement, quality of work or factors other than simply obtaining the service at the lowest cost to the city.

“Public work” means a type of public construction project subject to the regulation of the State Public Contract Code, such as:

1. The erection, construction of, alteration, major painting, repair, or demolition of public buildings, streets, walkways, water and sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the city;
2. Furnishing supplies for any of the above works or projects;
3. Public work does not include “maintenance work” as defined in this chapter.

“Purchase” includes the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.

“Purchase order” is a written contract for equipment, supplies, or services with a specified consultant, contractor, or vendor and is initiated by a purchase order requisition. A purchase order submitted by an authorized person becomes a legally binding contract. It can stand alone or include attachments for clarification purposes. A purchase order encumbers the specified amounts to provide specified equipment, supplies, services, and/or fixed assets. Regular purchasers may be paid through a one-time payment of an amount up to the purchase order amount at the conclusion of performance (delivery of supplies, services, etc.), and/or incremental (progress) payments as provided in the contract for each time items are purchased.

“Purchasing officer” means the finance director or his or her designated representative.

“Requisition” is a request to authorize the acquisition of equipment, supplies or services from a specified consultant, contractor, or vendor.

“Services” means the furnishing of labor, time or effort to perform or complete a designated task.

“Special equipment/supplies” means unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the city and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.

“Supplies” means office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the city’s business, excepting supplies for a public work which is regulated under Section [3.04.210](#).

“Uniform construction cost accounting procedures” means those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to the Public Contract Code Section [22030](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.020)

3.04.030 Staging prohibited.

Purchases and public works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.030)

3.04.040 Appeals.

Any dispute, contention, or disagreement relative to interpretation, application or enforcement of this chapter shall be submitted to the city council for determination in accordance with the appeal provisions of Chapter [1.16](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.040)

Article 2

Supplies, General Services and Equipment

3.04.050 Purchasing officer—Powers and duties.

The duties of the purchasing officer may be combined with those duties of any other officer or position in the city. The purchasing officer shall have the authority to:

- A. Purchase needed city supplies, general services, equipment and special equipment/supplies which are not included within the construction contract or proposed specifications for a construction contract of a public work being administered by any other city department;
- B. Investigate, keep knowledgeable about, negotiate, and recommend on the execution of contracts or the purchasing of supplies, general services, and equipment pursuant to the procedures of this chapter and such administrative rules and regulations as prescribed by the city;
- C. To keep informed of current developments concerning purchasing, prices, market conditions, and new products;
- D. To prescribe and maintain such forms as necessary for the proper operation of this purchasing system;
- E. To supervise the inspection of all supplies, general services, and equipment purchased under this chapter in order to assure conformance with city specifications;
- F. To supervise the transfer of surplus and unused supplies and equipment or sale or disposal of such;

- G. To maintain up-to-date bidder's list, vendors' catalogs, files and such other records as needed to perform these duties;
- H. To ensure that purchasing specifications are open and nonrestrictive to encourage full competition; and
- I. To perform such other tasks as may be necessary for the proper conduct of purchasing of supplies, general services, and equipment. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.010)

3.04.055 Standards of Conduct Pertaining to Procurement.

No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. All City employees of the City and persons in City service are required to adhere to applicable local, state, and federal conflict of interest requirements and prohibitions, including but not limited to the provisions of Article 4 of Title 1, Division 4, Chapter 1 of the Government Code, and Title 2 CFR, 220.318(c)(1) General procurement standards.

Reporting of Improper Activities

The City has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State, or Federal law.

Enforcement

In addition to any other penalty as provided by law, any employee found to be in violation of the Code of Ethics shall be subjected to appropriate disciplinary action up to and including, employment termination.

3.04.060 Requisitions.

Except as authorized under Section 3.04.100(A), any department requesting supplies, general services, equipment, or special equipment/supplies shall submit to the immediate supervisor a requisition on the purchasing officer's approved form prior to initiating any procurement. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.020)

3.04.070 Purchase orders.

Except for departmental purchases as authorized in Section 3.04.100(A), purchases of supplies, general services, most special equipment/supplies and general equipment not covered within a construction

contract or public works specification, may be made only by purchase orders issued by the purchasing officer and any other contractual document he or she determines is necessary. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.030)

3.04.080 Contracts.

The purchasing officer does not have the authority to sign contracts, nor to bind the city contractually. Contracts may only be entered into by the city manager. Subject to Section [3.04.340](#) contracts may only be entered into by the city manager; contracts in excess of city manager authority require city council approval, without which such contract is not valid. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.040)

3.04.090 Encumbrance of funds.

Except in case of an emergency or where specific authority is first obtained from the city council or the city manager, the purchasing officer shall not issue any purchase order for purchasing of supplies, general services or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.050)

3.04.100 Bidding procedures for various purchase amounts.

Except as authorized in Sections [3.04.140](#) and [3.04.150](#), or in the case of emergencies as described in Sections [3.04.170](#) and [3.04.175](#), the purchase of supplies, general services, equipment and special equipment/supplies, not included in a construction contract or bid specification for a public work, shall be made as follows:

- A. A purchase of five thousand dollars (\$5,000.00) or less may be made by departmental purchase in accordance with Section [3.04.110](#).
- B. A purchase greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000) may be made by an informal bid procedure in accordance with Section 3.04.120.
- C. A purchase of more than twenty-five thousand dollars (\$25,000.00) shall be made by formal bid procedure in accordance with Section [3.04.130](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.060)

3.04.110 Departmental purchases.

A department may, independently of the purchase officer, purchase specified and limited supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work, as follows:

A. Purchases of five thousand dollars (\$5,000.00) or less: requestor receives a verbal/written approval from supervisor, department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items. All purchases shall be made with funds in an unencumbered appropriation. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.070)

3.04.120 Informal bid procedure.

The purchase of supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with the estimated value greater than five thousand dollars (\$5,000.00), but not exceeding twenty-five thousand dollars (\$25,000.00), shall be made by a purchase order as required by this chapter. Said purchases, subject to the department head's discretion, based upon a small amount, or urgent need and timeliness, may be let without the formal bidding procedures described in Section [3.04.130](#). In such case, the following procedures shall be followed:

A. Solicitation of Bids. If it is determined that the request is of a sufficient size and time allows, the purchasing officer or designee, before issuing the purchase order to a specific contractor/vendor, shall: for purchases greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00), obtain at least three written bids or price quotes. The purchasing officer or designee may negotiate to obtain the lowest possible contract amount from any vendor contacted who can provide supplies, general service, or equipment within the time constraints of the department's request. The purchasing officer or designee may solicit or determine bids of prospective vendors by written request, telephone, or may base award recommendations upon current catalogs or advertisements.

B. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

C. Maintenance of Records. After placing the order, a written record of the contract, bids, quotes or advertisements used or received shall be open public records and maintained by the purchasing officer or the department for a period of two years.

D. Award. The purchasing officer or designee shall award the contract to the lowest responsive and responsible bidder, vendor or offeror whose quote, bid, or proposal fulfills the purpose intended, provided the amount is within the unencumbered appropriation for that item, or reject such bids or proposals, or negotiate further for terms more favorable to the city. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.080)

3.04.130 Formal bid procedure.

For supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with an estimated value in excess of twenty-five thousand dollars (\$25,000.00), purchases shall be made in accordance with the following formal written bid procedures:

- A. **Published Notices.** A notice inviting bids shall be published at least ten (10) calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation printed and published in the city, and also in appropriate trade publications, if any, circulated within the general area. Such other notice as the purchasing officer or designee deems appropriate shall be made.
- B. **Notices Inviting Bids.** Notices inviting bids shall include a general description of the goods, articles, services or equipment to be purchased, any required bidder's security or performance bonds, state where bid blanks and specifications may be secured and the time and place for the opening of bids.
- C. **Bidder's List.** The purchasing officer or designee shall maintain a list of responsible bidders for various categories of supplies, equipment, and general services. A solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the bidder's list for the category of equipment, supplies or general services subject to the bid request.
- D. **Bidder's Security/Failure to Sign Contract.** If the city requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten percent (10%) of the bid amount. Bidder's security shall be either a cash deposit with the city, a cashier's or certified check payable to the city, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the city council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the council may award the contract to the next lowest responsive, responsible bidder.
- E. **Bid Opening Procedure.** Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by city staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening.

F. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

G. Bid Evaluation Procedures. All bids and bidders shall be analyzed by purchasing officer or designee and the responsible department for bidder's qualifications and compliance with bid specifications. The purchasing officer or designee shall prepare a recommendation to the department for award or rejection; the department shall then prepare a recommendation for award or rejection to the city council.

H. Rejection of Bids. In its discretion, the city council may reject all bids and readvertise. If no bids are received, the city council may proceed with the procurement without further complying with this chapter using whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract.

