



City of St. Helena
Regular City Council Meeting
Tuesday, October 11, 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.

The City Council meeting will be live-streamed on Comcast Channel 28 and on the City's website. Public comment for City Council meetings will be accepted via email to publiccomment@cityofstheleena.org. All public comments must be emailed by two hours 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.

The schedule of upcoming meetings and published meeting agendas can be found on the City of St. Helena website at <https://stheleena.civicweb.net/portal/>.

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@cityofstheleena.org.

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@cityofstheleena.org.

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

Page

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.
 - 5.1. [Public Comment.Garry Rose](#)

5.2.	Public Comment.Durriya Syed1 Public Comment.Durriya Syed2 Public Comment.Durriya Syed3 Public Comment.Durriya Syed4 Public Comment.Durriya Syed5	9 - 17
6.	REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS: Reports by staff and/or Council Members on items of general interest. Brief questions for clarification may be posed and answered, and Council Members may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.	
7.	PRESENTATIONS AND PUBLIC RECOGNITIONS	
7.1.	Oath of Office and Introduction for: 1. Joe Leach, Director of Public Works 2. Jesus Gonzalez, Accounting Technician I	
7.2.	National Friends of Libraries Week Proclamation 2022 National Friends of Libraries Week Proclamation 2022	19 - 20
7.3.	Domestic Violence Awareness Month October 2022 Proclamation NEWS Proclamation	21
8.	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)	
8.1.	Consideration and proposed approval of Regular Meeting Minutes of September 27, 2022 Prepared By: Cindy Tzafopoulos, City Clerk Recommendation: Approve 09-27-2022 Regular City Council - Minutes	23 - 29
8.2.	Approval of Project Plans, Authorization to Bid R19-07 Silverado Trail Guardrail Replacement Project. CEQA Determination: Class I Categorical Exemption under Section 15301 of CEQA Prepared By: Mario Traverso, Public Works Assistant Engineer Recommendation: Approval of Plans and Authorize to Bid Staff Report - Pdf	31 - 39
8.3.	Second Reading and Proposed Adoption of an Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers CEQA Determination: Exempt from the requirements of CEQA under the "General Rule", Section 15061 (b)(3), in that it can be seen with	41 - 55

certainty that the proposed action will have no impact on the environment.

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

Recommendation:

Conduct the second reading and adopt the Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers

[Staff Report - Pdf](#)

- 8.4. Consideration and Proposed Approval of a Resolution Authorizing: (1) Amendment #1 to a Professional Services Agreement with Operational Technical Services STH Contract: FY 2022-011 in the amount of \$71,742.30 for a total not-to-exceed amount of \$96,742.30 for Temporary Underground Utilities Staffing and (2) a budget increase of \$71,743 to 561-5031-2020 and use of fund balance of the same. 57 - 78

CEQA Determination: Exempt

Prepared By: Clayton Church, Public Works Operations Manager

Recommendation:

Staff recommends City Council adopt the attached resolution.

[Staff Report - Pdf](#)

9. PUBLIC HEARINGS

- 9.1. Consideration and proposed approval the following actions: 79 - 208
1. Finding that none of the conditions specified in State CEQA Guidelines section 15162 require the preparation of a subsequent or supplemental EIR or MND and no additional environmental review is required; and
 2. Introduce and waive first reading of an Ordinance approving a Development Agreement Amendment between the applicant and the City of St. Helena for the LMR Destinations LLC lodging project at 1000 Mills Lane; and
 3. Adopt a resolution making specific findings and approve a Use Permit Amendment for the LMR Destinations LLC lodging project at 1000 Mills Lane.

CEQA Determination: The City has determined that none of the conditions specified in State CEQA Guidelines section 15162 requiring preparation of a subsequent or supplemental EIR or MND would occur.

Prepared By: Maya DeRosa, Community Development Director

Recommendation:

For the reasons described above, staff recommends that the City Council:

1. Find that none of the conditions specified in State CEQA Guidelines section 15162 require the preparation of a subsequent or supplemental EIR or MND and no additional environmental review is required; and
2. Introduce and waive first reading of an Ordinance approving a Development Agreement Amendment between the applicant and the City of St. Helena for the LMR Destinations LLC lodging project at 1000 Mills Lane; and

3. Adopt the attached resolution making specific findings and approve a Use Permit Amendment for the LMR Destinations LLC lodging project at 1000 Mills Lane.

[Staff Report - Pdf](#)
[Presentation](#)

10. OLD BUSINESS

- 10.1. Second Reading and Proposed Adoption of an Ordinance adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB 481 for the Funding, Acquisition, and Use of Military Equipment 209 - 234

CEQA Determination: Not a CEQA project

Prepared By: Chris Hartley, Chief of Police

Recommendation:

Conduct the second reading and adopt the Ordinance Police Department Policy No. 709 (Military Equipment Policy) In Accordance With AB 481.

[Staff Report - Pdf](#)

- 10.2. Water Penalty Update, Discussion and Direction for Water Penalties 235 - 259

CEQA Determination: Not a CEQA project

Prepared By: April Mitts, Assistant City Manager

Recommendation:

Receive and file report and provide direction to staff for collection of unpaid penalties and confirmation of staff recommendations for next steps.

[Staff Report - Pdf](#)

[Powerpoint Water Penalties](#)

11. NEW BUSINESS

- 11.1. Appointment of a Subcommittee to Review and Make Recommended Changes to the City Council, Committees, Boards and Commission Rules of Procedure for the Conduct of Meetings & Standards of Conduct document. 261 - 302

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzafoopoulos, City Clerk

Recommendation:

Appointment of a subcommittee of the City Council to review and make recommended changes to the City Council, Committees, Boards and Commission Rules of Procedure for the Conduct of Council Meetings & Standards of Conduct document.

[Staff Report - Pdf](#)

12. ADJOURNMENT

The next Regular City Council meeting is scheduled for October 25, 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 October 7, 2022.



Cindy Tzaopoulos, 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.

PULIC COMMENT, October 11, 2022 City Council Meeting

Good Evening Mayor Ellsworth, Vice Mayor Dohring, Council members, and welcome to St Helena - Mr. Comelo and Mr. Leach. Good to have you guys here.

I'm here this evening representing a group of residents to advocate for a permanent St. Helena Water and Wastewater Commission.

We would like to request that the city council agendaize a presentation by this group and discuss the options for a permanent citizens Commission dealing with matters relating to the Water and Wastewater Enterprises.

The Water and Wastewater Enterprises do not have a dedicated management structure, yet account for 35% of the city budget. If the budget numbers aren't convincing enough, look at how Water and Wastewater Capital Improvement Projects dominate the CIP list. A permanent Water and Wastewater Commission that enjoys mutual trust and respect between the Commission, City Staff, and City Council would be a huge asset to the city of St. Helena.

We have a new city manager and new director of public works that can benefit greatly from the local knowledge of Commission members and the institutional memory provided by a permanent Commission.

As you know, Measure H needs an oversight committee and the city has a Water Advisory Board tied to Phase II water restrictions. Both of these are technically temporary (ad hoc) committees.

With a permanent Commission, you can eliminate these and assign the duties to a Water and Wastewater Commission.

There's a lot to discuss regarding a permanent Water and Wastewater Commission.

The idea of such a Commission deserves an agendaized presentation and discussion.

The ultimate goal?

- Create and adopt an ordinance under Chapter 2.5 of the St. Helena Municipal Code for a permanent Water and Wastewater Commission
- Revise municipal code chapter 13.04 to replace the Water Advisory Board with the newly minted Water and Wastewater Commission
- Designate the Water and Wastewater Commission as the oversight body for Measure H

Again, we would like to request that the city council agendaize a presentation and discussion on this matter. With Measure H upon us, it makes sense to do this sooner rather than later.

We can discuss the details during and after the presentation.

Thank all of you for your attention and consideration.

Respectfully submitted,

Garry L. Rose

St. Helena City Council – Public Comments

October 11, 2022

My name is Durriya Syed, I am an Outreach Analyst in the Department of Insurance, also known as CDI. I want to share with you what we have been doing on behalf of your constituents.

Since 2019 we've met with more than 25,000 people in 40 counties, and held 60 events to specifically hear concerns around both availability and affordability of homeowners' insurance.

In January of 2022, Insurance Commissioner Ricardo Lara, and the state's emergency response and readiness agencies created the Safer From Wildfires framework, a consistent approach to reducing risk with a list of achievable, certifiable and effective actions to help make existing homes and businesses safer from wildfires. The ultimate goal is protecting consumers by reducing risk in their communities.

This "ground up" approach for wildfire resilience has three layers of protection—we call it the 1-2-3 Plan.

- #1 - protect the structure,
- #2 - protect the immediate surroundings,
- #3 - involve your entire community to prevent wildfires from catching and spreading to other homes and businesses in the neighborhood. This includes things like enhanced infrastructure and programs like Firewise.

You can see the entire list of specific actions you can take on our website, [Insurance.ca.gov](https://insurance.ca.gov), but I am confident your local fire agencies have apprised you of the actions you can take to harden your homes and community.

By making homes and businesses safer, we can bring risk down and bring costs down as well. The Commissioner's actions are focused on safety and transparency. His new regulations do this in three ways:

- He is requiring insurance companies to incorporate the framework into their pricing. Insurance companies will have to submit new rate filings that recognize safety.
- Consumers will receive their property's wildfire risk score, and the reasons for it. In the past this information was considered proprietary, and CDI will have oversight.

- Consumers will be able to appeal their risk determination when they have done the work.

Public input was critical – to ensure we were on the right track, we held a hearing on April 13th that accepted public comments.

We have evaluated all the input from the public and submitted the new regulations to the Office of Administrative Law and we expect to have new rate filings by early 2023.

We are California's largest consumer protection agency, everything we do at CDI is to protect consumers from fraud and abuse. We also provide a number of free informative presentations and informational guides for homeowners, drivers, and our senior community.

I have included flyers for some of these programs for you to post in your newsletter or website.

I want to remind you that we are here to help your constituents with any of your insurance questions. Please call our hotline **800-927-4357**, or go to our website at **insurance.ca.gov**.

Thank you for your time,

Durriya Syed
Outreach Analyst
Community Relations and Outreach Branch
California Department of Insurance
(916) 492-3418 | Durriya.Syed@insurance.ca.gov



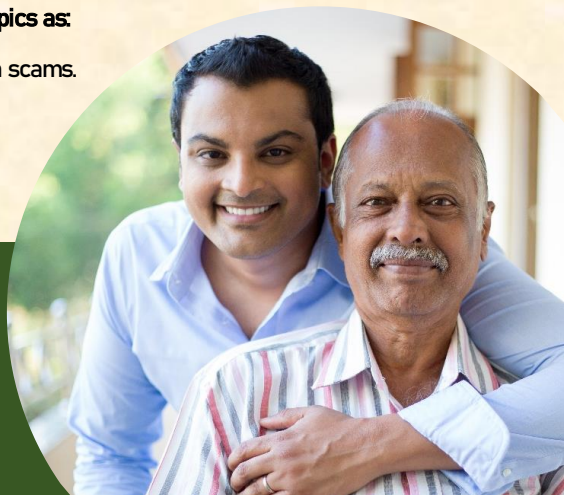
Empowering seniors with information and resources

The Senior Gateway is a one-stop website intended to provide seniors, their families, and caregivers with the information they need to connect to helpful services and resources, to find answers, and to solve problems.

Visit www.seniors.ca.gov to find information on such topics as:

- Preventing fraud, financial abuse, and common scams.
- Avoiding and reporting abuse and neglect.
- Health care information.
- Your rights.
- Other resources.

Senior Gateway is sponsored by the Elder Financial Abuse Interagency Roundtable (E-FAIR), a working group with representatives from many California State agencies, and is hosted by the California Department of Insurance.



Safer from Wildfires in 1 2 3

Safer from Wildfires is an interagency partnership between Insurance Commissioner Ricardo Lara and the emergency response and readiness agencies in Governor Gavin Newsom’s administration to protect lives, homes, and businesses by reducing wildfire risk.

With California experiencing devastating, climate change-intensified wildfires, homes and businesses need insurance they can rely on. Commissioner Lara is using every tool available to improve insurance for our communities. Drawing on the direct experience of first responders and the latest research on wildfires, the partnership created a consistent approach to reducing risk with a list of achievable and effective actions to help make existing homes and businesses safer from wildfires. The ultimate goal is protecting consumers by reducing wildfire risk in their communities, making insurance available and affordable for all Californians.

This “ground up” approach for wildfire resilience has three layers of protection — for the structure, the immediate surroundings, and the community — to prevent wildfires from catching and spreading to other homes and businesses in the neighborhood.



Commissioner Lara is working to increase available incentives for wildfire safety. To view the list of insurance companies currently offering discounts visit insurance.ca.gov.

1 Protecting the structure



- Class-A Fire rated roof
- Maintain a 5 foot ember-resistant zone around a home (including fencing within 5 feet)
- Noncombustible 6 inches at the bottom of exterior walls
- Ember and fire-resistant vents (See [Low-Cost Retrofit List](#), and Chapter 7A)
- Upgraded windows (Double paned or added shutters)
- Enclosed eaves

2 Protecting the immediate surroundings



- Cleared vegetation and debris from under decks
- Removal of combustible sheds and other outbuildings from the immediate surroundings of the home, to at least a distance of 30 feet
- Defensible space compliance (including trimming trees, removal of brush and debris from yard, and compliance with state law and local ordinances)

3 Working together as a community



- A community should have clearly defined boundary and a local risk assessment in consultation with the local fire district or state fire agency; an identified evacuation route, cleared of vegetative overgrowth, and evacuation plan contingencies; clear funding sources to implement community mitigation activities and meet clear risk reduction goals; and integrated and up-to-date local planning documents pertinent to community wildfire risk.
- Current examples include the Fire Risk Reduction Community designation under development by the Board of Forestry, Firewise USA communities in good standing, and Shelter-in-Place designations.



Auto insurance is required by law

The law requires licensed drivers to have auto insurance at all times. **California's Low Cost Auto Insurance** is a state-sponsored program that makes auto insurance affordable.