I. Award of Contracts. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to criteria designated in the solicitation, provided the award amount is within the unencumbered appropriation for that item. The city council may waive any minor bid irregularities.

J. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the council may accept either bid or accept the lowest bid made by negotiation with the tied bidders.

K. Performance Bonds. The city may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.090)

3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.

A. Special Equipment/Supplies. In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the purchasing officer or department head may:

1. Limit bidding to a specific product type, or a brand name product; or
2. Utilize a request for proposal approach where warranties, servicing obligations, and product performance will be evaluated in addition to the price of the product, and the award of the contract is made by the council to the proposer it deems is in the best public interest.

B. Sole Source Purchases. Commodities or services that can be obtained from only one vendor, or one distributor authorized to sell in this area, are exempt from the competitive bidding requirements in Section [3.04.100](#) and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer. All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the appropriate department head and forwarded to the purchasing officer. Approval of any sole source acquisition shall be obtained from the city council for an award of a contract or purchase order greater than twenty-five thousand dollars (\$25,000.00).

C. Bid Exceptions. The competitive bid process is not applicable to certain purchases. The following are exempt from bid processes of this chapter:

1. Departmental purchases, as defined in Section [3.04.110](#);
2. Subscriptions;
3. Trade circulars or books;
4. Newspaper advertisements and notices;
5. Utility payments;
6. Land. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.100)

3.04.150 Cooperative purchasing with other agencies.

The bidding requirements of Section [3.04.100](#) shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the city, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last twelve (12) months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, the city council’s approval shall be required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.110)

3.04.160 Recycled supply products specification.

If in procuring supplies a recycled product can achieve the necessary city performance standard, and if such recycled product is readily available, specifications should, if economically feasible, require products

made with recycled materials be bid. If the department head determines that: (A) a recycled product lacks performance capabilities or needed quality levels; or (B) a sufficient amount of such recycled or reusable product is not currently available in the market, then a reduced percentage can be required, or the supply specification can be limited to nonrecycled or virgin materials. When recycled products are required, reasonable efforts shall be made to label the products as containing recycled materials. As used in this section, recycled products does not mean used products, but is limited to new products made with materials which have been recycled. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.120)

3.04.170 Emergencies.

Bidding procedures may be dispensed with in the case of an emergency. The city council delegates to the city manager the authority to declare a public emergency and enter into contracts for any purchase in accordance with Section [3.04.175](#). The city manager's authority is subject to confirmation by the city council at its next meeting for any purchase in excess of twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.130)

3.04.175 Declared emergencies.

A. Purpose. This section modifies the city's normal purchasing practices only during a proclaimed emergency. With this revised policy, the city is able to acquire goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property while maintaining an effective purchasing policy.

B. Definitions. For the purposes of this section, the following definitions are applicable:

A proclaimed disaster or emergency exists if (1) the Governor has declared a state of emergency for an area which includes the geographic territory of the city, or (2) the city manager or his or her designee has declared an emergency in the city.

"Exigent circumstances" are situations in which (1) a disaster or emergency has been proclaimed, and (2) the public exigency for goods and services required to address an immediate threat to life, public health or safety, or improved public and private property will not permit competitive solicitation.

C. Delegation of Purchasing Authority in Exigent Circumstances. If the city manager or his or her designee determines that goods and services must be procured before the city council is to assemble and approve purchases, the city manager or his or her designee has the authority, subject to the limitations set forth below to approve the immediate rental and/or purchase of any equipment, supplies, services, or

other items necessary to respond to an immediate threat to life, public health or safety, or improved public and private property.

1. Limits of Single Purchase Authority. The city manager or his or her designee shall have the authority to make individual purchases up to one hundred thousand dollars (\$100,000.00) on his or her signature alone. The city manager or his or her designee shall have the authority to make purchases in excess of one hundred thousand dollars (\$100,000.00) up to a maximum of five hundred thousand dollars (\$500,000.00) when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

2. Limits of Aggregate Purchase Authority. The city manager or his or her designee shall have the authority to make aggregate purchases up to one million five hundred thousand dollars (\$1,500,000.00) on his or her signature alone per disaster declaration. The city manager or his or her designee shall have the authority to make aggregate purchases in excess of one million five hundred thousand dollars (\$1,500,000.00) and up to a maximum of two million five hundred thousand dollars (\$2,500,000.00) per disaster declaration when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

- a. Sub-delegation to the Emergency Operations Center (EOC) Director. The EOC director shall be a designee of the city manager at any time that the city manager is not available to approve purchases as allowed in this section.

- b. Sub-delegation of Purchasing Authority to Department Heads. If neither the city manager or his or her designee nor the EOC director is available, then any city department head has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of fifty thousand dollars (\$50,000.00).

- c. Sub-delegation of Purchasing Authority to Mid-Managers. If neither the city manager or his or her designee, EOC director, or any department head is not available, then any employee classified as a mid-manager has the authority to rent or purchase from the nearest source, any equipment, supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of twenty-five thousand dollars (\$25,000.00).

D. Administrative Procedures and Reporting Requirements.

1. As soon as possible after purchases are made under subsection C of this section, the city manager or his or her designee, EOC director, department head or midmanager shall submit to the finance director or designee a purchase order requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.
2. The finance director will inform the city manager or his or her designee and the city council of any individual purchase under this section with a contract amount greater than twenty-five thousand dollars (\$25,000.00), and also whenever the aggregate of purchases under this section is greater than two hundred fifty thousand dollars (\$250,000.00).
3. The finance director will obtain the city manager's or his or her designee's (or EOC director as the city manager's designee) approval prior to any purchase by a department head if the amount is twenty-five thousand dollars (\$25,000.00) or more.
4. If the city manager or his or her designee and the EOC director are unavailable, and the delay in getting his or her signature would imperil life, public health or safety, or improved public or private property, then any department head (except the requestor) may approve the emergency purchase of fifty thousand dollars (\$50,000.00) or more.
5. The finance director or designee shall have the authority to approve all disaster related purchases under fifty thousand dollars (\$50,000.00).
6. The finance director or designee will expedite the verification of funds available and complete the preparation of the purchase order.

E. Procurement Procedures in Exigent Circumstances. Upon receipt of the requisitions under subsection D of this section, the finance director or designee shall prepare purchase orders for emergency equipment, supplies, services or other items in accordance with the requirements of this section.

1. Exempt Purchases. Purchases of two hundred fifty thousand dollars (\$250,000.00) or less shall not be required to be formally bid. Purchases greater than two hundred fifty thousand dollars (\$250,000.00) may be made following the procedures specified in this section. The signature(s) of the city manager or his or her designee, finance director, or department head are still required as provided in subsections C and D of this section.

2. Justification of “Sole Source” or “No Bid” Contracts. Where exigent circumstances require immediate procurement from the nearest available source, the finance director or designee shall justify the emergency sole source purchase or no bid purchase on the purchase order.
 - a. Procurement should be limited to that portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the city’s normal purchasing policy (this chapter).
 - b. “Sole source” or “no bid” acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures; procurement of scarce commodities, goods, or services; or acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.
 3. Provision for Alternate Bid Solicitation Procedures. The city’s normal requirements for quotes, sealed bids, or local preference shall not apply to this section (Declared emergencies). However, the finance director or designee shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.
 4. Posting Locations for Requests for Proposals or Solicitations of Bids. The finance director or designee may waive normal requirements for public posting of requests for proposals or solicitation of bids for the procurement of emergency equipment, goods or services. Notices soliciting bids or requests for proposals shall be posted, at minimum, at the emergency operations center or the alternate emergency operations center, if the primary emergency operations center is not being used.
 5. Length of Time for Posting Requests for Proposals or Solicitation of Bids. The finance director or designee shall determine the posting period. The finance director or designee will make reasonable efforts to ensure that multiple suppliers are able to place a bid during the shortened time period.
- F. Notification and Ratification.
1. Posting of Contract Awards. All contracts awarded that exceed twenty-five thousand dollars (\$25,000.00) shall be presented to the city council for ratification and thereafter shall be publicly posted within sixty (60) days of the award.

2. Authority to Cancel Emergency Procurements. The city manager has the absolute authority to rescind a contract for nonperformance within twenty-four (24) hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or nonperformance presents an immediate threat to life, public health or safety, or improved public or private property.

3. Notification Requirement for Emergency Services. For any purchase in excess of twenty-five thousand dollars (\$25,000.00), the city manager shall report all such purchases to the city council within thirty (30) days of the onset of the disaster.

4. Requirement for Separate Invoicing. All purchases or rentals made during the proclaimed emergency or disaster conditions shall require separate invoicing from routine (nondisaster) purchases. All invoices must state the goods, services, or equipment provided and must specify the location where the goods or services were delivered.