To qualify for this program, you must:

- Have a valid California driver's license including **AB60 license** for undocumented drivers
- Own a vehicle valued at \$25,000 or less
- Have a good driving record
- Meet household income guidelines

Benefits that may help you qualify:

If you receive any of the following benefits you may be eligible for low cost auto insurance:

- CalFresh: Electronic Benefit Transfer (EBT) card
- CalWorks: Notification letter
- Medi-Cal/Medicaid: Medi-Cal card
- State of California Employment Development Department (EDD): Debit card or benefit letter
- Social Security or Pension: SS or Pension letter



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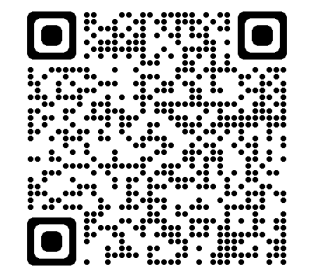
- Resolving consumer complaints
- Investigating and prosecuting insurance fraud
- Overseeing insurer solvency
- Licensing agents and brokers
- Conducting market conduct reviews

Providing Services by:

- One-on-One insurance assistance
- Assisting with catastrophes
- Providing insurance informational guides
- Making in person presentations on potential scams, understanding insurance



For more information visit us at www.insurance.ca.gov
or call us at **1-800-927-4357**



City of St. Helena PROCLAMATION

National Friends of Libraries Week
October 16-22, 2022

Whereas, Friends & Foundation, St. Helena Public Library raises money that enables our library to move from good to great -- providing the resources for programming, Chromebooks and WiFi hotspots, additional part-time staffing, support for summer reading for all ages, and special events throughout the year;

Whereas, the work of the Friends & Foundation highlights on an ongoing basis the fact that our library is the cornerstone of the community providing opportunities for all to engage in the joy of life-long learning and connecting with the thoughts and ideas of others from ages past to the present;

Whereas, the Friends & Foundation understands the critical importance of well-funded libraries and encourages community support for the library along with advocating to ensure that our library gets the resources it needs to provide a wide variety of services to all ages including access to the Internet and online resources, print and electronic materials, along with expert assistance in research, readers' advisory, and children's services;

Now, therefore, be it resolved that I, Geoff Ellsworth, Mayor of the City of St. Helena, along with the St. Helena City Council, proclaim October 16-22, 2022, as Friends of Libraries Week in St. Helena and urge everyone to thank the Friends & Foundation for all they do to make our library and community so much better.

Dated: October 11, 2022

Geoff Ellsworth, Mayor
City of St. Helena

City of St. Helena PROCLAMATION

Domestic Violence Awareness Month
October 2022

WHEREAS, NEWS, Domestic Violence and Sexual Abuse Services is commemorating 41 years of service to survivors of domestic violence in Napa County, having opened the first confidential safe house on October 5th 1981 and began providing safety to those escaping abuse; and

WHEREAS, every year since 1989, the United States Congress has proclaimed October as Domestic Violence Awareness Month, renewing our Country's commitment to standing against DV and meeting the needs of survivors; and

WHEREAS, domestic violence is a public health concern that impacts the well-being and success of individual community members, as well as the community as a whole. Data from the U.S. Center of Disease Control's National Intimate Partner and Sexual Violence Survey (NIPSVS) show that nearly 1 in 4 women and 1 in 9 men in the U.S. report experiencing severe physical violence from an intimate partner in their lifetime while nearly half of U.S. adults have experienced psychological aggression such as humiliating or controlling behaviors from their partner. Domestic violence can cause severe physical and emotional distress for survivors who are more likely to become suicidal and lose economic opportunities from the abuse. Children who witness abuse are likely to experience abuse themselves and are often used to control other family members which can have lifelong impacts on their mental health. Aside from the obvious physical and emotional trauma inflicted, domestic violence contributes to over 10% of all intentional violent deaths (not including suicide) and costs America over 8 billion dollars a year.

WHEREAS, by observing October as Domestic Violence Awareness Month we show that our community is committed to supporting survivors and working toward the prevention of domestic violence among future generations; and

WHEREAS, in Fiscal Year 2021/2022 NEWS provided services to over 1,700 of our Napa County community members, including 24-hour response, assistance with protective orders, safety and shelter, permanent housing, financial aid, support groups and children's services, for issues related to violence in the home; and

NOW, THEREFORE LET IT BE RESOLVED THAT I, Geoff Ellsworth, Mayor, on behalf of the City Council of the City of St. Helena, do hereby proclaim October 2022 as "Domestic Violence Awareness Month", and encourage all residents of St. Helena to honor domestic violence survivors and those who serve them during this month and throughout the year.

Dated: October 11, 2022

Geoff Ellsworth, Mayor
City of St. Helena

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, September 27, 2022 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

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

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

Absent: None

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

Vice Mayor Paul Dohring moved to approve the agenda as presented. The motion was seconded by Council Member Lester Hardy and on roll call carried by the following vote:

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

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

Reports were made by staff and the City Council.

City Attorney Joanna Gin noted there was no reportable action from the September 13, 2022 special City Council closed session meeting.

Mayor Ellsworth requested to agendize a review of the City Council standards of conduct, Vice Mayor Dohring agreed.

Regular City Council
September 27, 2022

6. PUBLIC FORUM:

Gary Margadant, citizen, Chris Malen, Terry Perry and Anthony Micheli addressed 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 Consideration and proposed approval of Regular Meeting Minutes of September 13, 2022.

Prepared By: Cindy Tzaferopoulos, City Clerk

- 7.2 Consideration of Approval of a Resolution Authorizing Temporary Closure of Hunt Avenue from November 21, 2022 until January 3, 2023 for the Wine Barrel Tree Display

CEQA Determination: Not a CEQA project

Prepared By: Dave Jahns, Parks & Recreation Director

Recommendation:

Approve a resolution authorizing temporary closure of Hunt Avenue, between Main Street and Railroad Avenue, from November 21, 2022 - January 3, 2023.

- 7.3 Quarterly Grant Report for FY 2022 Q4 for the period ending June 30, 2022.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Administrative Services Director

Recommendation:

Receive and file report.

- 7.4 Consideration and Approval of a Resolution for an Employment Agreement with Joseph Leach to serve as the Director of Public Works.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Administrative Services Director

Recommendation:

Staff recommends the City Council adopt the attached resolution.

Item 7.5 was removed from consent.

- 7.5 ~~August 2022 Review and Forecasting of City Water Supply Availability~~

Item 7.6 was removed from consent.

- 7.6 ~~Consideration and adoption of a Resolution: (1) Awarding the R22-79 Pavement Restoration Improvements Project to Argonaut Constructors in the~~

Regular City Council
September 27, 2022

~~amount of \$1,157,192.50; (2) Authorizing the City Manager to execute the Construction Contract with Argonaut Constructors; (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 10% of the contract amount; and (4) Determining the project to be exempt from the requirements of the California Environmental Quality Act (CEQA).~~

- 7.7 Consideration of approval of a resolution establishing a 401(a) Governmental Money Purchase Plan and authorizing the City Manager to execute all necessary agreements and plan documents.

CEQA Determination: Not a CEQA project

Prepared By: Mandy Kellogg, Administrative Services Director

Recommendation:

Approval of a resolution establishing a 401(a) Governmental Money Purchase Plan and authorizing the City Manager to execute all necessary agreements and plan documents.

- 7.8 Consideration and proposed approval of a resolution amending the City of St. Helena Conflict of Interest Code pursuant to the Political Reform Act of 1974

CEQA Determination: Not a CEQA project

Prepared By: Cindy Tzafopoulos, City Clerk

Recommendation:

It is recommended that the City Council adopt a Resolution approving and adopting the amended Conflict of Interest Code pursuant to the Political Reform Act of 1974.

- 7.9 Consideration of Resolution rescinding Resolution 2021-32 and extending a portion of Hunt Avenue to the City's List of Red Zones (parking prohibitions)

CEQA Determination: Not a CEQA project

Prepared By: Eric Janzen, Assistant Public Works Director

Recommendation:

Approve the attached resolution.

Council Member Anna Chouteau moved to approve Consent items 7.1 through 7.4 and 7.7 through 7.9. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

- 7.5 Consideration and adoption of a Resolution: (1) Awarding the R22-79

Regular City Council
September 27, 2022

Pavement Restoration Improvements Project to Argonaut Constructors in the amount of \$1,157,192.50; (2) Authorizing the City Manager to execute the Construction Contract with Argonaut Constructors; (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 10% of the contract amount; and (4) Determining the project to be exempt from the requirements of the California Environmental Quality Act (CEQA).

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

Prepared By: Mario Traverso, Public Works Assistant Engineer

Recommendation:

Adopt the attached resolution.

Mario Traverso, Public Works Assistant Engineer reported on this item.

A citizen addressed the City Council.

Vice Mayor Paul Dohring moved to approve item 7.5. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

7.6 August 2022 Review and Forecasting of City Water Supply Availability

CEQA Determination: Exempt

Prepared By: Ian Dale, Environmental Services Tech

Recommendation:

Receive and file.

Eric Janzen, Asst. Public Works Director reported on this item.

No public comment was received.

Vice Mayor Paul Dohring moved to approve item 4.6. The motion was seconded by Council Member Lester Hardy and on roll call carried by the following vote:

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

NOES: None

Regular City Council
September 27, 2022

ABSENT: None
ABSTAIN: None
RECUSE: None

8. PUBLIC HEARINGS

- 8.1 Introduction and First Reading of an Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers

CEQA Determination: Exempt from the requirements of CEQA under the "General Rule", Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.

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

Recommendation:

Introduce by title only and waive further reading of an Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers

Preya Nixon, Asst. to the City Manager reported on this item.

Mayor Ellsworth opened the public hearing.

Sally Ferrell and Chris Warner addressed the City Council.

Mayor Ellsworth closed the public hearing.

Vice Mayor Paul Dohring moved approve as amended the introduction by title only and waive further reading of an Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers. The amendment was:

1. Remove section 1.E.C which states: *The leaf blower is operated in a manner that does not result in leaves, dirt, debris, or other materials being blown or deposited on any other parcel, land, lot, or public right-of-way/property other than the parcel, land, lot, or public right-of-way/property on which the leaf blower is being used or operated.*

Additionally, Council provided direction that enforcement will not take place until April 1, 2023. However, the Ordinance will still go into effect on January 1, 2023 with staff utilizing an education-based outreach/approach to businesses, community members and property owners.

The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

Regular City Council
September 27, 2022

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

- 8.2 Consideration and Proposed Introduction of an Ordinance adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB 481 for the Funding, Acquisition, and Use of Military Equipment

CEQA Determination: Not a CEQA project
Prepared By: Chris Hartley, Chief of Police
Recommendation:
Recommend that the City Council Introduce and Waive First Reading of the Ordinance Adopting Police Department Policy No. 709 (Military Equipment Policy) In Accordance With AB 481.

Chris Hartley, Police Chief reported on this item.

Mayor Ellsworth opened the public hearing.

No public comment was received.

Mayor Ellsworth closed the public hearing.

Council Member Anna Chouteau moved approve as amended the introduction by title only and waive further reading of an Ordinance adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB 481 for the Funding, Acquisition, and Use of Military Equipment. The motion was seconded by Council Member Eric Hall and on roll call carried by the following vote:

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

9. OLD BUSINESS

- 9.1 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

Regular City Council
September 27, 2022

payments.

CEQA Determination: Exempt
Prepared By: Justin Tharp, Lieutenant
Recommendation:
Staff recommends approval of the attached resolution.

Justin Tharp, Lieutenant reported on this item.

No public comment was received.

10. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 7:56 p.m.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: CONSENT ITEMS

Subject: Approval of Project Plans, Authorization to Bid R19-07 Silverado Trail Guardrail Replacement Project.

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

Prepared By: Mario Traverso, Public Works Assistant Engineer

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

The Silverado Trail Guardrail Replacement project is a FY22/23 CIP project which scope includes the replacement of damaged guardrail along north bound Silverado Trail within the City limits. In 2019 the City was awarded a federal grant from the Federal Highway Administration's (FHWA) Highway Safety Improvement Program (HSIP) which included full funding for design and construction of the replacement guardrail. Project plans and specifications have been recently completed by staff, and authorization from FHWA has been provided to proceed with construction.

DISCUSSION

The original scope of this project (2018) included replacement of roughly 1500 linear feet of guardrail along Silverado Trail south of Pope Street. A significant portion of this guardrail was replaced by Napa County in response to damage incurred from the Glass Fire in 2020. As a result the scope of this project has been significantly reduced compared to the original scope. Currently, the project includes the replacement of 135 linear feet of guardrail north of Pope Street as well as traffic striping updates in the intersection. Plans and specifications were prepared by Coastland Engineering. City staff will provide construction management and project administration.

FISCAL IMPACT

Funding for this project is provided from the Highway Safety Improvement Program (HSIP). All expenses, including staff time for construction management and administration are approved for 100% reimbursement up to \$70,000. The engineer's estimate for this work is \$25,000.

RECOMMENDED ACTION

Approval of Plans and Authorize to Bid

ATTACHMENTS

[Attachment 1 Resolution Guardrail](#)

[11 - HISP 5051\(005\) Plans](#)

[E76 5051\(005\) SEQ3](#)

CITY OF ST. HELENA

RESOLUTION No. 2022 -

Finding the R19-07 Silverado Trail Guardrail Replacement Project Exempt from CEQA; Approving and adopting the project plans; and Authorizing the Bid Request for the R19-07 Silverado Trail Guardrail Replacement Project

RECITALS

- A. The City of St. Helena is responsible for maintenance of public streets within the City limits; and
- B. On August 25, 2018, City staff submitted an application to the Federal Highway Administration's Highway Safety Improvement Program for a project which included the replacement of guardrail along Silverado Trail located within the City limit; and
- C. On September 9, 2022, City staff received authorization from the Federal Highway Administration to proceed with construction; and
- D. The R19-07 Silverado Trail Guardrail Replacement Project is included in approved 5-Year Capital Improvement Program and the FY22/23 budget; and
- E. The Project Plans for R19-07 have been prepared by Coastland Civil Engineering, reviewed by the City Engineer, and presented for approval and authorization to bid.

RESOLUTION

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

- 1. The project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines section 15301, Existing Facilities Class 1 which exempts the operation, repair, maintenance, and permitting of existing facilities involving negligible or no expansion of use including publicly owned utilities; and
- 2. The Project Plans will be available online at the City of St. Helena's website and for viewing at St. Helena Public Works, 1572 Railroad Avenue, are hereby approved; and
- 3. The Public Works Director/City Engineer is authorized to solicit bids for the subject project.

Approved at a Regular Meeting of the St. Helena City Council on October 11, 2022, by the following vote:

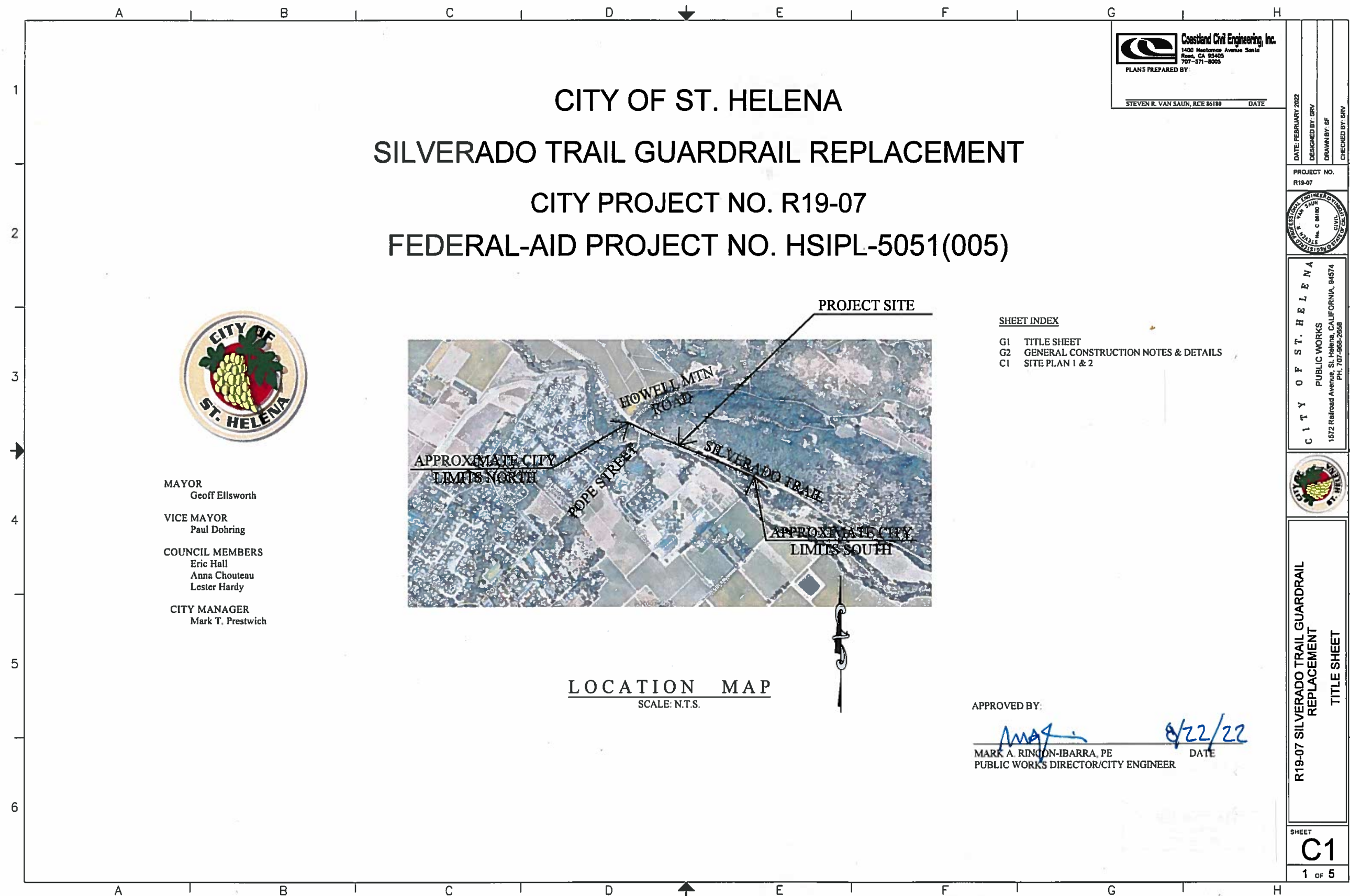
Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Chouteau: _____
Councilmember Hall: _____
Councilmember Hardy: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk



CITY OF ST. HELENA

SILVERADO TRAIL GUARDRAIL REPLACEMENT

CITY PROJECT NO. R19-07

FEDERAL-AID PROJECT NO. HSIPL-5051(005)



MAYOR
Geoff Ellsworth

VICE MAYOR
Paul Dohring

COUNCIL MEMBERS
Eric Hall
Anna Chouteau
Lester Hardy

CITY MANAGER
Mark T. Prestwich

LOCATION MAP
SCALE: N.T.S.

Coastland Civil Engineering, Inc.
1400 Huston Avenue Suite
Reno, CA 95403
707-371-8003
PLANS PREPARED BY:
STEVEN R. VAN SAUN, RCE 86180 DATE

- SHEET INDEX
- G1 TITLE SHEET
 - G2 GENERAL CONSTRUCTION NOTES & DETAILS
 - C1 SITE PLAN 1 & 2

APPROVED BY:  DATE: 8/22/22

MARK A. RINCON-IBARRA, PE
PUBLIC WORKS DIRECTOR/CITY ENGINEER

DATE: FEBRUARY 2022	DESIGNED BY: SRV	DRAWN BY: SF	CHECKED BY: SRV
PROJECT NO. R19-07			
			
CITY OF ST. HELENA PUBLIC WORKS 1572 Railroad Avenue, St. Helena, California 94574 PH: 707-968-2658			
			
R19-07 SILVERADO TRAIL GUARDRAIL REPLACEMENT TITLE SHEET			
SHEET C1 1 OF 5			

CONSTRUCTION CONTRACTOR AGREES TO IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES. CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY, AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT.

ALL WORKSMANSHIP, MATERIALS AND CONSTRUCTION SHALL CONFORM TO THESE PLANS, THE CITY OF ST. HELENA ROAD AND STREET STANDARDS, THE CONTRACT SPECIFICATIONS FOR THIS PROJECT AND THE 2018 CALTRANS STANDARD SPECIFICATIONS AND STANDARD PLANS, INsofar AS THEY MAY APPLY.

CONTRACTOR SHALL CONTACT THE CITY ENGINEER, OR THEIR DESIGNEE, TO ARRANGE A PRE-CONSTRUCTION CONFERENCE FOR THE PURPOSE OF REVIEWING JOB REQUIREMENTS AND CITY PROCEDURES.

CONTRACTOR SHALL NOTIFY THE CITY ENGINEER OR THEIR DESIGNEE, AT LEAST 72 HOURS IN ADVANCE OF COMMENCEMENT OF ANY PART OF THE WORK.

PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL PROVIDE THE CITY OF ST. HELENA PUBLIC WORKS DEPARTMENT A TRAFFIC CONTROL PLAN FOR APPROVAL BY CITY ENGINEER, IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS AND CITY ENCROACHMENT PERMIT REQUIREMENTS.

CONTRACTOR SHALL PROVIDE AND MAINTAIN SUFFICIENT TEMPORARY BARRICADES TO PROVIDE FOR THE SAFETY OF THE STAFF AND PUBLIC TO THE SATISFACTION OF THE ENGINEER.

THE CONTRACTOR SHALL NOTIFY PROPERTY OWNERS AND THE ENGINEER, IN WRITING, 48 HOURS IN ADVANCE OF ANY DRIVEWAY ACCESS INTERRUPTIONS. MAIL SERVICE SHALL BE MAINTAINED THROUGHOUT THE COURSE OF THIS PROJECT. THE U.S. POSTAL SERVICE SHALL HAVE UNINTERRUPTED ACCESS TO MAILBOXES AT ALL TIMES.

CONTRACTOR SHALL VERIFY LOCATIONS, LEVELS, DISTANCES, AND FEATURES THAT MAY AFFECT THE WORK. SHOULD EXISTING CONDITIONS DIFFER FROM THOSE SHOWN OR INDICATED IN THESE PLANS, STANDARD SPECIFICATIONS, AND SPECIAL PROVISIONS, OR IF IT APPEARS THAT THESE PLANS, STANDARD SPECIFICATIONS, AND SPECIAL PROVISIONS DO NOT ADEQUATELY DETAIL THE WORK TO BE DONE, CONTRACTOR SHALL NOTIFY THE ENGINEER PRIOR TO CONTINUING WITH ANY RELATED WORK. NO ALLOWANCE WILL BE MADE IN THE CONTRACTOR'S BIDS FOR ANY EXTRA EXPENSE RESULTING FROM FAILURE OR NEGLIGENCE IN DETERMINING THE CONDITIONS UNDER WHICH WORK IS TO BE PERFORMED. NOTED DIMENSIONS TAKE PRECEDENCE OVER SCALE.

A SET OF SIGNED PLANS AND A SET OF SPECIFICATIONS WILL BE KEPT AT ALL TIMES AT THE JOB SITE ON WHICH ALL CHANGES OR VARIATIONS IN THE WORK, INCLUDING ALL EXISTING UTILITIES, ARE TO BE RECORDED AND/OR CORRECTED DAILY AND SUBMITTED TO THE ENGINEER WHEN THE WORK TO BE DONE IS COMPLETED.

ALL MATERIALS SHALL BE FURNISHED AND INSTALLED BY THE CONTRACTOR UNLESS OTHERWISE NOTED.

ALL MAILBOXES, STREET SIGNS, POSTS, ETC. IN CONFLICT WITH PROJECT SHALL BE TEMPORARILY RELOCATED.

NEW EDGE OF PAVEMENT SHALL BE A CLEAN CONFORM WITH EXISTING ASPHALT CONCRETE SURFACES. EXISTING DRIVEWAYS THE CONTRACTOR SHALL CLEAN THE SITE AT THE END OF EACH WORK AND RESTORE SITE AT THE END OF THE PROJECT.

THE CONTRACTOR SHALL CALL UNDERGROUND SERVICE ALERT (U.S.A.) AT (800) 227-2600 AT LEAST 48 HOURS PRIOR TO ANY EXCAVATION, FOR MARK OUTS OF EXISTING UNDERGROUND FACILITIES.

THE CONTRACTOR SHALL INVESTIGATE THE SITE AND BE AWARE OF ANY LIMITED OVERHEAD CLEARANCES SUCH AS TREES, TREE BRANCHES, AND/OR UTILITIES, ETC.

EXCAVATIONS OVER FIVE FEET (5') DEEP REQUIRE AN EXCAVATION PERMIT FROM THE STATE DEPARTMENT OF INDUSTRIAL SAFETY.

NOTICE TO CONTRACTORS THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURE TO PROTECT THE UTILITY LINES SHOWN AND ANY OTHER LINES NOT SHOWN ON THESE PLANS.

CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY AND ALL DAMAGES TO EXISTING STRUCTURES AND UTILITIES DURING CONSTRUCTION.

EXISTING VEGETATION SHALL BE REMOVED ONLY AS REQUIRED TO INSTALL THE NEW GUARDRAIL AND DIRECTED BY THE ENGINEER.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR LAWFUL OFF-SITE DISPOSAL OF ALL BITUMINOUS PAVEMENT, CONCRETE AND REINFORCEMENT, AND SPOILS NOT NEEDED FOR DISPOSAL AS REQUIRED BY THE ENGINEER AND PER SPECIFICATIONS.

CONTRACTOR SHALL BE RESPONSIBLE FOR LAYOUT AND STAKING

CONTRACTOR IS RESPONSIBLE FOR IMPLEMENTING STORM WATER BMPs AND MAINTAINING THEM DURING CONSTRUCTION AS REQUIRED.

THE CONTRACTOR SHALL ADHERE TO ALL TERMS OF THE PERMITS FOR THIS PROJECT.

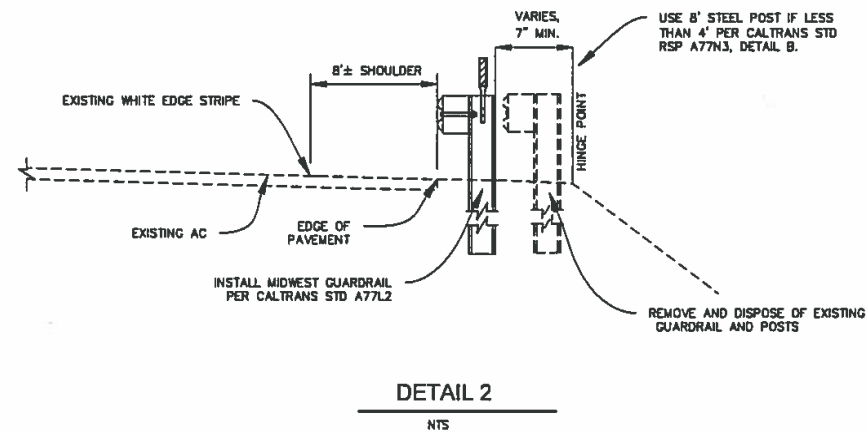
ADVANCE NOTICE PCMS SIGNS TO PROVIDE CONSTRUCTION DATES, TIMES AND PROJECT LOCATION

DURING THE CONSTRUCTION HOURS PCMS SIGNS TO PROVIDE PROJECT LOCATION AND "USE ALTERNATIVE ROUTES" MESSAGE

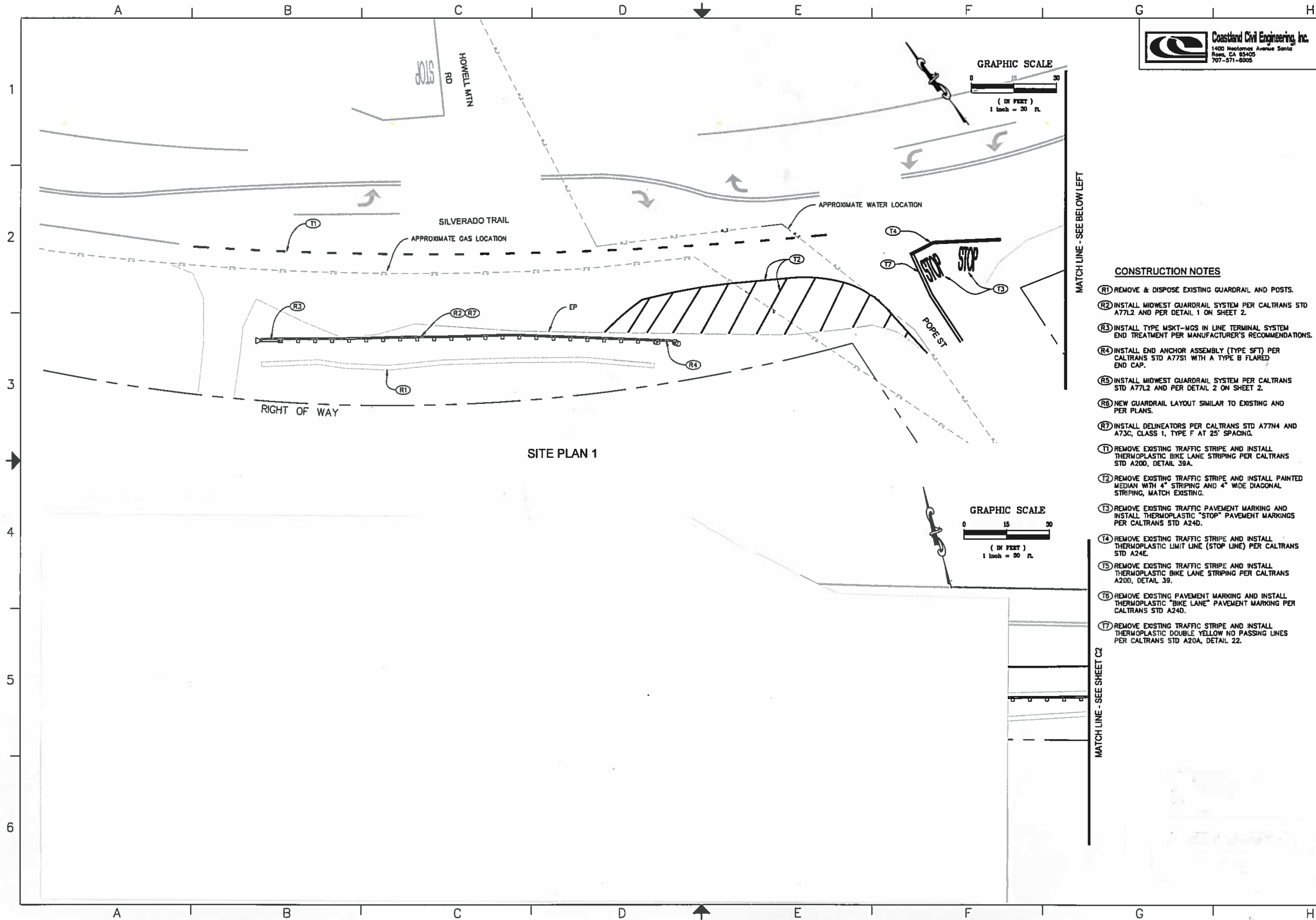
PCMS SIGNS TO BE INSTALLED TWO WEEKS PRIOR TO TRAFFIC RESTRICTION.