5. Limitations of Declared Emergencies Purchasing Policy. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or improved public or private property as outlined in this section shall follow the city's regular purchasing provisions. (Ord. 16-5 § 1 (Exh. A))

3.04.180 Surplus supplies and equipment.

All departments shall submit to the purchasing officer, at such times and in such forms as he or she may prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer may direct that the designated supplies or equipment be:

- A. Transferred to another city department or agency;
- B. Exchanged or traded in on new supplies and equipment; or
- C. Disposed of in some other suitable manner, which may include sale at auction or deposit at a landfill. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.140)

3.04.190 Inspection and tests.

The purchasing officer or designee or department requesting the item shall inspect all deliveries of supplies and equipment to assure conformance with the contract or order specifications. The purchasing officer or designee, at his or her discretion, may require such reasonable chemical and physical tests of samples of supplies and equipment as he or she deems necessary to determine the quality in

conformance with those specifications. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.150)

Article 3

Public Works Projects

3.04.200 Uniform construction cost accounting procedures.

The city council has elected to become subject to the Uniform Public Construction Cost Accounting Act and procedures as established by the California Uniform Construction Cost Accounting Commission in Public Contract Code Section [22000](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.010)

3.04.210 Bidding procedures for various project amounts.

- A. A public work project of sixty thousand dollars (\$60,000.00) or less may be performed by city force account, by negotiated contract, or by purchase order in accordance with Section 3.04.220.
- B. A public work project greater than sixty thousand dollars (\$60,000.00) and less than or equal to two hundred thousand dollars (\$200,000.00) may be let to contract by informal bid procedures in accordance with Section 3.04.230.
- C. A public work project of more than two hundred thousand dollars (\$200,000.00) shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure in accordance with Section 3.04.240.

The described project cost limits of subsections A through C of this section shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Public Contract Code Section [22034](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.020)

3.04.220 Negotiate contract or purchase order procedures.

For those projects qualifying under Section [3.04.210](#)(A), the applicable department head shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. For any city force account work, the department head shall first comply with the guidelines established by the California Uniform Construction Cost Accounting Commission in determining the cost of the public work. The city manager shall have the authority to award and to execute any contract for the public work qualifying under Section [3.04.210](#)(A). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.030)

3.04.230 Informal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(B) for informal bidding, the following procedures shall be used:

A. Bidder's List. The city shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with the Uniform Public Construction Cost Accounting Act rules.

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall include a general description of the services and/or articles to be purchased, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether bid deposit or bond and faithful performance and/or warranty bond will be required.

2. Mailing of Notice. Unless the product or service is proprietary, all contractors on the city's list for the category of work being bid shall be mailed a notice inviting informal bids, or an announcement/advertisement shall be placed in all construction trade journals, or both such mailing and advertising. The trade journals shall be those identified by the California Uniform Construction Cost Accounting Commission as appropriate for this area, in accordance with California Public Contract Code Section [22036](#).

3. Ten (10) Day Notice. Notices inviting informal bids shall be posted at the city hall and mailed at least ten (10) calendar days before the due date of submission of bids to all firms or suppliers on the bidder's list for the category of work being bid and to such other vendors as the public works director deems appropriate.

4. Proprietary Products or Services. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting bids may be sent exclusively to such contractor or contractors.

C. Award. The city council shall award the contract to the lowest responsive and responsible bidder whose bid or proposal fulfills the purpose intended according to criteria designated in the solicitation. The council may waive any minor bid irregularities.

D. Bids in Excess of Statutory Amount. If all bids received are in excess of two hundred thousand dollars (\$200,000.00), the city council may, by passage of a resolution by a four-fifths vote, award the contract to the lowest responsive and responsible bidder up to an amount not to exceed two hundred

twelve thousand five hundred dollars (\$212,500.00) if it determines the cost estimate of the city was reasonable. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.040)

3.04.240 Formal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(C) for formal bidding, the following procedures shall be used:

A. Adoption of Plans. Prior to soliciting bids, unless otherwise delegated by the city council to the public works director, the city council shall approve and adopt the plans, specifications and working details, and authorize the bid request for all public work projects in excess of two hundred thousand dollars (\$200,000.00).

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

2. Publication of Notice. The notice shall be published at least once fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, which is circulated within the jurisdiction of the city.

3. Mailing of Notice. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission as appropriate for the area. The notice shall be mailed at least fifteen (15) calendar days before the date of opening the bids.

4. Other Notice. In addition to notice required by this section, the city may give other notice as it deems proper.

C. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project and bid on the envelope. Bids shall be opened by the city clerk's staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening. The public works director shall make an analysis of the bids for compliance with bid specifications and thereafter make a recommendation for award or rejection.

D. Award. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation. The

council may waive minor bid irregularities. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.050)

3.04.250 Bonds.

A. The city shall require payment bonds for projects in excess of twenty-five thousand dollars (\$25,000.00) in accordance with California Civil Code Section [9550](#), as may be amended from time to time. The city council may require bid security or bid bonds and performance and/or warranty bonds from an acceptable surety in such amounts as it finds reasonably necessary to protect the public interest. If the city requires a bond, the form and amount of the bond shall be described in the notice inviting bids.

B. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the city council may award the contract to the next lowest responsible bidder. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.060)

3.04.260 No bids received.

If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by negotiated contract without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.070)

3.04.270 Tie bids.

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council may accept either bid or accept the lowest bid made by negotiation with the tied bidders. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.080)

3.04.280 Rejection of bids.

In its discretion, the council may reject any bids presented. If after the first invitation of bids all bids are rejected, the city shall state the reasons for the rejection and after reevaluating its cost estimates of the project, the city shall have the option of any of the following:

- A. Abandoning the project;
- B. Readvertising for bids in the manner described in this chapter; or

C. By passage of a resolution by a four-fifths vote of the council declaring that the project can be performed more economically by city employees, may have the project done by force account without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.090)

3.04.290 Emergencies.

A. In cases of emergency as defined in this chapter, the city, pursuant to a four-fifths vote of the council, may proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without adopting plans, specifications, working details, or giving notice for bids to provide contracts. The work may be done by day labor under the direction of the council, by contractor, or by a combination of the two.

B. The city manager may order any action under this section subject to the provisions of California Public Contract Code Section [22050](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.100)

3.04.300 Prevailing wages required.

Public works contracts are subject to prevailing wage requirements as set forth in Labor Code Section [1720](#) et seq., as may be amended from time to time. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.110)

3.04.310 Pre-qualification of bidders.

Prospective bidders on a public works contract may be required to be pre-qualified in accordance with procedures adopted by city council resolution, subject to the provisions of California Public Contract Code Section [20101](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.120)

Article 4

Professional Services

3.04.320 Award of professional service contracts based upon competence.

In contracting for those professional services as defined in Section [3.04.020](#), contracts should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required. Once the department requesting the service has determined a firm has an adequate level of competence, the cost of the service may be considered. However, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the city's best interest to award the contract to a higher priced professional services provider based on the scope of services

available, unique skills, staffing levels, timing, prior experience, past working relationship and other factors required by the department or proposed by that professional services provider. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each city department responsible for recommending the professional service contract. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.010)

3.04.330 Request for proposal/qualification.

The acquiring of professional services shall be procured through negotiated contract and may include requests for proposals/qualifications. Contracting for professional services is decentralized and shall be the responsibility of the department head requesting the service. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.020)

3.04.340 Contracting authority.

The city manager shall approve professional service or consulting contracts up to and including twenty-five thousand dollars (\$25,000.00). The city council shall approve professional service or consulting contracts greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.030)

CITY OF ST. HELENA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, ADDING SECTION 3.04.055 STANDARDS OF CONDUCT PERTAINING TO PROCUREMENT TO ST. HELENA MUNICIPAL CODE CHAPTER 3.04 PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES AND PROCEDURES FOR PUBLIC WORKS PROJECTS

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

SECTION 1. Amendment of Chapter 3.04, Title 3 of the St. Helena Municipal Code.

Chapter 3.04, Title 3 of the St. Helena Municipal Code is hereby amended to read in its entirety as shown on Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. Compliance with CEQA.

The City Council hereby finds that the action to adopt this ordinance to amend Chapter 3.04, title 3 of the St. Helena Municipal Code is not a Project subject to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA). Further, even if the adoption of the ordinance is found to be a Project subject to CEQA, it is nevertheless exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment.

SECTION 3. Severability.

The City Council hereby declares every section, paragraph, sentence, clause and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the St. Helena Municipal Code.

It is the intention of the St. Helena City Council that the text in Exhibit A of this ordinance be made a part of the St. Helena Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Chapter," or such as appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date.