1. EACH TERMINAL SYSTEM INSTALLED MUST BE IDENTIFIED BY PAINTING THE TYPE OF TERMINAL SYSTEM IN NEAT BLACK LETTERS AND FIGURES 2 INCHES HIGH ON THE BACKSIDE OF THE RAIL ELEMENT BETWEEN SYSTEM POST NUMBERS 4 AND 5.
2. ALL GUARDRAIL LENGTH AND LOCATION ARE MEASURED ALONG THE FACE OF THE RAILING, UNLESS NOTED OTHERWISE.
3. FOR INSTALLATION OF TERMINAL SYSTEMS, BLACK AND YELLOW RETROREFLECTIVE SLOPED SHEETING SHALL BE ADHERED TO THE APPROACH END(S) OF THE GUARDRAIL. THE STRIPES SHALL BE STRIPE DOWN AT AN ANGLE OF 45 DEGREES TOWARD THE SIDE OF THE ROADWAY ON WHICH TRAFFIC IS TO PASS THE OBSTRUCTION BEING PROTECTED. THE SHEETING SHALL BE CONSISTENT WITH THE DESIGN PATTERN. COLORS AND DIRECTIONS OF A TYPE "P"(CA) OBJECT MARKERS PER CALIFORNIA MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) 2014 EDITION.
4. ALL STD GUARDRAIL INSTALLATION SHALL BE STEEL POSTS WITH NOTCHED RECYCLED PLASTIC BLOCKS UNLESS NOTED OTHERWISE.

A20D	PAVEMENT MARKERS AND TRAFFIC LINES TYPICAL DETAILS
A24D	PAVEMENT MARKINGS WORDS
A24E	PAVEMENT MARKINGS - WORDS, LIMIT AND YIELD LINES
A73C	DELINEATORS, CHANNELIZERS AND BARRICADES
A77M1	MIDWEST GUARDRAIL SYSTEM STANDARD HARDWARE
A77L2	MIDWEST GUARDRAIL SYSTEM STANDARD RAIL SECTION (STEEL POST WITH NOTCHED WOOD OR NOTCHED RECYCLED PLASTIC BLOCK)
RSP A77N3	MIDWEST GUARDRAIL SYSTEM TYPICAL LINE POST EMBEDMENT AND HINGE POINT OFFSET DETAILS (DATED 10/19/18)
A77N4	MIDWEST GUARDRAIL SYSTEM TYPICAL RAILING DELINEATION AND DIKE POSITION DETAIL
A77S1	MIDWEST GUARDRAIL SYSTEM END ANCHOR ASSEMBLY (TYPE SFT)



R19-07 SILVERADO TRAIL GUARDRAIL REPLACEMENT		CITY OF ST. HELENA
		PUBLIC WORKS
		1572 Railroad Avenue, St. Helena, California, 94574
		PH: 707-988-2658
SHEET		
G2		
2	OF	5



Coastland Civil Engineering, Inc.
 1400 Westmont Avenue Santa
 Rosa, CA 95405
 707-571-8005

- CONSTRUCTION NOTES**
- (R1) REMOVE & DISPOSE EXISTING GUARDRAIL AND POSTS.
 - (R2) INSTALL MIDWEST GUARDRAIL SYSTEM PER CALTRANS STD A77L2 AND PER DETAIL 1 ON SHEET 2.
 - (R3) INSTALL TYPE MSKT-MGS IN LINE TERMINAL SYSTEM END TREATMENT PER MANUFACTURER'S RECOMMENDATIONS.
 - (R4) INSTALL END ANCHOR ASSEMBLY (TYPE SFT) PER CALTRANS STD A77S1 WITH A TYPE B FLARED END CAP.
 - (R5) INSTALL MIDWEST GUARDRAIL SYSTEM PER CALTRANS STD A77L2 AND PER DETAIL 2 ON SHEET 2.
 - (R6) NEW GUARDRAIL LAYOUT SIMILAR TO EXISTING AND PER PLANS.
 - (R7) INSTALL DELINEATORS PER CALTRANS STD A77N4 AND A73C, CLASS 1, TYPE F AT 25' SPACING.
 - (T1) REMOVE EXISTING TRAFFIC STRIPE AND INSTALL THERMOPLASTIC BIKE LANE STRIPING PER CALTRANS STD A200, DETAIL 39A.
 - (T2) REMOVE EXISTING TRAFFIC STRIPE AND INSTALL PAINTED MEDIAN WITH 4" STRIPING AND 4" WIDE DIAGONAL STRIPING, MATCH EXISTING.
 - (T3) REMOVE EXISTING TRAFFIC PAVEMENT MARKING AND INSTALL THERMOPLASTIC "STOP" PAVEMENT MARKINGS PER CALTRANS STD A240.
 - (T4) REMOVE EXISTING TRAFFIC STRIPE AND INSTALL THERMOPLASTIC LIMIT LINE (STOP LINE) PER CALTRANS STD A24E.
 - (T5) REMOVE EXISTING TRAFFIC STRIPE AND INSTALL THERMOPLASTIC BIKE LANE STRIPING PER CALTRANS A200, DETAIL 39.
 - (T6) REMOVE EXISTING PAVEMENT MARKING AND INSTALL THERMOPLASTIC "BIKE LANE" PAVEMENT MARKING PER CALTRANS STD A240.
 - (T7) REMOVE EXISTING TRAFFIC STRIPE AND INSTALL THERMOPLASTIC DOUBLE YELLOW NO PASSING LINES PER CALTRANS STD A20A, DETAIL 22.

DATE: FEBRUARY 2022 DESIGNED BY: SRV DRAWN BY: SF CHECKED BY: SRV	
PROJECT NO. R19-07	
CITY OF ST. HELENA PUBLIC WORKS 1512 Railroad Avenue, St. Helena, CALIFORNIA, 94574 PH. 707-988-2858	
R19-07 SILVERADO TRAIL GUARDRAIL REPLACEMENT SITE PLAN 1 & 2	
SHEET C1 3 OF 5	

AMENDMENT MODIFICATION SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

FEDERAL AID PROGRAM

DLA LOCATOR: 04-NAP-0-SHLA
 PREFIX: HSIP
 PROJECT NO: 5051(005)
 SEQ NO: 3
 STATE PROJ NO: 0420000045L-N
 ALT. PROJ NO:
 AGENCY: ST HELENA
 ROUTE:
 DISASTER NO:
TIP DATA
 MPO: MTC
 FSTIP YR: 21/22
 STIP REF: 206-0000-6070
 FSTIP ID NO: VAR170002

PROJECT LOCATION:
 ON SILVERADO TRAIL, WITH THE PROJECT LIMITS BORDERING NAPA COUNTY, BEGINNING FROM APPROXIMATELY 175 FEET NORTH OF HOWELL
 TYPE OF WORK:
 UPGRADE 136 LINEAR FEET OF GUARDRAIL AND WOOD POSTS WITH NEW
 PREV AUTH / AGREE DATES:
 PE:
 R/W:
 CON:
 SPR:
 MCS:
 OTH:
 PROJECT END DATE (PED): 06/30/2025
 ENV STATUS / DT: 09/16/2021
 RW STATUS / DT: 1 08/17/2022
 INV RTE:
 BEG MP:
 END MP:
 BRIDGE NO:

PROG CODE	LINE NO	IMPV TYPE	FUNC SYS	URBAN AREA	URB/RURAL	DEMO ID
YS30	30	21				
YS30	31	17				
ZS30	10	15				

FUNDING SUMMARY

PHASE		PROJECT COST		FEDERAL COST		AC COST
PE	PE PREV. OBLIGATION	\$70,000.00		\$70,000.00		\$0.00
	PE THIS REQUEST	\$0.00		\$0.00		\$0.00
	PE SUBTOTAL	\$70,000.00		\$70,000.00		\$0.00
R/W	RW PREV. OBLIGATION	\$0.00		\$0.00		\$0.00
	RW THIS REQUEST	\$0.00		\$0.00		\$0.00
	RW SUBTOTAL	\$0.00		\$0.00		\$0.00
CON	CON PREV. OBLIGATION	\$0.00		\$0.00		\$0.00
	CON THIS REQUEST	\$70,000.00		\$70,000.00		\$0.00
	CON SUBTOTAL	\$70,000.00		\$70,000.00		\$0.00
OTH	OTH PREV. OBLIGATION	\$0.00		\$0.00		\$0.00
	OTH THIS REQUEST	\$0.00		\$0.00		\$0.00
	OTH SUBTOTAL	\$0.00		\$0.00		\$0.00
TOTAL:		\$140,000.00		\$140,000.00		\$0.00

STATE REMARKS

11/01/2019 * This request is for the initial authorization of the PE phase.
 * EPSP is being utilized.
 11/01/2021 SEQ 2- Request PED extension.
 11/01/2021 SEQ 2: The PED is being extended from 09/25/2021 to 06/01/2023. The PE phase has been delayed due to COVID-19 resulting in city staff furloughs, multiple disasters that include the LNU Lightning and Glass Fires that impacted the City, and a site survey requirement. Any costs incurred between the existing PED (09/25/2021) and the date of E76 Sequence #2 approval by FHWA will not be eligible for reimbursement.
 08/26/2022 SEQ 3 - Request CON/CE fund less than approval per TIP due to scope reduction. Please see reduction of scope memo attached in the RFA(CON) package. Thank you.
 08/30/2022 SEQ 3: Authorizing federal funds for CON & CENG (Reduced scope approved by HSIP manager). Project is eligible for 100% reimbursement for safety countermeasures.

FEDERAL REMARKS

AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: CON
FOR: CON AND CENG
DOCUMENT TYPE: AMOD

PREPARED IN FADS BY: LE, ROBERT
REVIEWED IN FADS BY: HOANG, KHA B
SUBMITTED IN FADS BY: WULFF, DARLENE
PROCESSED IN FADS BY: SIGNATURE, NOT_REQUIRED
E-76 AUTHORIZED DATE IN FMIS BY: GRACE REGIDOR

ON 2022-08-26 622-5917
ON 2022-08-30 653-6460
ON 2022-08-30 FOR CALTRANS
ON 2022-08-30 FOR FHWA
ON 2022-09-09 23:45:43.0

SIGNATURE HISTORY FOR PROJECT NUMBER 5051(005) AS OF 09/12/2022

FHWA FMIS SIGNATURE HISTORY

MOD #	SIGNED BY	SIGNED ON
2	HAYS WAI	09/07/2022
	HAYS WAI	09/07/2022
	GRACE REGIDOR	09/09/2022
1	SHUN HUEY	11/08/2021
	SHUN HUEY	11/08/2021
	TASIA PAPAJOHN	11/10/2021
0	SHUN HUEY	11/27/2019
	SHUN HUEY	12/03/2019
	TASIA PAPAJOHN	12/03/2019

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

DOCUMENT TYPE	SIGNED BY	SIGNED ON
AMEND/MOD	WULFF, DARLENE	08/30/2022



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: CONSENT ITEMS

Subject: Second Reading and Proposed Adoption of an Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers

CEQA Determination: Exempt from the requirements of CEQA under the “General Rule”, Section 15061 (b)(3), in that it can be seen with certainty that the proposed action will have no impact on the environment.

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

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

The City Council has a 3 Year Adopted Workplan. City Council Goal #6 is to “support initiatives that respond to and plan for climate change”. Goal 6F is to consider the ban on gas powered leaf blowers. Restrictions on the use of gas-powered leaf blowers will yield multiple environmental benefits. The primary benefit will be a reduction in greenhouse gas emissions that result from the combustion of fossil fuels, in this case, gasoline and/or diesel.

More recently, California enacted AB 1346 which will require the state to adopt regulations to ban the sale of gas-powered leaf blowers (and other lawn equipment) in 2024. The City's Public Works Department is currently undertaking a pilot project to convert its gas-powered leaf blowing equipment to electric.

This item was heard at the July 6, 2022 Regular Active Transportation and Sustainability Committee meeting, where the Committee heard a presentation on the potential ban on gas powered leaf blowers and provided feedback. The Committee unanimously voted in support of this Ordinance.

The first reading was conducted and approved as amended at the September 27, 2022, regular City Council meeting.

The amendment includes:

1. Remove section 1.E.C which states: *The leaf blower is operated in a manner that does not result in leaves, dirt, debris, or other materials being blown or deposited on any other parcel, land, lot, or public right-of-way/property other than the parcel, land, lot, or public right-of-way/property on which the leaf blower is being used or operated.*

Additionally, Council provided direction that enforcement will not take place until April 1, 2023. However, the Ordinance will still go into effect on January 1, 2023 with staff utilizing an education-based outreach/approach to businesses, community members and property owners.

DISCUSSION

Exhaust emissions are currently emitted by many pieces of equipment including, but not limited to gas powered leaf blowers. Extensive evidence exists on the adverse health effects of exhaust emissions, and other fine particulates, which include cardiovascular disease, stroke, respiratory disease, cancer, neurological conditions, premature death, and effects on prenatal development. A ban on gas powered leaf blowers will help in reducing some of the exhaust emissions. Additionally, electric leaf blowers emit less noise and generate fewer particulates in the air while in use. Staff recommends that the proposed ordinance keep the decibel limit for electric leaf blowers at 65 dBA or less and staff will develop a list of leaf blowers that are sound rated at 65 dBA or less.

Outreach Strategy:

Staff has met with community members to discuss outreach and education steps following Ordinance approval by the City Council.

- An outdoor demonstration/workshop with electric/battery powered leaf blowers at a City park
- Inserts in utility bills
- Targeted mailing to landscaping businesses with active, inactive, or partially active business licenses, hotels, and HOA's etc...
- Postcards with information on the City's rebate program/educational material-to be distributed by City staff to community groups/posted on community boards
- Information at community gatherings including the Farmer's Market and the Hometown Harvest Festival
- City standard communication outreach such as media release and social media
- Dedicated City website page with easy to read Frequently Asked Questions

Enforcement:

For those using a gas powered leaf blower, the following steps would be taken after April 1, 2023:

1. Verbal warning
2. Notice of Violation Letter
3. First offense: a fine not exceeding one hundred dollars (\$100.00)
4. Second offense: a fine not exceeding two hundred dollars (\$200.00)
5. Third offense: a fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same ordinance within one year.

Effective Date:

Staff recommends Ordinance effect date of January 1, 2023.

Rebate Program:

Staff has learned that the State is developing a voucher program for small businesses for landscaping equipment that would include leaf blowers. This program would be administered through the California Air Resources Board (CARB) under the Clean Off-Road Equipment (CORE) Voucher Incentive Program. This would allow small businesses to directly purchase an electric leaf blower from an authorized seller for up to 70% of the costs including a battery and charger. The State is still finalizing this program.

Staff anticipates the rebate program would be modeled very closely on the program that has successfully been implemented in Yountville and Calistoga. A rebate of \$150 would be available to each residential address with proof of the purchase of a battery-electric leaf blower.

Similarly, a rebate of either \$300 or \$500 (depending on the number of accounts/properties serviced) would be available to licensed commercial leaf blower operators who provide proof of purchase of a commercial battery-electric leaf blower. Rebate funds would be made available on a first come first serve basis.

Staff anticipates that such a program could be in place by the new year.

FISCAL IMPACT

The overall fiscal impact is unknown at this time. However, at a future meeting, staff will recommend a budget of \$25,000 for the following:

- \$23,000 for the rebate program
- \$2,000 for outreach/education

Code enforcement costs are unknown at this time, but staff is actively engaged with conversations with surrounding agencies regarding shared services. Preliminary outreach will utilize city staff.

RECOMMENDED ACTION

Conduct the second reading and adopt the Ordinance of the City Council of the City of St. Helena Amending Section 8.24.010 Of Chapter 24 To Title 8 of The St. Helena Municipal Code Regarding Leaf Blowers

ATTACHMENTS

[Active Transportation and Sustainability Committee - 06 Jul 2022 - FINAL MINUTES](#)

[ST HELENA Ordinance Regarding Leaf Blowers redlined](#)

[ST HELENA Ordinance Regarding Leaf Blowers redlined - CLEAN](#)



FINAL MINUTES
City of St. Helena
Active Transportation and Sustainability
Committee
Regular Meeting
Wednesday, July 6, 2022 @ 5:00 PM

Page

1. CALL TO ORDER
Chair Stanton called the meeting to order at 5:01 p.m.
2. ROLL CALL
The following were present:

Committee Chair: Leslie Stanton, Vice Chair: Jeff Farmer
Members: Maddie Chandler, John Zimmerman
Alternate Members: Vacant, Vacant

Council Liaison: Paul Dohring, Vice Mayor
Staff Liaison: Preya Nixon, Asst. to the City Manager

Member Glenn Smith was excused.
3. PUBLIC FORUM:
No public comment was received.
4. REPORTS BY STAFF AND COMMITTEE:
Reports were conducted.
5. CONSENT CALENDAR:
 Members of the Active Transportation Committee 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, on motion may be used to adopt all recommendation actions.
 - 5.1. Active Transportation and Sustainability Committee Meeting Minutes of June 1, 2022. # - #
[DRAFT MINUTES Active Transportation and Sustainability Committee - 01 Jun 2022](#)

A motion was made by Vice Chair Farmer and seconded by member Chandler to approve the minutes for the meeting held on June 1, 2022.

The motion passed unanimously.
6. SCHEDULED MATTERS:
 - 6.1. Receive a presentation on the Napa County Climate Challenge website # - #

[Napa County Climate Challenge Presentation](#)
[Staff Report- Napa County Climate Challenge website](#)

*Presentation was given by Patrick Journey
No public comment was received*

- 6.2. Consideration and Feedback Regarding a Draft Ordinance Banning the Use of Gas Powered Leaf Blowers # - #

Preya Nixon, Assistant to the City Manager, presented on this item.

Public comment was received from

*Valli Ferrell
Sharon Parham*

*The following feedback was given by the Committee:
-Equity must be considered in the rebate program, especially for commercial users.
-include the decibel limit of 65 dBA.
-that the noise component is important too
-see if there is any more research on the GHG impact.*

A motion was made by Vice Chair Farmer and seconded by Member Chandler to support the ordinance with the feedback provided.

The motion was passed unanimously.

7. FUTURE AGENDA ITEMS

- 7.1.
- Review and approval of Committee governing language
 - Presentation from Fire Chief John Sorensen regarding vehicular speeding and potential traffic mitigation
 - Active Transportation Plan Phase II
 - Potential Reusable Foodware and Waste Reduction Ordinance
 - Napa Countywide Greenhouse Gas Emission Inventory Presentation (fall 2022)

8. ADJOURNMENT

Chair Stanton adjourned the meeting at 6:20 p.m.

The next regular Active Transportation Committee meeting is scheduled for October 5, 2022 at 5:00 pm, at the Carnegie Building, 1360 Oak Avenue

Approved

Attest

Chair

Preya Nixon,
Assistant to the City Manager

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ST. HELENA AMENDING SECTION 8.24.010 OF CHAPTER 24 TO TITLE 8 OF THE
ST. HELENA MUNICIPAL CODE REGARDING LEAF BLOWERS**

WHEREAS, the City of St. Helena's Noise Ordinance, specifically subsection (E) of Section 8.24.010 of the St. Helena Municipal Code, regulates the use of leaf blowers; and

WHEREAS, the City Council of the City of St. Helena desires to ban the use of leaf blowers powered by gasoline and diesel.

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

Section 1: Amendment.

Subsection (E) of Section 8.24.010 of the St. Helena Municipal Code is hereby amended to read as follows (new language is underlined, deletions are in ~~strikeout~~):

"8.24.010 Unnecessary noises generally.

E. Leaf Blowers.

1. It shall be unlawful for any person to operate any ~~gas-powered~~ leaf blower ~~other than a gas-powered leaf blower that bears a manufacturer's label indicating a noise level designation not exceeding sixty-five (65) dB(A) at a distance of fifty (50) feet utilizing American National Standard Institute ("ANSI") B175.2 methodology. All such leaf blowers shall be operated with all mufflers, full extension tubes, shrouds and sound-attenuating devices supplied by the manufacturer for that leaf blower and shall be maintained in sound operating condition. This paragraph shall not apply to electric leaf blowers. unless it is powered by electricity or battery and is used in compliance with the following criteria:~~

a. The electric or batter operated leaf blower bears a manufacturer's label indicating a noise level designation not exceeding sixty-five (65) dB(A) at a distance of fifty (50) feet utilizing American National Standard Institute ("ANSI") B175.2 methodology. All such leaf blowers shall be operated with all mufflers, full extension tubes, shrouds and sound-attenuating devices supplied by the

manufacturer for that leaf blower and shall be maintained in sound operating condition.;

b. The leaf blower is operated without the use of a generator with a gasoline or diesel engine; and

c. ~~The leaf blower is operated in a manner that does not result in leaves, dirt, debris, or other materials being blown or deposited on any other parcel, land, lot, or public right-of-way/property other than the parcel, land, lot, or public right-of-way/property on which the leaf blower is being used or operated.~~

2. The operation of lawful ~~gas-battery~~-powered and electric leaf blowers on all streets and parcels within the city, except for those areas designated in subsection (E)(3) of this section, shall be allowed between nine a.m. and four p.m. Monday through Friday, between ten a.m. and three p.m. on Saturdays, and between ten a.m. and twelve p.m. on Sundays.

3. The operation of lawful ~~gas-battery~~-powered and electric leaf blowers on all parcels on Main Street between Pine Street and Grayson Avenue shall be allowed between five a.m. and three p.m. Monday through Friday, between ten a.m. and three p.m. on Saturdays, and between ten a.m. and twelve p.m. on Sundays.

4. It shall be unlawful to operate ~~gas-battery~~-powered and electric leaf blowers on federal and local holidays.

5. The operation of ~~gas-battery~~-powered and electric leaf blowers shall be exempt from the permit requirement of subsection A of this section.

6. A violation of any provision of this section shall be subject to the enforcement procedures under Chapter 1.12 of this code in addition to any other enforcement remedies available under law and this code. Notwithstanding any provision to the contrary in Chapter 1.12, for purposes of enforcement of this chapter under Chapter 1.12, a "responsible person" shall only include a person who uses or operates, or a property owner or business that permits the use or operation of, a leaf blower in violation of this chapter."

Section 2: Severability.

If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 3: CEQA.

This ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that this ordinance is exempt from review under CEQA under Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment.

Section 4: Rebate Program/Public Education.

City staff shall develop a rebate program for those persons or businesses purchasing a leaf blower powered by electricity or battery to comply with this ordinance. The rebate program shall be reviewed and approved by City ~~Town~~ Council prior to implementation. City staff shall also establish a public education campaign regarding this ordinance, including notice to likely leaf blower users or operators of its provisions, means of compliance, and penalties for noncompliance, prior to its effective date.

Section 5: Effective Date.

This ordinance shall take effect January 1, 2023 after its final 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 _____ 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 Tzafoopoulos, City Clerk

I, CINDY TZAFPOPOULOS, 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: _____

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ST. HELENA AMENDING SECTION 8.24.010 OF CHAPTER 24 TO TITLE 8 OF THE
ST. HELENA MUNICIPAL CODE REGARDING LEAF BLOWERS**

WHEREAS, the City of St. Helena's Noise Ordinance, specifically subsection (E) of Section 8.24.010 of the St. Helena Municipal Code, regulates the use of leaf blowers; and

WHEREAS, the City Council of the City of St. Helena desires to ban the use of leaf blowers powered by gasoline and diesel.

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

Section 1: Amendment.

Subsection (E) of Section 8.24.010 of the St. Helena Municipal Code is hereby amended to read as follows (new language is underlined, deletions are in ~~strikeout~~):

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a. The electric or batter operated leaf blower bears a manufacturer's label indicating a noise level designation not exceeding sixty-five (65) dB(A) at a distance of fifty (50) feet utilizing American National Standard Institute ("ANSI") B175.2 methodology. All such leaf blowers shall be operated with all mufflers, full extension tubes, shrouds and sound-attenuating devices supplied by the

manufacturer for that leaf blower and shall be maintained in sound operating condition.;

b. The leaf blower is operated without the use of a generator with a gasoline or diesel engine; and

2. The operation of lawful ~~gas-battery~~-powered and electric leaf blowers on all streets and parcels within the city, except for those areas designated in subsection (E)(3) of this section, shall be allowed between nine a.m. and four p.m. Monday through Friday, between ten a.m. and three p.m. on Saturdays, and between ten a.m. and twelve p.m. on Sundays.

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5. The operation of ~~gas-battery~~-powered and electric leaf blowers shall be exempt from the permit requirement of subsection A of this section.

6. A violation of any provision of this section shall be subject to the enforcement procedures under Chapter 1.12 of this code in addition to any other enforcement remedies available under law and this code. Notwithstanding any provision to the contrary in Chapter 1.12, for purposes of enforcement of this chapter under Chapter 1.12, a "responsible person" shall only include a person who uses or operates, or a property owner or business that permits the use or operation of, a leaf blower in violation of this chapter."

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If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or

unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

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City staff shall develop a rebate program for those persons or businesses purchasing a leaf blower powered by electricity or battery to comply with this ordinance. The rebate program shall be reviewed and approved by City ~~Town~~ Council prior to implementation. City staff shall also establish a public education campaign regarding this ordinance, including notice to likely leaf blower users or operators of its provisions, means of compliance, and penalties for noncompliance, prior to its effective date.

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

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

Cindy Tzafoopoulos, 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 - 11 Oct 2022

Agenda Section: CONSENT ITEMS

Subject: Consideration and Proposed Approval of a Resolution Authorizing: (1) Amendment #1 to a Professional Services Agreement with Operational Technical Services STH Contract: FY 2022-011 in the amount of \$71,742.30 for a total not-to-exceed amount of \$96,742.30 for Temporary Underground Utilities Staffing and (2) a budget increase of \$71,743 to 561-5031-2020 and use of fund balance of the same.

CEQA Exempt
Determination:

Prepared By: Clayton Church, Public Works Operations Manager

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On August 23, 2021, the City entered into a Professional Services Agreement (PSA) with Operational Technical Services (OTS) in an amount not-to-exceed \$25,000 for temporary water meter services. This agreement was initially executed for additional support to underground utilities staff due to the significant increase in requests for detailed meter reads, leak checks, and meter accuracy tests. Since the time the agreement was executed, there was an immediate and urgent need for additional support for underground utilities field staff due to an unplanned, extended employee absence.

DISCUSSION

Over the past year, the City utilized OTS to bridge a temporary staffing gap caused by a continued extended leave and a recent vacancy in the underground utilities division of Public Works. This position required a Water Distribution Grade 2 operator certification or higher to ensure compliance with State Water Resources Control Board (SWRCB)

The recommended amendment with OTS will cover the outstanding balance with OTS for the temporary employee. The OTS employee applied for, and through the open recruitment process, was hired full time with the City, effective 10/03/2022. Additionally, as part of the agreement with OTS, the City is required to pay OTS a percentage of the employee's initial salary, which equates to just short of \$20,000.

Table 1 provides a summary of the current OTS contract, payments, and additional funding needed to satisfy the outstanding balance for services provided.

Table 1

Current OTS Contract	\$25,000.00
OTS Invoices - Paid through 7/31/22	(\$22,179.90)
OTS Invoices - To be Paid through 10/2/22	\$54,563.30
OTS - Early Conversion Option	\$20,000.00
<i>Amendment #1</i>	<i>\$71,742.30</i>

FISCAL IMPACT

The fiscal impact of the Professional Services Agreement is for an additional \$71,742.30 for a not-to-exceed amount of \$96,742.30, a increase to 561-5031-2020 of \$71,742.30 and use of water fund balance of the same.

RECOMMENDED ACTION

Staff recommends City Council adopt the attached resolution.

ATTACHMENTS

[Attachment 1 - STH Contract FY2022-011 OTS Temp Meter Read Assistance](#)

[Attachment 2 - Amendment #1 STH Contract FY2021-011-01A OTS Underground Utilities](#)

[Attachment 3 - Resolution OTS Contract Amendment Underground Utilities](#)

STH Contract: FY2022-011

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on August 23, 2021 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Operational Technical Services (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Temporary Water Meter Reader.

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 \$25,000 unless additional compensation is approved in accordance with Section 2.

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

Page 1 of 13

Operational Technical Services 082121 Meter Reading

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

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

SECTION 5 – STANDARD OF PERFORMANCE

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

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

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

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

SECTION 7 – INSURANCE REQUIRED

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

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

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

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

E. Primary Coverage. For any claims related to this contract the Consultants insurance coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

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

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

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

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

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

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

SECTION 8 – INDEMNIFICATION

A. To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), as may be applicable, Consultant shall indemnify, defend, and hold harmless City, its agents, officers, officials, employees, representatives, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith, including legal fees and expert witness costs)

Page 4 of 13

Operational Technical Services 082121 Meter Reading

(collectively, “Liabilities”), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees, subconsultants, and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of, pertaining to, or relating to such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

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

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

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

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

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

G. Further, Consultant will defend and indemnify City, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to City, a Consultant employee or a person performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, Consultant’s obligation for any payments to such a claimant shall be limited to those payments which the City may be required to pay. This indemnity obligation shall survive the termination or expiration of this Agreement.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

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

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

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

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

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

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

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

Page 6 of 13

Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

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

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

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

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

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

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

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery

Page 7 of 13

request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

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

SECTION 14 – COMPLIANCE WITH LAW

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

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

SECTION 16 – COMPLIANCE WITH CALIFORNIA LABOR CODE REQUIREMENTS

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

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

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

SECTION 17 – AUDIT AND INSPECTION OF RECORDS

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

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

Page 9 of 13

Operational Technical Services 082121 Meter Reading

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

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

SECTION 18 – LIMITATION OF LIABILITY

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

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

SECTION 19 – COOPERATION BY CITY

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

SECTION 20 – NOTICES

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

To City:	City Manager 1572 Railroad Avenue St. Helena, California 94574
To Consultant:	Operational Technical Services David Sibelman 10250 Constellation Blvd., Ste 3-115 Los Angeles, CA 90067 david@getots.com

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

SECTION 21 – TERMINATION

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

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

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

SECTION 22 – ATTORNEYS' FEES

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

SECTION 23 – ENTIRE AGREEMENT

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

SECTION 24 – SUCCESSORS AND ASSIGNS

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

SECTION 25 – CONTINUITY OF PERSONNEL

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

SECTION 26 – DEFAULT

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

SECTION 27 – WAIVER

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

SECTION 28 – LAW TO GOVERN; VENUE

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

SECTION 29 – SEVERABILITY

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

SECTION 30 – THIRD PARTY BENEFICIARIES

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

SECTION 31 – STATUTES OF LIMITATION

As between the parties to this Agreement, any applicable statute of limitations for action arising out of, pertaining to, or relating to any act or failure to act in connection with this Agreement shall commence to run on the date of City's issuance of the final Certificate for

Payment, or termination of this Agreement, whichever is earlier, except for latent defects and/or deficiencies, for which the applicable statute of limitation shall begin to run upon discovery of the defect and/or deficiency and its cause.