This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 23rd day of August 2022, and was adopted at a regular meeting of the St. Helena City Council on the ____th day of ____, 2022, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Chouteau:

Councilmember Hall:

Councilmember Hardy:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

I, CINDY TZAFPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and passed upon its first reading at a regular meeting of the City Council on the 23rd day of August, 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____th day of ____, 2022, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Koberstein:

Councilmember Chouteau:

Councilmember Knudsen:

EXHIBIT A

Chapter 3.04
PURCHASE OF SUPPLIES, EQUIPMENT AND SERVICES, AND PROCEDURES FOR
PUBLIC WORKS PROJECTS

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Article 1

Generally

3.04.010 Purpose—Objectives—Scope—Responsibilities.

The purpose of this chapter is to establish an efficient procedure for the purchase of supplies, equipment, and services, and to establish a procedure for performing or contracting for the construction of public works consistent with state law. These procedures are intended to allow the city to obtain the best professional services, to acquire quality supplies, general services and equipment, to construct public works at the lowest possible cost commensurate with quality needed, and to exercise positive financial control over purchases and also to define authority for the purchasing function. These procedures apply to all city employees. These procedures apply to all purchases of supplies, equipment and services, including purchases made online or over the phone. Employees are responsible for reading and understanding the requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.90.010)

3.04.020 Definitions.

As used in this chapter:

“Bidder’s list” means a list of responsible prospective vendors capable of providing the items being bid upon.

“Contract” means an agreement, regardless of how titled, for the procurement of supplies, equipment or services, including without limitation a verbal or written agreement between the city and a contractor, the city and a service provider, and/or the city and a vendor.

“Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

“Equipment” means furnishings, machinery, vehicles, rolling stock, and other personal property used in the city’s business.

“General services” are services such as janitorial, uniform cleaning, maintenance work and other services which do not require any unique skill, special background, or training. Obtaining such services at the lowest cost is the single most important factor in selection, as opposed to personal performance.

“Maintenance work” means:

1. Routine, recurring, and usual work for the cleaning, preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
2. Minor repainting;
3. Resurfacing of streets and highways at less than one inch;
4. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
5. Work performed to keep, operate, and maintain publicly owned water or waste disposal systems including, but not limited to, dams and reservoirs.

“Professional or special services” means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, consultant or those services such as computer services, and other services which require special performance criteria, specific experience, training, personal judgement, quality of work or factors other than simply obtaining the service at the lowest cost to the city.

“Public work” means a type of public construction project subject to the regulation of the State Public Contract Code, such as:

1. The erection, construction of, alteration, major painting, repair, or demolition of public buildings, streets, walkways, water and sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the city;
2. Furnishing supplies for any of the above works or projects;
3. Public work does not include “maintenance work” as defined in this chapter.

“Purchase” includes the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.

“Purchase order” is a written contract for equipment, supplies, or services with a specified consultant, contractor, or vendor and is initiated by a purchase order requisition. A purchase order submitted by an authorized person becomes a legally binding contract. It can stand alone or include attachments for clarification purposes. A purchase order encumbers the specified amounts to provide specified equipment, supplies, services, and/or fixed assets. Regular purchasers may be paid through a one-time payment of an amount up to the purchase order amount at the conclusion of performance (delivery of supplies, services, etc.), and/or incremental (progress) payments as provided in the contract for each time items are purchased.

“Purchasing officer” means the finance director or his or her designated representative.

“Requisition” is a request to authorize the acquisition of equipment, supplies or services from a specified consultant, contractor, or vendor.

“Services” means the furnishing of labor, time or effort to perform or complete a designated task.

“Special equipment/supplies” means unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the city and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.

“Supplies” means office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the city’s business, excepting supplies for a public work which is regulated under Section [3.04.210](#).

“Uniform construction cost accounting procedures” means those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to the Public Contract Code Section [22030](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.020)

3.04.030 Staging prohibited.

Purchases and public works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements of this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.030)

3.04.040 Appeals.

Any dispute, contention, or disagreement relative to interpretation, application or enforcement of this chapter shall be submitted to the city council for determination in accordance with the appeal provisions of Chapter [1.16](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.90.040)

Article 2

Supplies, General Services and Equipment

3.04.050 Purchasing officer—Powers and duties.

The duties of the purchasing officer may be combined with those duties of any other officer or position in the city. The purchasing officer shall have the authority to:

- A. Purchase needed city supplies, general services, equipment and special equipment/supplies which are not included within the construction contract or proposed specifications for a construction contract of a public work being administered by any other city department;
- B. Investigate, keep knowledgeable about, negotiate, and recommend on the execution of contracts or the purchasing of supplies, general services, and equipment pursuant to the procedures of this chapter and such administrative rules and regulations as prescribed by the city;
- C. To keep informed of current developments concerning purchasing, prices, market conditions, and new products;
- D. To prescribe and maintain such forms as necessary for the proper operation of this purchasing system;
- E. To supervise the inspection of all supplies, general services, and equipment purchased under this chapter in order to assure conformance with city specifications;
- F. To supervise the transfer of surplus and unused supplies and equipment or sale or disposal of such;

G. To maintain up-to-date bidder's list, vendors' catalogs, files and such other records as needed to perform these duties;

H. To ensure that purchasing specifications are open and nonrestrictive to encourage full competition; and

I. To perform such other tasks as may be necessary for the proper conduct of purchasing of supplies, general services, and equipment. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.010)

3.04.055 Standards of Conduct Pertaining to Procurement.

No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. All City employees and persons in City service are required to adhere to applicable local, state, and federal conflict of interest requirements and prohibitions, including but not limited to the provisions of Article 4 of Title 1, Division 4, Chapter 1 of the Government Code, and Title 2 CFR, 220.318(c)(1) General procurement standards.

Reporting of Improper Activities

The City has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State, or Federal law.

Enforcement

In addition to any other penalty as provided by law, any employee found to be in violation of the Code of Ethics shall be subjected to appropriate disciplinary action up to and including, employment termination.

3.04.060 Requisitions.

Except as authorized under Section [3.04.100](#)(A), any department requesting supplies, general services, equipment, or special equipment/supplies shall submit to the immediate supervisor a requisition on the purchasing officer's approved form prior to initiating any procurement. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.020)

3.04.070 Purchase orders.

Except for departmental purchases as authorized in Section [3.04.100](#)(A), purchases of supplies, general services, most special equipment/supplies and general equipment not covered within a construction contract or public works specification, may be made only by purchase orders issued by the purchasing

officer and any other contractual document he or she determines is necessary. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.030)

3.04.080 Contracts.

The purchasing officer does not have the authority to sign contracts, nor to bind the city contractually. Contracts may only be entered into by the city manager. Subject to Section [3.04.340](#) contracts may only be entered into by the city manager; contracts in excess of city manager authority require city council approval, without which such contract is not valid. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.040)

3.04.090 Encumbrance of funds.

Except in case of an emergency or where specific authority is first obtained from the city council or the city manager, the purchasing officer shall not issue any purchase order for purchasing of supplies, general services or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.050)

3.04.100 Bidding procedures for various purchase amounts.

Except as authorized in Sections [3.04.140](#) and [3.04.150](#), or in the case of emergencies as described in Sections [3.04.170](#) and [3.04.175](#), the purchase of supplies, general services, equipment and special equipment/supplies, not included in a construction contract or bid specification for a public work, shall be made as follows:

- A. A purchase of five thousand dollars (\$5,000.00) or less may be made by departmental purchase in accordance with Section [3.04.110](#).
- B. A purchase greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000) may be made by an informal bid procedure in accordance with Section 3.04.120.
- C. A purchase of more than twenty-five thousand dollars (\$25,000.00) shall be made by formal bid procedure in accordance with Section [3.04.130](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.060)

3.04.110 Departmental purchases.

A department may, independently of the purchase officer, purchase specified and limited supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work, as follows:

A. Purchases of five thousand dollars (\$5,000.00) or less: requestor receives a verbal/written approval from supervisor, department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items. All purchases shall be made with funds in an unencumbered appropriation. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.070)

3.04.120 Informal bid procedure.

The purchase of supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with the estimated value greater than five thousand dollars (\$5,000.00), but not exceeding twenty-five thousand dollars (\$25,000.00), shall be made by a purchase order as required by this chapter. Said purchases, subject to the department head's discretion, based upon a small amount, or urgent need and timeliness, may be let without the formal bidding procedures described in Section [3.04.130](#). In such case, the following procedures shall be followed:

A. Solicitation of Bids. If it is determined that the request is of a sufficient size and time allows, the purchasing officer or designee, before issuing the purchase order to a specific contractor/vendor, shall: for purchases greater than five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00), obtain at least three written bids or price quotes. The purchasing officer or designee may negotiate to obtain the lowest possible contract amount from any vendor contacted who can provide supplies, general service, or equipment within the time constraints of the department's request. The purchasing officer or designee may solicit or determine bids of prospective vendors by written request, telephone, or may base award recommendations upon current catalogs or advertisements.

B. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

C. Maintenance of Records. After placing the order, a written record of the contract, bids, quotes or advertisements used or received shall be open public records and maintained by the purchasing officer or the department for a period of two years.

D. Award. The purchasing officer or designee shall award the contract to the lowest responsive and responsible bidder, vendor or offeror whose quote, bid, or proposal fulfills the purpose intended, provided the amount is within the unencumbered appropriation for that item, or reject such bids or proposals, or negotiate further for terms more favorable to the city. (Ord. 15-8 § 1 (Exh. A) (part); Ord. 01-14 (part); prior code § 2.91.080)

3.04.130 Formal bid procedure.

For supplies, equipment, special equipment/supplies and general services not included in a construction contract or bid specification for a public work with an estimated value in excess of twenty-five thousand dollars (\$25,000.00), purchases shall be made in accordance with the following formal written bid procedures:

- A. **Published Notices.** A notice inviting bids shall be published at least ten (10) calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation printed and published in the city, and also in appropriate trade publications, if any, circulated within the general area. Such other notice as the purchasing officer or designee deems appropriate shall be made.
- B. **Notices Inviting Bids.** Notices inviting bids shall include a general description of the goods, articles, services or equipment to be purchased, any required bidder's security or performance bonds, state where bid blanks and specifications may be secured and the time and place for the opening of bids.
- C. **Bidder's List.** The purchasing officer or designee shall maintain a list of responsible bidders for various categories of supplies, equipment, and general services. A solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the bidder's list for the category of equipment, supplies or general services subject to the bid request.
- D. **Bidder's Security/Failure to Sign Contract.** If the city requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten percent (10%) of the bid amount. Bidder's security shall be either a cash deposit with the city, a cashier's or certified check payable to the city, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the city council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the council may award the contract to the next lowest responsive, responsible bidder.
- E. **Bid Opening Procedure.** Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by city staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening.

F. Local Preference. Quality and service being equal, a local preference of one percent shall be given to local bidders located within the city, the difference being the sales tax the city would receive on the sale in the case of vendors.

G. Bid Evaluation Procedures. All bids and bidders shall be analyzed by purchasing officer or designee and the responsible department for bidder's qualifications and compliance with bid specifications. The purchasing officer or designee shall prepare a recommendation to the department for award or rejection; the department shall then prepare a recommendation for award or rejection to the city council.

H. Rejection of Bids. In its discretion, the city council may reject all bids and readvertise. If no bids are received, the city council may proceed with the procurement without further complying with this chapter using whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract.

I. Award of Contracts. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to criteria designated in the solicitation, provided the award amount is within the unencumbered appropriation for that item. The city council may waive any minor bid irregularities.

J. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the council may accept either bid or accept the lowest bid made by negotiation with the tied bidders.

K. Performance Bonds. The city may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.090)

3.04.140 Special equipment/supplies, sole source purchases, and bid exceptions.

A. Special Equipment/Supplies. In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the purchasing officer or department head may:

1. Limit bidding to a specific product type, or a brand name product; or
2. Utilize a request for proposal approach where warranties, servicing obligations, and product performance will be evaluated in addition to the price of the product, and the award of the contract is made by the council to the proposer it deems is in the best public interest.

B. Sole Source Purchases. Commodities or services that can be obtained from only one vendor, or one distributor authorized to sell in this area, are exempt from the competitive bidding requirements in Section [3.04.100](#) and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer. All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the appropriate department head and forwarded to the purchasing officer. Approval of any sole source acquisition shall be obtained from the city council for an award of a contract or purchase order greater than twenty-five thousand dollars (\$25,000.00).

C. Bid Exceptions. The competitive bid process is not applicable to certain purchases. The following are exempt from bid processes of this chapter:

1. Departmental purchases, as defined in Section [3.04.110](#);
2. Subscriptions;
3. Trade circulars or books;
4. Newspaper advertisements and notices;
5. Utility payments;
6. Land. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.100)

3.04.150 Cooperative purchasing with other agencies.

The bidding requirements of Section [3.04.100](#) shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the city, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last twelve (12) months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, the city council’s approval shall be required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.110)

3.04.160 Recycled supply products specification.

If in procuring supplies a recycled product can achieve the necessary city performance standard, and if such recycled product is readily available, specifications should, if economically feasible, require products

made with recycled materials be bid. If the department head determines that: (A) a recycled product lacks performance capabilities or needed quality levels; or (B) a sufficient amount of such recycled or reusable product is not currently available in the market, then a reduced percentage can be required, or the supply specification can be limited to nonrecycled or virgin materials. When recycled products are required, reasonable efforts shall be made to label the products as containing recycled materials. As used in this section, recycled products does not mean used products, but is limited to new products made with materials which have been recycled. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.120)

3.04.170 Emergencies.

Bidding procedures may be dispensed with in the case of an emergency. The city council delegates to the city manager the authority to declare a public emergency and enter into contracts for any purchase in accordance with Section [3.04.175](#). The city manager's authority is subject to confirmation by the city council at its next meeting for any purchase in excess of twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.130)

3.04.175 Declared emergencies.

A. Purpose. This section modifies the city's normal purchasing practices only during a proclaimed emergency. With this revised policy, the city is able to acquire goods and services required to address an immediate threat to life, public health or safety, or an immediate threat of significant damage to improved public and private property while maintaining an effective purchasing policy.

B. Definitions. For the purposes of this section, the following definitions are applicable:

A proclaimed disaster or emergency exists if (1) the Governor has declared a state of emergency for an area which includes the geographic territory of the city, or (2) the city manager or his or her designee has declared an emergency in the city.

"Exigent circumstances" are situations in which (1) a disaster or emergency has been proclaimed, and (2) the public exigency for goods and services required to address an immediate threat to life, public health or safety, or improved public and private property will not permit competitive solicitation.

C. Delegation of Purchasing Authority in Exigent Circumstances. If the city manager or his or her designee determines that goods and services must be procured before the city council is to assemble and approve purchases, the city manager or his or her designee has the authority, subject to the limitations set forth below to approve the immediate rental and/or purchase of any equipment, supplies, services, or

other items necessary to respond to an immediate threat to life, public health or safety, or improved public and private property.

1. Limits of Single Purchase Authority. The city manager or his or her designee shall have the authority to make individual purchases up to one hundred thousand dollars (\$100,000.00) on his or her signature alone. The city manager or his or her designee shall have the authority to make purchases in excess of one hundred thousand dollars (\$100,000.00) up to a maximum of five hundred thousand dollars (\$500,000.00) when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

2. Limits of Aggregate Purchase Authority. The city manager or his or her designee shall have the authority to make aggregate purchases up to one million five hundred thousand dollars (\$1,500,000.00) on his or her signature alone per disaster declaration. The city manager or his or her designee shall have the authority to make aggregate purchases in excess of one million five hundred thousand dollars (\$1,500,000.00) and up to a maximum of two million five hundred thousand dollars (\$2,500,000.00) per disaster declaration when countersigned by the mayor or, in the mayor's absence, countersigned by another council member.

- a. Sub-delegation to the Emergency Operations Center (EOC) Director. The EOC director shall be a designee of the city manager at any time that the city manager is not available to approve purchases as allowed in this section.

- b. Sub-delegation of Purchasing Authority to Department Heads. If neither the city manager or his or her designee nor the EOC director is available, then any city department head has the authority to rent or purchase from the nearest source, any equipment supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of fifty thousand dollars (\$50,000.00).

- c. Sub-delegation of Purchasing Authority to Mid-Managers. If neither the city manager or his or her designee, EOC director, or any department head is not available, then any employee classified as a mid-manager has the authority to rent or purchase from the nearest source, any equipment, supplies, services, or other items necessary for any department to respond to an immediate threat to health, safety, or improved property, up to a maximum of twenty-five thousand dollars (\$25,000.00).

D. Administrative Procedures and Reporting Requirements.

1. As soon as possible after purchases are made under subsection C of this section, the city manager or his or her designee, EOC director, department head or midmanager shall submit to the finance director or designee a purchase order requisition and a notation that the commodity has been ordered on an emergency basis from the vendor designated.
2. The finance director will inform the city manager or his or her designee and the city council of any individual purchase under this section with a contract amount greater than twenty-five thousand dollars (\$25,000.00), and also whenever the aggregate of purchases under this section is greater than two hundred fifty thousand dollars (\$250,000.00).
3. The finance director will obtain the city manager's or his or her designee's (or EOC director as the city manager's designee) approval prior to any purchase by a department head if the amount is twenty-five thousand dollars (\$25,000.00) or more.
4. If the city manager or his or her designee and the EOC director are unavailable, and the delay in getting his or her signature would imperil life, public health or safety, or improved public or private property, then any department head (except the requestor) may approve the emergency purchase of fifty thousand dollars (\$50,000.00) or more.
5. The finance director or designee shall have the authority to approve all disaster related purchases under fifty thousand dollars (\$50,000.00).
6. The finance director or designee will expedite the verification of funds available and complete the preparation of the purchase order.