SECTION 32 – SPECIAL PROVISIONS

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

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

Consultant:

By: David S. Sibelman
Name: David S Sibelman
Title: Chief Executive Officer

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

Digitally signed by Mark
T. Prestwich
Date: 2021.08.23
09:35:58 -07'00'

Approved as to Form:

ethan.
By: walsh@bbklaw.com
Name: Ethan Walsh
Title: City Attorney

Digitally signed by: ethan.
walsh@bbklaw.com
DN: CN = ethan.walsh@bbklaw.com
Date: 2021.08.23 14:56:39 -07'00'

Exhibit A
“Scope of Services”

THIS TASK ORDER is issued pursuant to that certain Agreement for Temporary Services by Independent On-Call Contract between City of St. Helena (“Client”) and Operational Technical Services, LLC, also known as OTS dated July 29, 2021.

1. Project Name or Description: Temporary Water Meter Reader
2. Premises: The Client’s business premises is located at 1572 Railroad Ave, St Helena, CA 94574 shall be defined as the “Premises”
3. Reporting Supervisor Name/Role: Clayton Church, Operations Manager
4. Duration of Services:
Start Date/Time: TBD
End Date: TBD
Work Schedule: TBD
5. Scope of Services:

Client seeks to obtain the services of OTS to provide a Temporary Water Meter Reader.

According to the Professional Services Agreement between OTS and the Client, any Temporary Water Meter Reader that is provided to the Client shall be treated a consultant and not considered an employee of the Client.

The following essential functions will be required of the Temporary Water Meter Reader:

Essential Functions:

- Utilizes a hand-held meter-reading computer to retrieve data from water meters in accordance with an assigned schedule and route including taking transfer and final readings; notes any unusual computer messages and takes appropriate actions to remedy issues.
- Performs a variety of semi-skilled work to inspect, maintain, and repair valves, meters, water distribution pipelines; shuts down mains and valves to isolate water lines under inspection or repair.
- Performs customer service duties such as turn-ons and shut-offs, checking for leaks or dead meters; reports water use violations; assists customers in resolving water volume and pressure problems.
- Observes condition of meter or other unusual conditions relative to need for repair; maintains meters, boxes, lids, and landscape around meter boxes; installs water meters and customer valves.
- Utilizes leak detection equipment to determine leak locations
- Provides customers with specialized information about their water service (e.g., when consumption is unusually high, when an obstruction prevents reading of meter, and/or when service shut-offs may be required for maintenance purposes).
- Reads and interprets maps and diagrams in the performance of the work.
- Answers customer inquiries and refer customers to the proper City personnel if additional information is requested.
- Observes and complies with City and mandated safety rules, regulations and protocols.

Page 13 of 15

Operational Technical Services 0812202

- Performs other duties as assigned.

Knowledge & Abilities

Knowledge of:

- Meter reading devices and sizes and types of water meters.
- Methods and procedures for installing, testing, maintaining, and repairing water meters.
- Utility billing procedures.
- Operation and minor maintenance of a variety of hand and power tools and vehicles.
- Basic principles, practices, tools, and materials for maintaining and repairing water meters and other related equipment.
- Basic traffic control procedures and traffic sign regulations.
- Shop arithmetic.
- City and mandated safety rules, regulations, and protocols.
- Techniques for providing a high level of customer service by effectively dealing with the public, vendors, contractors, and City staff.
- The structure and content of the English language, including the meaning and spelling of words, rules of composition, and grammar.
- Modern equipment and communication tools used for business functions and program, project, and task coordination, including computers and software programs relevant to work performed.

Ability to:

- Install, read, and repair a variety of types of water meters.
- Post data accurately on forms and prepare simple records.
- Read and interpret street maps.
- Perform maintenance and repair work on water meters and related equipment.
- Troubleshoot maintenance problems and determine materials and supplies required for repair.
- Make accurate arithmetic calculations.
- Perform routine equipment maintenance.
- Maintain accurate logs, records, and basic written records of work performed.
- Understand and follow oral and written instructions.
- Organize own work, set priorities, and meet critical time deadlines.
- Effectively use computer systems, software applications relevant to work performed, and modern business equipment to perform a variety of work tasks.
- Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.
- Establish, maintain, and foster positive and effective working relationships with those contacted in the course of work.

6. Break Requirement:

California law requires that within an 8 hour shift the Operator is entitled to a 30-minute break. This lunch break may be waived by mutual consent of both the Client and the Operator. If the Operator works over 10 hours in one day they are entitled to a second lunch break of 30 min. The second meal period may not be waived if the first period is waived, however either meal period can be counted as work hours and compensated for at the normal hourly rate.

Exhibit B
“Compensation”

Total compensation of this agreement is for a not-to-exceed amount of \$25,000. A breakdown of the compensation is included below:

OTS Fee Schedule	
Temporary Water Meter Reader	Regular Rate: \$85.00/hr

Early Conversion Option

Client has the right, upon notification to OTS, to convert the OTS Temporary Employee to be a permanent Employee. In the event Client chooses to convert the Temporary Employee prior to Temporary Employee completing 800 straight time hours, or approximately 20 weeks, on assignment.

Number of Hours on OTS Payroll	Percent (%) of Employee's Initial Salary
1 – 400 Hours	25%
401 – 600 Hours	20%
601 – 800 Hours	15%
801+ Hours	No Fee

Overtime:

Workweeks are defined as 5 days @ 8 hours per day. Overtime hours, according to the State of California, are defined as any work in excess of eight (8) hours in one normal workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek. These overtime hours shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay. If Operator works more than 12 hours in any workday or works any time in excess of eight hours on the seventh consecutive day of work in a workweek, Operator must be paid two (2.0) times the regular rate. Client will be billed overtime for any hours worked on a recognized holiday.

On-Call Support:

If an Operator is expected to provide On-Call support, they shall be compensated in the following manner:

- **Standby On-Call:** if OTS's Operator is expected to remain in the vicinity of the Client system and in a ready-to-respond status during off hours on a day where they have already worked a shift, this time will be compensated as one (1) regular hour of time. On days where they have not worked a shift and are expected to remain in a ready-to-respond status (off days), time will be compensated as two (2) regular hours of time.
- **Activated On-Call:** if OTS's Operator is called to respond to a system alarm or emergency after hours to Client system, then this time will be charged at a minimum of two (2) hours or for the total duration of time from departure from domicile to return to domicile, whichever is greater. Standard labor laws shall apply if Operator happens to have accrued the appropriate number of hours to constitute overtime.

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT WITH OPERATIONAL TECHNICAL SERVICES;
STH CONTRACT NO: 2022-011 FOR TEMPORARY UNDERGROUND UTILITIES STAFFING FOR
AN ADDITIONAL \$71,742.30 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED
\$96,742.30.**

This First Amendment to Professional Services Agreement STH Contract: 2021-011 dated August 23, 2021 ("Agreement") is made as of this 11th day of October 2022 by and between the City of St. Helena, a municipal corporation ("City"), and Operational Technical Services ("Consultant").

RECITALS

- A. On August 23, 2021, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described as Temporary Water Meter Reader assistance in the underground utilities division; and
- B. Due to a staffing gap caused by a continued extended leave and a recent vacancy in the underground utilities division there was an immediate and urgent need for additional support in this division; and
- C. Additional funding is necessary for the payment of outstanding Operational Technical Services invoices through October 3, 2022; and
- D. The temporary employee applied for, and through the open recruitment process, was hired full time with the City effective October 3, 2022; and
- E. As part of the agreement with OTS, the City is required to pay OTS a percentage of the employee's initial salary; and
- F. The City of St. Helena and Operational Technical Services now desire to amend the Agreement.

AGREEMENT

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

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

"Total compensation shall not exceed \$96,742.30..."

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

Entered as of the day and year first above stated.

CONSULTANT:

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

CITY OF ST. HELENA
a Municipal Corporation

By: _____

Print Name: Anil Comelo

Title: City Manager

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

CITY OF ST. HELENA

RESOLUTION No. 2022 -

A Resolution of the City of St. Helena City Council Authorizing: (1) the City Manager to execute Amendment No. 1 to STH Contract: FY2021-011 with Operational Technical Services for Temporary Underground Utilities Staffing in the amount of \$71,742.30 for a total amount not-to-exceed \$96,742.30; (2) a Water Fund budget increase of \$71,742.30 to 561-5031-2020; and (3) use of Water Operations fund balance of \$71,720.30.

RECITALS

- A. On August 23, 2021, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described as Temporary Water Meter Reader assistance in the underground utilities division; and
- B. Due to a staffing gap caused by a continued extended leave and a recent vacancy in the underground utilities division there was an immediate and urgent need for additional support in this division; and
- C. Additional funding is necessary for the payment of outstanding Operational Technical Services invoices through October 3, 2022; and
- D. The temporary employee applied for, and through the open recruitment process, was hired full-time with the effective October 3, 2022; and
- E. As part of the agreement with OTS, the City is required to pay OTS a percentage of the employee's initial salary; and
- F. The City of St. Helena and Operational Technical Services now desire to amend the Agreement.

RESOLUTION

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

1. Authorize the City Manager to execute Amendment No. 1 to STH Contract: FY2021-011 with Operational Technical Services for a Temporary Underground Utility Operator in the amount of \$71,742.30 for a total amount not-to-exceed \$96,742.30; and

2. Authorize a Water Fund budget increase of \$71,742.30 to 561-5031-2020; and
3. Authorize use of Water Fund Balance in the amount of \$71,742.30.

Approved at a Regular Meeting of the St. Helena City Council on October 11, 2022, by the following vote:

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

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaferopoulos, City Clerk



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: PUBLIC HEARINGS

- Subject:** Consideration and proposed approval the following actions:
1. Finding that none of the conditions specified in State CEQA Guidelines section 15162 require the preparation of a subsequent or supplemental EIR or MND and no additional environmental review is required; and
 2. Introduce and waive first reading of an Ordinance approving a Development Agreement Amendment between the applicant and the City of St. Helena for the LMR Destinations LLC lodging project at 1000 Mills Lane; and
 3. Adopt a resolution making specific findings and approve a Use Permit Amendment for the LMR Destinations LLC lodging project at 1000 Mills Lane.

CEQA Determination: The City has determined that none of the conditions specified in State CEQA Guidelines section 15162 requiring preparation of a subsequent or supplemental EIR or MND would occur.

Prepared By: Maya DeRosa, Community Development Director

Reviewed By: April Mitts, Assistant City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On October 13, 2020, the St. Helena City Council approved Resolution No.2020-100 approving a Use Permit and Design Review for a 65-room hotel. Additionally on October 13, 2020, the City Council introduced Ordinance No. 2020-9, approving a Development Agreement for the subject lodging project and authorized its execution, and adopted that Ordinance on October 27, 2020. The ordinance became effective on November 26, 2020.

Subsequent to these approvals and with the passage of time and conversations about how to address storm water infrastructure, the City found a superior alternative way to address storm drainage from the project. Please refer to the Project Description below for the details of the change.

The Planning Commission considered the proposed Development Agreement Amendment and Use Permit Amendment on September 29, 2022 and voted (4-0) recommending approval to the City Council.

DISCUSSION

PROJECT DESCRIPTION

Amendment to the Development Agreement and Use Permit for the Long Meadow Ranch Lodging Project – 1000 Mills Lane

The City and developer desire to amend certain provisions of the Development Agreement with respect to certain outstanding obligations of Developer under the Development Agreement. The current Development Agreement provides that the Developer would construct Storm Drain Improvements that would extend along Mills Lane and would ultimately discharge into the Napa River. These Storm Drain Improvements were contemplated in the Highway 29 Specific Plan as a means to provide storm water drainage for future development in the Specific Plan area, and were included in the Development Agreement as an additional commitment that the developer agreed to assume in exchange for the vested development rights provided for in the Development Agreement. However, these Storm Drain Improvements are not needed at this time and are not required for this project. The project is designed so that storm water from up to a ten year storm event (i.e., the most severe storm that is likely to occur in a ten year period) would be collected on the project site and infiltrated through underground infiltration chambers maintained as part of the project. If the Storm Drain Improvements are not built, storm water from rains in excess of a ten year storm event can flow into an infiltration system that will be included within the Mills Lane right of way as part of the realignment of Mills Lane. The infiltration system will essentially be a trench that runs adjacent to Mills Lane, and will be designed at a size that will allow it to detain any excess storm water from the project site up to a twenty-five year storm event. Any storm water that would be detained in this infiltration system would then infiltrate into the ground. This is consistent with the storm drainage plan for the project as originally planned, in that the project currently contemplates that storm water inlets from the site into the storm drain would be designed for 25 year storm water flows, and storm water from more severe storm events would flow over land. This change simplifies the storm water infrastructure for this project significantly, and allows for infiltration of storm water runoff from the project. Any savings that the developer receives due to the removal of the requirement to contribute to the cost of the Storm Drain Improvements will instead be put toward the City's cost of developing its recycled water system, or other water conservation measures as deemed appropriate by the City.

The applicant is requesting approval of a Development Agreement Amendment in order to reflect the revised approach to addressing storm drainage from the project site and the additional monetary contribution toward the City's future recycled water project or other water conservation measures. The Development Agreement Amendment also makes changes to the timing of completion of the recycled water improvements and adds clarifying language regarding reimbursement of certain developer costs in developing public improvements for the benefit of the City, as further described below. Lastly, a Use Permit Amendment is also requested in order to update the previously approved conditions of approval that relate to the storm drain.

No changes to the hotel or onsite amenities is proposed by this request.

ANALYSIS **CEQA**

In accordance with the California Environmental Quality Act (CEQA), an Initial Study and Mitigated Negative Declaration (IS/MND) (SCH No. 2020050553) was prepared for the project. The document contains a description of the proposed project, an analysis of potential environmental impacts resulting from the proposed project, as well as mitigation measures intended to reduce potentially significant impacts to less-than-significant levels.

In particular, the IS/MND found that although the proposed project would generate potentially significant impacts related to air quality, biological resources, cultural/tribal resources, hydrology, noise, public services, traffic/transportation, and utilities/service systems, but through the implementation of mitigation measures, all potentially significant impacts would be reduced to less than significant levels. On October 13, 2020, City Council adopted the IS/MND and the Mitigation Monitoring and Reporting Program (MMRP), and approved the project.

On the basis of the whole record, including the IS/MND and MMRP, the City has determined that the minor modifications made to the infrastructure conditions of approval and development agreement terms for the Farmstead property are consistent with the MND and MMRP previously prepared and adopted for the Project on October 13, 2020 and would not result in new impacts or any substantial changes to any significant effects previously identified. Specifically, substantial changes are not proposed in the Project that would require major revisions of the Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects have not occurred; new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Mitigated Negative Declaration was adopted, as applicable, showing any of the following, has not come to light: (i) that the Project would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the

applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt. Thus, based on these findings and all evidence in the record, the City has determined that none of the conditions specified in State CEQA Guidelines section 15162 requiring preparation of a subsequent or supplemental EIR or MND would occur and no additional environmental review is required.

GENERAL PLAN

The nature of this project amendment does not result in any changes to the prior determination that the project is consistent with the adopted 2019 General Plan.

Staff Response: The General Plan requires developer to provide adequate drainage improvements and detention to mitigate storm runoff from the site to the nearest major water way, and require that post-project runoff be limited to pre-project peak flow rates for five year and ten year storms. Developer will still satisfy these standards through the on-site detention included in the design of the project and inclusion of the infiltration system.

HIGHWAY 29 SPECIFIC PLAN

In February 2005, the City adopted the Highway 29 Specific Plan, which outlines circulation changes, roadways extensions, traffic signal installations, and streetscape improvements along the State Route 29 corridor west of the Sulphur Creek Bridge. This project is located within the Highway 29 Specific Plan.

Staff Response: The project, including the proposed amendments to the Development Agreement and Use Permit, remains consistent with the objectives of the Highway 29 Specific Plan. The only substantive change to the project for the developer to provide for the infiltration system rather than the Storm Drain Improvements. The Specific Plan specifically allows for temporary use of storm water detention or retention facilities to address storm water runoff at the discretion of the City Engineer. City staff believes that the infiltration system is an appropriate means of storm water management for this project.

ZONING

The lodging project parcel has zoning designations of Service Commercial (SC) and Twenty-Acre Agriculture (A-20).

The SC designation provides for service and retail uses, restaurants, service stations, motels, public and quasi-public uses, and similar and compatible uses. The designation is intended primarily for service and retail uses that are automobile-oriented or whose operational characteristics and space needs are not considered appropriate for the Central Business District. The A-20 designation provides for agricultural and residential uses. With the exception of those hillside areas designated woodlands and watershed, and wineries designated winery, all lands outside the urban limit line are designated A-20

regardless of their size or use. The purpose of the A-20 district is to promote and implement the policies of the general plan to preserve agricultural land uses and provide for future orderly development as the urban limit line is adjusted to accommodate urban growth.

Staff Response: Pursuant to SHMC Section 17.52.030, a use permit was approved by the City Council in October 2020 to allow a new hotel in the SC district. No changes are proposed to the building site plan and therefore no changes to consistency with development standards.

USE PERMIT / USE PERMIT AMENDMENT

As noted above, SHMC Section 17.52.030 requires use permit approval for the establishment of a new hotel in the SC district. The purpose of a use permit is to allow the proper integration of essential or desirable uses which may be suitable only in certain locations or zoning districts in the City, or to ensure that such uses are designed or arranged on the site in a particular manner. The Resolution No. 2020-100 for the Use Permit included conditions of approval for the storm drain which need to be amended to be consistent with the amended development agreement. There is no change proposed to the hotel and how it will operate. The attached resolution notes in redline revised condition numbers 32, 40, 44, and 67.

In its review of applications for use permits, the Planning Commission shall evaluate each proposed use in order to consider its impact on the City. Pursuant to Municipal Code Section 17.168.050, no use permit shall be granted unless the following findings can be made:

1. That the proposed use would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community.
2. That the proposed use would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties or uses.
3. That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan.
4. That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.
5. That the proposed use would provide adequate ingress and egress to and from the proposed location.
6. That allowing the proposed use would not conflict with the City's goal of maintaining the economic viability of a local serving economy.
7. That the proposed use would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located.
8. That the proposed use would not be in conflict with the City's General Plan.
9. That the proposed use would not be injurious to public health, safety, or welfare.
10. That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan.

11. That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available.
12. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.

Staff Response:

Staff finds that the amended conditions of approval meets and/or complies with the required findings to approve a use permit amendment for the lodging project. The findings included in the attached resolution identify this compliance.

DEVELOPMENT AGREEMENT

A development agreement is a land use tool that is authorized and governed by Government Code Section 65864 et seq. and SHMC Chapter 17.156. Development agreements are voluntary, negotiated agreements entered into between an applicant and the City, pursuant to which the Developer may secure vested rights to develop their property under the rules in place at the time of their approval. In exchange for granting these additional vested rights, the City can negotiate to require the Developer to provide additional community benefits to the City in excess of what the City could require through the normal entitlement process. SHMC Chapter 17.156 requires that the Planning Commission hold a public hearing to consider the Development Agreement and amendments to the Development Agreement and following the public hearing make a recommendation to the City Council on whether to approve the Development Agreement or the Amendment, including making a determination whether the development agreement proposed:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- C. Is in conformity with public convenience, general welfare and good land use practice;
- D. Will be detrimental to the health, safety and general welfare;
- E. Will adversely affect the orderly development of property or the preservation of property values. The recommendation shall include the reasons for the recommendation; and
- F. Will have a sufficient water supply for subdivisions pursuant to the requirements of Government Code Section 66473.7 [*Note: This last finding applies to residential subdivisions of 500 or more lots and therefore is not applicable to this Project*].

Section 17.156.090 (Decision by City Council), sets the following requirements for the City Council's consideration of the development agreement:

- G. After the City Council completes its public hearing, it may accept, modify or disapprove the recommendation of the planning commission. It may, but need not, refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the city council.

- H. The City Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.
- I. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance. After the ordinance approving the development agreement takes effect, the City may enter into the agreement.

Staff Response: As noted in the Background section of this report, the Farmstead Lodging project Development Agreement became effective on November 26, 2020. As the amendment to the Development Agreement involves a change in the monetary contributions by the Developer related to the infrastructure, it meets the definition of a “Major Amendments to Agreement” noted in Article 8.2 of the approved Development Agreement. A Major Amendment requires a public hearing before the Planning Commission and City Council and thus is one of the requested action items discussed in this report. There are two primary areas of revision to the approved Development Agreement (DA):

STORM DRAIN AMENDMENTS

Key components of the changes to the DA include:

- a. Requirement to construct and contribute to the cost of the Storm Drain is deleted.
- b. In place of constructing the storm drain, stormwater from the hotel project in excess of 10 year flows would drain into an infiltration system that would be constructed in the City right of way adjacent to Mills Lane.
- c. The Developer is fully responsible for the design and construction of the stormwater infiltration system improvements.
- d. Exhibit G has been replaced and renamed “Alignment of Infiltration System Improvements”

RECYCLED WATER IMPROVEMENT AMENDMENTS

Key components of the changes to the DA include:

- e. The timing of the deadline to construct the recycled water pipe has been extended to November 1, 2024 (previously November 1, 2022).
- f. A new section of the DA (7.3.5) describes an additional contribution by the developer to the cost of the recycled water improvements or other water conservation measures. The developer is required to pay the City an amount equal to the difference between the developer’s share of the cost of the Storm Drain improvements, and the cost of construction of the infiltration system improvements. The funds paid to the City will be used for the Recycled Water Project or if the Recycled Water Project does not move forward, for other water conservation measures.

The Amendment also clarifies certain provisions related to the reimbursement of costs incurred by the developer for public improvements to be constructed in connection with the project. The Development Agreement requires the developer to pay for the construction certain improvements (including the realignment of Mills

Lane and the installation of recycled water pipe in the Mills Lane right of way), even though developer is only partially responsible for the cost of these improvements. The proposed amendment includes certain edits to make clear that the cost of construction includes planning, design and management of the construction of those public improvements, and that developer will be eligible for reimbursement of those related costs in excess of developer's proportionate share, and to provide for review and approval by the City Engineer of any contracts for such costs to ensure that the expenses incurred by developer are appropriate.

Lastly, City staff is recommending one additional provision to be included in the Development Agreement amendment, which has been negotiated with the Developer since the Planning Commission hearing. City staff is recommending the addition of a new requirement that Developer pay to the City the amount of \$50,000 for the purpose of offsetting costs that the City has incurred in conjunction with the planning and pursuit of regulatory approval for the Storm Drain Improvements and development of this Amendment, including but not limited to legal, staff and consultant costs incurred by the City. The Developer will pay this amount within 180 days of the effective date of the Development Agreement amendment, with authority granted to the City Manager to reasonably extend the payment deadline for not more than 90 days.

The Development Agreement amendment is consistent with SHMC Chapter 17.156 in that the infrastructure changes are consistent and do not preclude full implementation of the adopted General Plan and Highway 29 Specific Plan, does not make any change to compatible uses in the zoning districts, is in conformance with public convenience, general welfare and good land use practice, will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of property or the preservation of property values.

FISCAL IMPACT

There is no new fiscal impact to the City by the implementation of the Farmstead Hotel Development Agreement Amendment.

RECOMMENDED ACTION

For the reasons described above, staff recommends that the City Council:

1. Find that none of the conditions specified in State CEQA Guidelines section 15162 require the preparation of a subsequent or supplemental EIR or MND and no additional environmental review is required; and
2. Introduce and waive first reading of an Ordinance approving a Development Agreement Amendment between the applicant and the City of St. Helena for the LMR Destinations LLC lodging project at 1000 Mills Lane; and
3. Adopt the attached resolution making specific findings and approve a Use Permit Amendment for the LMR Destinations LLC lodging project at 1000 Mills Lane.

ATTACHMENTS

[First Amendment to Development Agreement \(Farmstead\)-FINAL](#)

[Executed Development Agreement](#)

[Ordinance Approving Farmstead DA Amendment-FINAL](#)

[CC Resolution Approving Amendment to Use Permit for Farmstead Project-FINAL](#)

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, California 94574
Attn: City Clerk

Record Without Fee
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF ST. HELENA

AND

LMR DESTINATIONS LLC

Effective Date: _____, 2022

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ST. HELENA
AND LMR DESTINATIONS LLC**

This First Amendment to Development Agreement (“**First Amendment**”), dated as of the Effective Date set forth above, is entered into by and between the City of St. Helena, a California municipal corporation, (“**City**”) and LMR Destinations LLC, a California limited liability company (“**Developer**”) . City and Developer may be referred to individually in this First Amendment as “**Party**” or collectively as “**Parties**.”

RECITALS

A. City entered into a Development Agreement with an effective date of November 26, 2020, and recorded in the Official Records of Napa County as Document No. 2020-0031913 (the “**Development Agreement**”), providing for the development of that certain property located at 1000 Mills Lane, St. Helena in the County of Napa as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”), with a maximum 65 room hotel with ancillary retail and related amenities as more particularly described in the Development Agreement (the “**Project**”).

B. Concurrently with the approval of the Development Agreement, the City took several actions to approve the Project, which actions are more specifically described as the “**Existing Approvals**” in the Development Agreement. Since the approval of the Development Agreement, Developer has been proceeding with the development of the Project in accordance with the requirements of the Development Agreement and the Existing Approvals.

C. City and Developer desire to amend certain provisions of the Development Agreement with respect to certain outstanding obligations of Developer under the Development Agreement. The Development Agreement obligates Developer to construct certain storm drain improvements necessary to install a storm drain along Mills Lane to serve properties on Mills Lane, La Fata Street, Fountain Street, Grayson Avenue, Main Street (to Charter Oak Avenue), and Vidovich Avenue and to construct an outfall for said storm drain into the Napa River (the “Storm Drain Improvements”) as contemplated in the City’s Storm Drain Master Plan dated September 2000. The Storm Drain Improvements are not needed at this time, nor are they required for the Project. The parties therefore desire to eliminate the requirement to construct the Storm Drain Improvements and instead provide that Developer will connect to an infiltration system to be included in the Mills Lane right way. The Parties have further agreed that to the extent Developer experiences financial savings from the as more particularly elimination of Developer’s obligation to contribute to the cost of the Storm Drain Improvements, Developer

shall contribute those financial savings to City for the City's construction of recycled water improvements or other water conservation measures.

D. In addition, the Parties have determined that certain other amendments and/or clarifications to the Development Agreement should be made to reflect the changes described in these recitals.

AGREEMENTS

1. Incorporation of Recitals. The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

2. Amendment to Section 5.1.2. Section 5.1.2 of the Development Agreement is hereby amended and restated in its entirety to read as follows:

"5.1.2. Stormwater Infiltration System. Developer shall, at its sole cost and expense, design and construct stormwater infiltration system improvements adjacent to the Mills Lane Improvements and within the existing public right of way for Mills Lane and on an alignment as generally depicted in Exhibit G attached hereto and incorporated herein by this reference (the "Infiltration System Improvements"), which Infiltration System Improvements shall be designed to retain and infiltrate at a minimum 25 year stormwater flows. The Project shall include inlets from the Project to the Infiltration System Improvements to manage at minimum such 25 year stormwater flows. The Infiltration System Improvements shall be constructed prior to or concurrently with the development of the Project and in accordance with improvement plans approved by the City Engineer and verified to meet the standards for retention and infiltration as set forth herein. Developer shall complete the Infiltration System Improvements prior to the issuance of the first certificate of occupancy for the Project by the City.

5.1.2.1 Determining Cost of Infiltration System Improvements. Within fifteen (15) days following execution by Developer of the construction contract or change order that provides for the construction of the Infiltration System Improvements, Developer shall provide City with written confirmation of the cost of the Infiltration System Improvements, along with documentary support for such costs through the construction contract or change order documenting such improvements, which shall include separate line items as necessary to clearly document the separate cost of the Infiltration System Improvements. The City Engineer shall confirm the cost of the Infiltration System Improvements based on the documentation provided, which confirmation by the City Engineer shall be deemed to constitute the cost of the Infiltration System Improvements.

3. Amendment to Section 5.1.4. Section 5.1.4 of the Development Agreement is hereby amended and restated in its entirety to read as follows:

5.1.4 Recycled Water Improvements. Developer shall construct and install additional piping to convey recycled water in the public right of way in Mills Lane extending from the intersection of Highway 29 and Mills Lane easterly to the eastern end of Mills Lane

(the “**Recycled Water Pipe**”) in a manner as directed by the City Engineer and consistent with plans and specifications as approved by the City and shall be completed prior to November 1, ~~2022~~2024 as a prerequisite for a final certificate of occupancy for the Project. For purposes of this agreement “recycled water” means wastewater treated by the City’s wastewater treatment facility that meets State requirements for reuse, including but not limited to California Department of Public Health regulations contained in Title 17 and Title 22 of the California Code of Regulations. The Recycled Water Pipe shall be designed and at a size as directed by the City Engineer, but is anticipated to be a twelve (12) inch pipe and will be installed in ~~the a~~ a trench constructed in the public right of way for Mills Lane as more specifically set forth in the plans and specifications approved by the City Engineer pursuant to this Section 5.1.4~~for the Storm Drain Improvements~~. Developer shall construct and install the Recycled Water Pipe as a means of offsetting its water requirement in accordance with Chapter 13.12 of the St. Helena Municipal Code. The construction of the Recycled Water Pipe is being conducted in lieu of paying the in-lieu retrofit fee that would otherwise be required of the Project pursuant to Section 13.12.030(B) of the St. Helena Municipal Code.