E. Procurement Procedures in Exigent Circumstances. Upon receipt of the requisitions under subsection D of this section, the finance director or designee shall prepare purchase orders for emergency equipment, supplies, services or other items in accordance with the requirements of this section.

1. Exempt Purchases. Purchases of two hundred fifty thousand dollars (\$250,000.00) or less shall not be required to be formally bid. Purchases greater than two hundred fifty thousand dollars (\$250,000.00) may be made following the procedures specified in this section. The signature(s) of the city manager or his or her designee, finance director, or department head are still required as provided in subsections C and D of this section.

2. Justification of “Sole Source” or “No Bid” Contracts. Where exigent circumstances require immediate procurement from the nearest available source, the finance director or designee shall justify the emergency sole source purchase or no bid purchase on the purchase order.
 - a. Procurement should be limited to that portion of the work that must be performed immediately, and subsequent procurement by competitive proposal for the remainder of the work under the city’s normal purchasing policy (this chapter).
 - b. “Sole source” or “no bid” acquisitions shall be necessary for one of the following reasons: placement of emergency protective measures; procurement of scarce commodities, goods, or services; or acquisition or rental of emergency equipment, emergency consulting services, emergency road clearance, or other emergency requirements.
 3. Provision for Alternate Bid Solicitation Procedures. The city’s normal requirements for quotes, sealed bids, or local preference shall not apply to this section (Declared emergencies). However, the finance director or designee shall conduct telephonic or other electronic bid solicitation from potential vendors or suppliers, in lieu of written and/or sealed bids, in an effort to obtain multiple competitive proposals when and if time allows in light of the exigent circumstances.
 4. Posting Locations for Requests for Proposals or Solicitations of Bids. The finance director or designee may waive normal requirements for public posting of requests for proposals or solicitation of bids for the procurement of emergency equipment, goods or services. Notices soliciting bids or requests for proposals shall be posted, at minimum, at the emergency operations center or the alternate emergency operations center, if the primary emergency operations center is not being used.
 5. Length of Time for Posting Requests for Proposals or Solicitation of Bids. The finance director or designee shall determine the posting period. The finance director or designee will make reasonable efforts to ensure that multiple suppliers are able to place a bid during the shortened time period.
- F. Notification and Ratification.
1. Posting of Contract Awards. All contracts awarded that exceed twenty-five thousand dollars (\$25,000.00) shall be presented to the city council for ratification and thereafter shall be publicly posted within sixty (60) days of the award.

2. Authority to Cancel Emergency Procurements. The city manager has the absolute authority to rescind a contract for nonperformance within twenty-four (24) hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or nonperformance presents an immediate threat to life, public health or safety, or improved public or private property.

3. Notification Requirement for Emergency Services. For any purchase in excess of twenty-five thousand dollars (\$25,000.00), the city manager shall report all such purchases to the city council within thirty (30) days of the onset of the disaster.

4. Requirement for Separate Invoicing. All purchases or rentals made during the proclaimed emergency or disaster conditions shall require separate invoicing from routine (nondisaster) purchases. All invoices must state the goods, services, or equipment provided and must specify the location where the goods or services were delivered.

5. Limitations of Declared Emergencies Purchasing Policy. Any purchases that do not meet the standard of being necessary for responding to an immediate threat to life, public health or safety, or improved public or private property as outlined in this section shall follow the city's regular purchasing provisions. (Ord. 16-5 § 1 (Exh. A))

3.04.180 Surplus supplies and equipment.

All departments shall submit to the purchasing officer, at such times and in such forms as he or she may prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer may direct that the designated supplies or equipment be:

- A. Transferred to another city department or agency;
- B. Exchanged or traded in on new supplies and equipment; or
- C. Disposed of in some other suitable manner, which may include sale at auction or deposit at a landfill. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.140)

3.04.190 Inspection and tests.

The purchasing officer or designee or department requesting the item shall inspect all deliveries of supplies and equipment to assure conformance with the contract or order specifications. The purchasing officer or designee, at his or her discretion, may require such reasonable chemical and physical tests of samples of supplies and equipment as he or she deems necessary to determine the quality in

conformance with those specifications. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.91.150)

Article 3 Public Works Projects

3.04.200 Uniform construction cost accounting procedures.

The city council has elected to become subject to the Uniform Public Construction Cost Accounting Act and procedures as established by the California Uniform Construction Cost Accounting Commission in Public Contract Code Section [22000](#) et seq. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.010)

3.04.210 Bidding procedures for various project amounts.

- A. A public work project of sixty thousand dollars (\$60,000.00) or less may be performed by city force account, by negotiated contract, or by purchase order in accordance with Section 3.04.220.
- B. A public work project greater than sixty thousand dollars (\$60,000.00) and less than or equal to two hundred thousand dollars (\$200,000.00) may be let to contract by informal bid procedures in accordance with Section 3.04.230.
- C. A public work project of more than two hundred thousand dollars (\$200,000.00) shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure in accordance with Section 3.04.240.

The described project cost limits of subsections A through C of this section shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Public Contract Code Section [22034](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.020)

3.04.220 Negotiate contract or purchase order procedures.

For those projects qualifying under Section [3.04.210](#)(A), the applicable department head shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. For any city force account work, the department head shall first comply with the guidelines established by the California Uniform Construction Cost Accounting Commission in determining the cost of the public work. The city manager shall have the authority to award and to execute any contract for the public work qualifying under Section [3.04.210](#)(A). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.030)

3.04.230 Informal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(B) for informal bidding, the following procedures shall be used:

- A. Bidder's List. The city shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with the Uniform Public Construction Cost Accounting Act rules.
- B. Notice. The city clerk shall prepare a notice inviting bids.
 - 1. Contents of Notice. The notice inviting bids shall include a general description of the services and/or articles to be purchased, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether bid deposit or bond and faithful performance and/or warranty bond will be required.
 - 2. Mailing of Notice. Unless the product or service is proprietary, all contractors on the city's list for the category of work being bid shall be mailed a notice inviting informal bids, or an announcement/advertisement shall be placed in all construction trade journals, or both such mailing and advertising. The trade journals shall be those identified by the California Uniform Construction Cost Accounting Commission as appropriate for this area, in accordance with California Public Contract Code Section [22036](#).
 - 3. Ten (10) Day Notice. Notices inviting informal bids shall be posted at the city hall and mailed at least ten (10) calendar days before the due date of submission of bids to all firms or suppliers on the bidder's list for the category of work being bid and to such other vendors as the public works director deems appropriate.
 - 4. Proprietary Products or Services. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting bids may be sent exclusively to such contractor or contractors.
- C. Award. The city council shall award the contract to the lowest responsive and responsible bidder whose bid or proposal fulfills the purpose intended according to criteria designated in the solicitation. The council may waive any minor bid irregularities.
- D. Bids in Excess of Statutory Amount. If all bids received are in excess of two hundred thousand dollars (\$200,000.00), the city council may, by passage of a resolution by a four-fifths vote, award the contract to the lowest responsive and responsible bidder up to an amount not to exceed two hundred

twelve thousand five hundred dollars (\$212,500.00) if it determines the cost estimate of the city was reasonable. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.040)

3.04.240 Formal bidding procedures.

For those projects which qualify under Section [3.04.210](#)(C) for formal bidding, the following procedures shall be used:

A. Adoption of Plans. Prior to soliciting bids, unless otherwise delegated by the city council to the public works director, the city council shall approve and adopt the plans, specifications and working details, and authorize the bid request for all public work projects in excess of two hundred thousand dollars (\$200,000.00).

B. Notice. The city clerk shall prepare a notice inviting bids.

1. Contents of Notice. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
2. Publication of Notice. The notice shall be published at least once fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, which is circulated within the jurisdiction of the city.
3. Mailing of Notice. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission as appropriate for the area. The notice shall be mailed at least fifteen (15) calendar days before the date of opening the bids.
4. Other Notice. In addition to notice required by this section, the city may give other notice as it deems proper.

C. Bid Opening Procedure. Sealed bids shall be submitted to the city clerk's office and shall be identified as to bidder, project and bid on the envelope. Bids shall be opened by the city clerk's staff in public at the time and place stated and as described in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of two years after the bid opening. The public works director shall make an analysis of the bids for compliance with bid specifications and thereafter make a recommendation for award or rejection.

D. Award. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation. The

council may waive minor bid irregularities. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.050)

3.04.250 Bonds.

A. The city shall require payment bonds for projects in excess of twenty-five thousand dollars (\$25,000.00) in accordance with California Civil Code Section [9550](#), as may be amended from time to time. The city council may require bid security or bid bonds and performance and/or warranty bonds from an acceptable surety in such amounts as it finds reasonably necessary to protect the public interest. If the city requires a bond, the form and amount of the bond shall be described in the notice inviting bids.

B. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the city council may award the contract to the next lowest responsible bidder. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.060)

3.04.260 No bids received.

If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by negotiated contract without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.070)

3.04.270 Tie bids.

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council may accept either bid or accept the lowest bid made by negotiation with the tied bidders. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.080)

3.04.280 Rejection of bids.

In its discretion, the council may reject any bids presented. If after the first invitation of bids all bids are rejected, the city shall state the reasons for the rejection and after reevaluating its cost estimates of the project, the city shall have the option of any of the following:

- A. Abandoning the project;
- B. Readvertising for bids in the manner described in this chapter; or

C. By passage of a resolution by a four-fifths vote of the council declaring that the project can be performed more economically by city employees, may have the project done by force account without further complying with this chapter. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.090)

3.04.290 Emergencies.

A. In cases of emergency as defined in this chapter, the city, pursuant to a four-fifths vote of the council, may proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without adopting plans, specifications, working details, or giving notice for bids to provide contracts. The work may be done by day labor under the direction of the council, by contractor, or by a combination of the two.

B. The city manager may order any action under this section subject to the provisions of California Public Contract Code Section [22050](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.100)

3.04.300 Prevailing wages required.

Public works contracts are subject to prevailing wage requirements as set forth in Labor Code Section [1720](#) et seq., as may be amended from time to time. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.110)

3.04.310 Pre-qualification of bidders.

Prospective bidders on a public works contract may be required to be pre-qualified in accordance with procedures adopted by city council resolution, subject to the provisions of California Public Contract Code Section [20101](#). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.92.120)

Article 4

Professional Services

3.04.320 Award of professional service contracts based upon competence.

In contracting for those professional services as defined in Section [3.04.020](#), contracts should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required. Once the department requesting the service has determined a firm has an adequate level of competence, the cost of the service may be considered. However, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the city's best interest to award the contract to a higher priced professional services provider based on the scope of services

available, unique skills, staffing levels, timing, prior experience, past working relationship and other factors required by the department or proposed by that professional services provider. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each city department responsible for recommending the professional service contract. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.010)

3.04.330 Request for proposal/qualification.

The acquiring of professional services shall be procured through negotiated contract and may include requests for proposals/qualifications. Contracting for professional services is decentralized and shall be the responsibility of the department head requesting the service. (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.020)

3.04.340 Contracting authority.

The city manager shall approve professional service or consulting contracts up to and including twenty-five thousand dollars (\$25,000.00). The city council shall approve professional service or consulting contracts greater than twenty-five thousand dollars (\$25,000.00). (Ord. 15-8 § 1 (Exh. A) (part): Ord. 01-14 (part): prior code § 2.93.030)



Report to the City Council
Regular City Council - 23 Aug 2022

Agenda Section: PUBLIC HEARINGS

Subject: Consideration and Proposed approval of a Resolution adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB148 for the Funding, Acquisition, and Use of Military Equipment

CEQA Determination: Not a CEQA project

Prepared By: Chris Hartley, Chief of Police

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On September 30, 2021 Governor Newsom signed into law Assembly Bill 481, relating to the approval, funding, acquisition, and use of "military equipment" by law enforcement agencies. California Government Code section 7071 requires a law enforcement agency's military equipment policy, which includes the type of "military equipment" the department currently possesses or may acquire and use, be approved by the governing body (City Council).

This item was continued from the May 24, 2022 Regular City Council meeting for policy language clarification. New language reads:

St. Helena Police Department Policy 707.5. The Chief of Police or authorized designee shall obtain approval from the governing body, "**prior to acquiring any listed military equipment**" by the way of an ordinance adopting the military equipment policy.

DISCUSSION

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code 7070; Government Code

7071 and Government Code 7072). The proposed Policy being presented is attachment 2 to this staff report. It is important to understand that what is defined as "military equipment" by the California State Legislation is not related to whether or not the equipment was acquired through military sources. The St. Helena Police Department does not possess nor use any equipment specifically designed for military use as defined in Government Code 7070 (c), nor has the department acquired any equipment through a military surplus program, commonly known as "1033 Program (10 USC 2576(a)).

FISCAL IMPACT

None

RECOMMENDED ACTION

Recommend Approval of a Resolution Adopting the St. Helena Police Department Policy 707 "Military Equipment".

ATTACHMENTS

[Attachment 1 - Policy 707 Public Hearing Notice](#)

[Attachment 2 - Assembly Bill No. 481](#)

[Attachment 3 - AB481 Resolution Military Equipment](#)

[Attachment 4 - Presentation](#)

[Attachment 5 - Military Equipment \(4\)](#)

**CITY OF ST. HELENA
CITY COUNCIL PUBLIC HEARING NOTICE**

On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the approval, funding, acquisition, and use of "military equipment" by law enforcement agencies. California Government Code section 7071 requires a law enforcement agency's military equipment policy, which includes the type of "military equipment" the department currently possesses or may acquire and use, be approved by the governing body (City Council). This section also requires the Saint Helena Police Department to post on the department website the proposed military equipment policy at least 30 days prior to the policy being presented to the City Council for approval.

Staff will present the Saint Helena Police Department Military Equipment Policy (Lexipol Policy 709) to the City Council for consideration on May 24, 2022, at a regular scheduled meeting beginning at 6:00 p.m., or soon thereafter. The policy being presented can be found on the preceding pages of this communication. It is important to understand that what is defined as "military equipment" by the California State Legislature is not related to whether or not the equipment was acquired through military sources. The Saint Helena Police Department does not possess or use any equipment specifically designed for military use as defined in Government Code section 7070 (c), nor has the department acquired any equipment through a military surplus program, commonly known as the "1033 Program" (10 USC 2576a).

Copies of agendas and staff reports are available on the Friday afternoon immediately preceding the hearing the City's website at cityofsthelena.org. Public comment for City Council meetings will be accepted via email to publiccomment@cityofsthelena.org. All public comments must be emailed by 3:00 PM prior to the meeting. Emailed public comments will not be read out loud but will be publicly available and attached to the on-line City Council agenda. **Please see the end of the City Council agenda for detailed PUBLIC PARTICIPATION instructions.**

Community members having questions regarding this policy to contact Chief Chris Hartley Chartley@cityofsthelena.org or by calling 707-967-2850. Chief Hartley welcomes your comments and inquiries about the policy on Military Equipment and conformance with the new legislation on the approval, acquiring, possession, use, and reporting of military equipment defined in Government Code section 7070.

Chris Hartley, Chief of Police

April 12, 2022

Assembly Bill No. 481

CHAPTER 406

An act to add Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to military equipment.

[Approved by Governor September 30, 2021. Filed with
Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 481, Chiu. Law enforcement and state agencies: military equipment: funding, acquisition, and use.

Existing law designates the Department of General Services as the agency for the State of California responsible for distribution of federal surplus personal property, excepting food commodities, and requires the department to, among other things, do all things necessary to the execution of its powers and duties as the state agency for the distribution of federal personal surplus property, excepting food commodities, in accordance with specified federal law. Existing law, the Federal Surplus Property Acquisition Law of 1945, authorizes a local agency, as defined, to acquire surplus federal property without regard to any law which requires posting of notices or advertising for bids, inviting or receiving bids, or delivery of purchases before payment, or which prevents the local agency from bidding on federal surplus property. Existing federal law authorizes the Department of Defense to transfer surplus personal property, including arms and ammunition, to federal or state agencies for use in law enforcement activities, subject to specified conditions, at no cost to the acquiring agency.

This bill would require a law enforcement agency, defined to include specified entities, to obtain approval of the applicable governing body, by adoption of a military equipment use policy, as specified, by ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. The bill would also require similar approval for the continued use of military equipment acquired prior to January 1, 2022. The bill would allow the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards. The bill would require the governing body to annually review the ordinance and to either disapprove a renewal of the authorization for a type, as defined, of military equipment or amend the military equipment use policy if it determines, based on an annual military equipment report prepared by the law enforcement agency, as provided, that the military equipment does not comply with the above-described standards for approval. The bill would specify these provisions do not preclude a county or local municipality from implementing

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additional requirements and standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

This bill would also require a state agency, as defined, to create a military equipment use policy before engaging in certain activities, publish the policy on the agency's internet website, and provide a copy of the policy to the Governor or the Governor's designee, as specified. The bill would also require a state agency that seeks to continue use of military equipment acquired prior to January 1, 2022, to create a military equipment use policy.

This bill would also include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to the duties of local officials with respect to the funding, acquisition, and use of military equipment, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The acquisition of military equipment and its deployment in our communities adversely impacts the public's safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurment of significant financial costs. Military equipment is more frequently deployed in low-income Black and Brown communities, meaning the risks and impacts of police militarization are experienced most acutely in marginalized communities.

(b) The public has a right to know about any funding, acquisition, or use of military equipment by state or local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment.

(c) Decisions regarding whether and how military equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.

(d) Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.

(e) The lack of a public forum to discuss the acquisition of military equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service.

SEC. 2. Chapter 12.8 (commencing with Section 7070) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.8. FUNDING, ACQUISITION, AND USE OF MILITARY
EQUIPMENT

7070. For purposes of this chapter, the following definitions shall apply:

(a) "Governing body" means the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county.

(b) "Law enforcement agency" means any of the following:

(1) A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or California Community Colleges.

(2) A sheriff's department.

(3) A district attorney's office.

(4) A county probation department.

(c) "Military equipment" means the following:

(1) Unmanned, remotely piloted, powered aerial or ground vehicles.

(2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

(3) High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.

(4) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

(5) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.

(6) Weaponized aircraft, vessels, or vehicles of any kind.

(7) Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters,

or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.

(8) Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

(9) Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

(10) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

(11) Any firearm or firearm accessory that is designed to launch explosive projectiles.

(12) “Flashbang” grenades and explosive breaching tools, “tear gas,” and “pepper balls,” excluding standard, service-issued handheld pepper spray.

(13) Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

(14) The following projectile launch platforms and their associated munitions: 40mm projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons.

(15) Any other equipment as determined by a governing body or a state agency to require additional oversight.

(16) Notwithstanding paragraphs (1) through (15), “military equipment” does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

(d) “Military equipment use policy” means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum, all of the following:

(1) A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.

(2) The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.

(3) The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.

(4) The legal and procedural rules that govern each authorized use.

(5) The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public’s welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.

(6) The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight

authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.

(7) For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

(e) “State agency” means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(f) “Type” means each item that shares the same manufacturer model number.

7071. (a) (1) A law enforcement agency shall obtain approval of the governing body, by an ordinance adopting a military equipment use policy at a regular meeting of the governing body held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable, prior to engaging in any of the following:

(A) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(B) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(C) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.

(E) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.

(F) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.

(G) Acquiring military equipment through any means not provided by this paragraph.

(2) No later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with this section. If the governing body does not approve the continuing use of military equipment, including by adoption pursuant to this subdivision of a military equipment use policy submitted pursuant to subdivision (b), within 180 days of submission of the proposed military equipment use policy to the governing body, the law enforcement agency shall cease its use of

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the military equipment until it receives the approval of the governing body in accordance with this section.

(b) In seeking the approval of the governing body pursuant to subdivision (a), a law enforcement agency shall submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue.

(c) The governing body shall consider a proposed military equipment use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(d) (1) The governing body shall only approve a military equipment use policy pursuant to this chapter if it determines all of the following:

(A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

(B) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(C) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

(D) Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

(2) In order to facilitate public participation, any proposed or final military equipment use policy shall be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use.

(e) (1) The governing body shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment at least annually and, subject to paragraph (2), vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(2) The governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d). If the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications

to the military equipment use policy in a manner that will resolve the lack of compliance.

(f) Notwithstanding subdivisions (a) to (e), inclusive, if a city contracts with another entity for law enforcement services, the city shall have the authority to adopt a military equipment use policy based on local community needs.

7072. (a) A law enforcement agency that receives approval for a military equipment use policy pursuant to Section 7071 shall submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use. The law enforcement agency shall also make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use. The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

(1) A summary of how the military equipment was used and the purpose of its use.

(2) A summary of any complaints or concerns received concerning the military equipment.

(3) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.

(4) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.

(5) The quantity possessed for each type of military equipment.

(6) If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

(b) Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

7073. (a) A state agency shall create a military equipment use policy prior to engaging in any of the following:

(1) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(2) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(3) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(4) Collaborating with a law enforcement agency or another state agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.

(5) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.

(6) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, or to apply to receive, acquire, use, or collaborate in the use of, military equipment.

(7) Acquiring military equipment through any means not provided by this subdivision.

(b) No later than May 1, 2022, a state agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall create a military equipment use policy.

(c) A state agency that is required to create a military equipment use policy pursuant to this section shall do both of the following within 180 days of completing the policy:

(1) Publish the military equipment use policy on the agency's internet website.

(2) Provide a copy of the military equipment use policy to the Governor or the Governor's designee.

7074. The Legislature finds and declares that ensuring adequate oversight of the acquisition and use of military equipment is a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter applies to all cities, including charter cities and shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

7075. Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Requiring local agencies to hold public meetings prior to the acquisition of military equipment further exposes that activity to public scrutiny and enhances public access to information concerning the conduct of the people's business.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would

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result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

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CITY OF ST. HELENA

RESOLUTION No. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING ST. HELENA POLICE DEPARTMENT POLICY 707 “ACQUISITION AND USE OF MILITARY EQUIPMENT”

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body prior to taking certain actions relating to the funding, acquisition, solicitation, or use of military equipment; and

WHEREAS, Assembly Bill 481, requires that the approval by the governing body be by an ordinance adopting a military equipment use policy, at a regular meeting held pursuant to open meeting laws; and

WHEREAS, Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations with respect to a military equipment use policy; and

WHEREAS, a draft of the St. Helena Police Department Policy 707 “Military Equipment” was published on the Department’s internet website, and provided to the City Council at least 30 days prior to public hearing in accordance with requirements of Government Code section 7071; and

WHEREAS, the St. Helena Police Department’s Lexipol Policy 707 “Military Equipment” meets the requirements of California Government Code section 7070, subdivision (d); and

WHEREAS, the St. Helena Police Department currently does not use, possess, or has allocated funds for military equipment as defined in Government Code section 7070(c); and

WHEREAS, Policy 707 “Military Equipment” will safeguard the public’s welfare, safety, civil rights, and civil

liberties should the St. Helena Police Department request the procurement, use, or allocation of funds to acquire “Military Equipment”; and

WHEREAS, no prior military use policy has existed in the City of St. Helena that was applicable to the use of military equipment, and the adoption of such policy shall serve to secure future compliance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ST. HELENA DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The City Council of the City of St. Helena does hereby find the above referenced recitals are true and correct and material to the adoption of this resolution.

Section 2. Purpose and Authority. The purpose of this resolution is to establish the regulations pertaining to the police department's approval, acquisition, and reporting requirements of military equipment required AB 481, signed into law on September 30, 2021.

Section 3. Approval of Military Equipment Policy. The City Council hereby adopts and approves the St. Helena Police Department Policy 707 “Military Equipment” as set forth in Exhibit A attached hereto.

Section 4. Environmental Determination. The City Council finds that adoption of this resolution and St. Helena Police Department Policy 707 are exempt from the provisions of the California Environmental Quality Act (“CEQA”) because they will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a “project,” as defined in Section 15378 of the CEQA Guidelines.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of the policy is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the policy. The City Council hereby declares that it should adopt the policy and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 6. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this resolution by the City Council of the City of St. Helena, California.

Section 7. Effective Date. This resolution shall be in full force and effective upon its adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of St. Helena, California, held on the 23rd day of August 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
Clerk

Cindy Tzaopoulos, City

AB 481

Military Equipment

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).



Definitions (Government Code § 7070)

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units. Weaponized aircraft, vessels, or vehicles of any kind.

Military Equipment continued

- Battering rams, slugs, and breaching apparatuses that are explosive in nature. **This does not include a handheld, one-person ram.**
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code §30515, except for standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld
- pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic
- devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Government Codes § 7070 and § 7071

Government Code § 7070: The following constitutes a list of qualifying equipment for the Department (**Currently the Saint Helena Police Department does not use, possess, or allocate funds for the listed Military Equipment per (Government Code § 7070).**).

Government Code § 7071: The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

Government Code § 7072

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use.

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071).

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

Outside agencies responding to this jurisdiction as mutual aid per the request of the Saint Helena Police Department shall adhere to their approved policy as approved by, the responding agencies governing body in accordance with (Government Code § 7071).

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Military Equipment

707.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

707.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

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Military Equipment

707.2 POLICY

It is the policy of the St. Helena Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

707.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of St. Helena Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 - 1. Publicizing the details of the meeting.
 - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

707.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

Currently the Saint Helena Police Department does not use, possess, or allocate funds for the listed Military Equipment per (Government Code § 7070).

707.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body, prior to acquiring any listed military equipment by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

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Military Equipment

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

707.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

Outside agencies responding to this jurisdiction as mutual aid per the request of the Saint Helena Police Department shall adhere to their approved policy as approved by, the responding agencies governing body in accordance with (Government Code § 7071).

707.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

707.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.