5.1.4.1 To allow Developer’s Recycled Water Pipe to offset the Project’s use of City water, City shall seek options to improve its wastewater treatment facility to treat wastewater to the above referenced State requirements and shall install necessary piping such that the Recycled Water Pipe is delivering recycled water to Crane Park’s irrigation infrastructure (“Recycled Water Improvements”). City shall pursue efforts to complete these improvements on or before November 1, 2024 subject to CEQA and the right to not build the Recycled Water Improvements in any form. In the event the Recycled Water Improvements are not completed by November 1, ~~2022~~2024 City and Developer will cooperate to identify and implement measures calculated to save potable water in amounts equal to the Project’s use of City water until recycled water is delivered to Crane Park, if ever. Notwithstanding the above, nothing herein shall commit or otherwise require the City, or be interpreted as committing or requiring the City, to approve the Recycled Water Improvements, or any portion thereof. Further, the Parties acknowledge and agree that the City retains full discretionary authority with respect to the Recycled Water Improvements, and may deny or approve the Recycled Water Improvements, or any portion thereof. Similarly, the City retains full authority under CEQA and other environmental laws to impose any and all feasible mitigation to reduce potentially significant impacts and to consider and adopt alternatives to the Recycled Water Improvements, specifically including the “no project” alternative.

4. Amendment to Section 7.3. Section 7.3 is hereby amended and restated in its entirety to read as follows:

7.3 Construction and Reimbursement for Public Improvements. Pursuant to Sections 5.1.1-5.1.5 of this Agreement, Developer is required to construct the Mills Lane Improvements, ~~Storm Drain Infiltration System~~ Improvements, Recycled Water Pipe, and La Fata Sidewalk Improvements, collectively referred to herein as the “**Public Improvements**”. This section sets forth the manner in which the required Public Improvements will be planned, designed and constructed, and provides for reimbursement to Developer for costs incurred in conjunction with

contracts with third parties for the planning, design, construction management and construction of these Public Improvements in excess of Developer's share of such costs.

7.3.1 Planning and Design of Public Improvements. ~~City will undertake and complete the planning and design of the Storm Drain Improvements, including preparation of final design plans, specifications, drawings and related materials as necessary for Developer to issue a request for bids for construction of the Storm Drain Improvements.~~ Developer will undertake and complete the planning and design of the Mills Lane Improvements, Infiltration System Improvements, La Fata Sidewalk Improvements and Recycled Water Pipe, including final design plans, specifications, drawings and related materials as necessary to solicit bids for these improvements, which materials shall be subject to the review and approval by the City Engineer. All third party contracts that Developer will include as part of the cost of the Public Improvements used for purposes of calculating the amount to be reimbursed to Developer pursuant to Section 7.3.4 of this Agreement, including agreement for planning, design and construction management work, shall be subject to the review and approval of the City Engineer to determine the reasonableness of such costs. Developer shall not be eligible for any reimbursement for costs incurred pursuant to such contracts unless and until the contracts are reviewed and approved in writing by the City Engineer, which approval may be granted or withheld in the City Engineer's reasonable discretion.

7.3.2 Construction of Public Improvements. Following completion of the design work described above, Developer shall bid the Mills Lane Improvements, ~~Storm Drain~~ Infiltration System Improvements and Recycled Water Pipe in conformance with all local and state bidding requirements applicable to the City. The City Engineer shall assist Developer as necessary to ensure compliance with applicable bidding requirements. The improvements described above may be bid as a single project, provided that if it is bid as a single project it will be broken into component parts in a manner as approved by the City Engineer, so that the costs of each component part is clearly indicated, to allow for calculation of Developer's share of the cost of each of the required Public Improvements in accordance with this section. The Developer shall bid the La Fata Sidewalk Improvements in a manner as Developer deems appropriate. Developer shall award and enter into the contracts for all the Public Improvements and shall be solely responsible for all project and construction management activities. The Public Improvements shall be inspected and accepted by the City at the appropriate times in accordance with the City's customary practice and processes.

7.3.3 Developer Share of Public Improvement Costs. Developer shall be solely responsible to pay the full cost of planning, designing, construction management, and constructing the Public Improvements described herein, but shall be entitled to reimbursement from the City for portion of such costs in excess of the Developer's share of such costs. Developer's share of the cost of each of the required Public Improvements is as follows:

7.3.3.1 Developer's share of the cost of the Mills Lane Improvements shall be forty-one percent (41%) of the planning, design, construction management and construction costs attributable to the Mills Lane

Improvements as set forth in the bid documents for such improvements, including any change orders for such improvements and third party contracts for planning, design and construction management services that are reviewed and approved by the City Engineer.

7.3.3.2 Developer's share of the cost of the ~~Storm-Drain Infiltration System~~ Improvements shall be ~~eighteen~~ one hundred percent (100%) of the planning, design, construction management, and construction costs attributable to the ~~Storm-Drain~~ Infiltration System Improvements as set forth in the bid documents for such improvements, including any change orders for such improvements and third party contracts for planning, design and construction management services that are reviewed and approved by the City Engineer.

7.3.3.3 Developer shall pay the full planning, design, construction management and construction cost attributable to the Recycled Water Pipe as set forth in the bid documents for such improvements, including any change orders for such improvements and third party contracts for planning, design and construction management services that are reviewed and approved by the City Engineer up to a maximum amount of Two Hundred Fifty-Six Thousand Five Hundred Forty-Nine Dollars (\$256,549). Any planning, design, construction management and construction costs approved by the City Engineer in excess of this maximum amount shall be subject to reimbursement by the City in accordance with Section 7.3.4.

7.3.3.4 Developer shall pay the full cost of planning, design, construction management and construction of the La Fata Sidewalk Improvements with no reimbursement from the City.

7.3.3.5 The amounts for which Developer is solely responsible as set forth above are collectively referred to herein as the "Developer's Share of Public Improvements."

7.3.4 Reimbursement for Costs in Excess of Developer's Share of Public Improvements.

7.3.4.1 Following construction of the Public Improvements by Developer and acceptance of said Public Improvements by the City, the City shall reimburse Developer for the planning, design, construction management and construction costs of the Public Improvements approved by the City Engineer and in excess of the Developer's Share of Public Improvements, as set forth in the bid documents for such Public Improvements, including any change orders and third party contracts for planning, design and construction management services reviewed and approved by the City Engineer, in the manner set forth below. Developer shall, within sixty (60) days following the date when all of the Public Improvements have been accepted by the City, submit to the City Engineer a calculation of the dollar amount of Developer's Share of Public Improvements, along with all supporting documentation for such

calculation as requested by the City Engineer, including but not limited to the construction contracts for all of the Public Improvements and all change orders for the Public Improvements, as well as all third party contracts for planning, design and construction management services, and invoices documenting costs incurred thereunder. Within thirty (30) days of such submission, City Engineer shall notify Developer in writing of the City Engineer's final determination of the Developer's Share of Public Improvements, and the total amount to be reimbursed to Developer pursuant to this Section 7.3.4. In the event of any dispute between the parties as to the calculation of the amount to be reimbursed to Developer for such costs, the parties shall meet and confer in an effort to resolve such disputes prior to taking any other action pursuant to this Agreement.

7.3.4.2 City shall reimburse Developer an amount equal to fifty percent (50%) of the Transient Occupancy Tax ("**TOT**") received by the City from Developer pursuant to Chapter 3.28 of the St. Helena Municipal Code, until the approved planning, design, construction management and construction costs in excess of Developer's Share of Public Improvements have been reimbursed to Developer in full. Reimbursement shall be made on a quarterly basis within thirty (30) days after the City has confirmed the amount of TOT paid by Developer for the prior quarter, provided that the City may, at its discretion, make additional or larger payments to the Developer toward to the total reimbursement amount. City may use any source of funds it deems appropriate to make the reimbursement payment required hereunder, including general fund moneys, impact fees as appropriate for the constructed improvements or other funds available to pay for the construction of capital improvements. City's obligation to reimburse Developer pursuant to this section shall survive the expiration of the Term and any Extended Term.

7.3.5 Developer contribution to Recycled Water Improvements. Developer shall separately pay directly to the City an amount equal to the difference between (i) eighteen percent (18%) of the projected cost of the Storm Drain Improvements that were to be constructed by Developer prior to the adoption of the First Amendment (which cost the Parties stipulate is Seven Hundred Sixty-Three Thousand Eight Hundred Forty Dollars (\$763,840) based on the low bid received by Developer for such work) ("**Developer's Storm Drain Improvements Cost Share**") and (ii) the cost of construction of the Infiltration System Improvements (specifically excluding the planning, design and construction management costs) as determined pursuant to Subsection 7.3.3.2 above to be used by City for the construction of the Recycled Water Improvements as described in Section 5.1.4.1 of this Agreement, or if the City does not proceed with construction of the Recycled Water Improvements, for such water conservation measures as the City deems appropriate in its sole discretion (the "**Recycled Water Contribution**"). The Recycled Water Contribution shall be paid to City by Developer within thirty (30) days following confirmation of the cost of the Infiltration System Improvements by the City Engineer pursuant to Section 5.1.2 of this Agreement.

5. Additional Payment for City Costs. In addition to other consideration provided by Developer pursuant to the Agreement as amended herein, Developer shall pay to the City the

amount of Fifty Thousand Dollars (\$50,000) (the “**Developer Amendment Payment**”) for costs incurred by the City in conjunction with the planning and pursuit of regulatory approval for the Storm Drain Improvements and development of this Amendment, including but not limited to legal, staff and consultant costs incurred by the City. The Developer Amendment Payment shall be paid in a single payment on or before one hundred eighty (180) days following the effective date of this Amendment, which is thirty (30) days following approval by the City Council, provided that the City Manager may extend the deadline for payment of the Developer Amendment for a period not to exceed ninety (90) additional days, based on City Manager’s determination that Developer is making reasonable progress on the Project.

6. Amendment to Exhibit D. Exhibit D to the Development Agreement (“Existing Approvals”) shall be modified and amended to incorporate the Amendments to Existing Approvals as attached to this First Amendment as Exhibit B and incorporated herein by this reference. Except as specifically modified or amended by Exhibit B to this First Amendment, Exhibit D to the Development Agreement shall remain in full force and effect.

7. Amendment to Exhibit G. Exhibit G to the Development Agreement (“Storm Drain Improvements”) is hereby deleted and is replaced with the Exhibit G attached to this Amendment and incorporated herein by this reference, which depicts the alignment of the Infiltration System Improvements.

8. Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A: Property Description

Exhibit B. Amendments to Existing Approvals

Exhibit G. Alignment of Infiltration System Improvements

9. Except as modified by this First Amendment, all terms and conditions of the Development Agreement remain unchanged and are in full force and effect.

10. This First Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF ST. HELENA, a municipal corporation

By: _____
Anil Comelo, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Cindy Tzaopoulos, City Clerk

APPROVED AS TO FORM:

By: _____
Ethan Walsh, City Attorney

DEVELOPER:

LMR DESTINATIONS LLC, a California limited liability company

By: Long Meadow Ranch Partners, L.P.
a California limited partnership
Its: Manager

By: LMR GP LLC,
a California limited liability company
Its: General Partner

By: _____
Ted W. Hall,
Its Manager
[Signature must be notarized]

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited
 ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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WITNESS my hand and official seal.

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☐ Other:

Signer is representing:
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STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

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Signature of Notary Public

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☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT A

Legal Description for the Property

[Attached behind this cover page]

Exhibit A

83578.00106\40671059.11

Escrow Number: P-253830-JR (3)

NEW ALBION SURVEYS, Inc
CONSULTING LAND SURVEYORS1113 Hunt Avenue St. Helena, CA 95474
(707) 963-1217 ♦ FAX (707) 963-1829
E-Mail: jwebb@albionsurveys.comJanuary 26, 2018
Rev February 17, 2021**Exhibit "A"****DESCRIPTION**
Proposed LMR Parcel

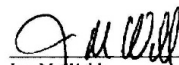
All that real property situate in the City of St Helena, County of Napa, State of California, being a portion of the lands described in the Grant Deed to David A. Gold and Katherine A. Gold, Trustees of the David A. Gold and Katherine A. Gold Living Trust recorded November 3, 2002 as instrument number 2002-0044827 in the Official Records of Napa County and also being portions of Parcel One, Parcel Two, Parcel Three and Parcel Four as shown on the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County, said portions being more particularly described as a whole as follows:

Beginning at a point on the northwest line of Parcel Two as shown on the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County, said point being North 31°15'00" East 75.00 feet along said northwest line from the most western corner of said Parcel Two and thence leaving said northwest line and running along a line which runs parallel with, and lies 75.00 feet northerly of the southwest line of said Parcel Two, South 59°13'30" East 184.00 feet to the intersection with the southeast line of said Parcel Two; thence along said southeast line and the southeast lines of said Parcel Four, Parcel Three and Parcel One North 31°15'00" East 873.85 feet to the most eastern corner of said Parcel One; thence along the northeast and northwest lines of said Parcel One North 58°45'00" West 640.00 feet and South 31°15'00" West 575.38 feet to the most western corner thereof, said western corner also being the most northern corner of said lands of Gold; thence along the northwest line of said lands of Gold South 31°15'00" West 378.78 feet to the most western corner thereof; thence along the southwest line of said lands of Gold South 59°13'30" East 50.00 feet; thence leaving said southwest line and running along a line which runs parallel with, and lies 50.00 feet southeasterly of said northwest line of Gold, North 31°15'00" East 455.37 feet; thence parallel with the northeast line of said lands of Gold South 58°45'00" East 246.00 feet; thence parallel with said northwest line of Gold South 31°15'00" West 77.00 feet to the intersection with said northeast line of Gold; thence along said northeast line South 58°45'00" East 160.01 feet to the most eastern corner thereof, said eastern corner also being the most northern corner of said Parcel Two; thence along said northwest line of Parcel Two South 31°15'00" West 300.00 feet, more or less, to the Point of Beginning.

The Basis of Bearings of this description is the map entitled, "Parcel Map of the Lands of Carl Doumani" recorded March 18, 2009 and filed in Book 26 of Parcel Maps, at Pages 22 and 23 of Official Records of Napa County

End of Description

Prepared from record data under the direction of the undersigned on behalf of New Albion Surveys, Inc.


Jon M. Webb
Licensed Land Surveyor No. 6709
Certificate renewal date: June 30, 2022



2-17-21
Date

L:\Desc\3775 LLA Legals

K:\CIVIL3D PROJ\3775\doc\3775-01 LLA\3775 LLA Legals.doc

ds/LAST PRINTED 2/17/2021 1:50 PM

The consolidation of underlying lots, parcels or portions thereof, as set forth in the above description, constitutes an expressed written statement of the grantor, merging said underlying lots, parcels or portions thereof pursuant to Section 1093 of the California Civil Code.

EXHIBIT B
AMENDMENTS TO EXISTING APPROVALS

[to be inserted]

EXHIBIT G
ALIGNMENT OF INFILTRATION SYSTEM IMPROVEMENTS

[to be inserted]

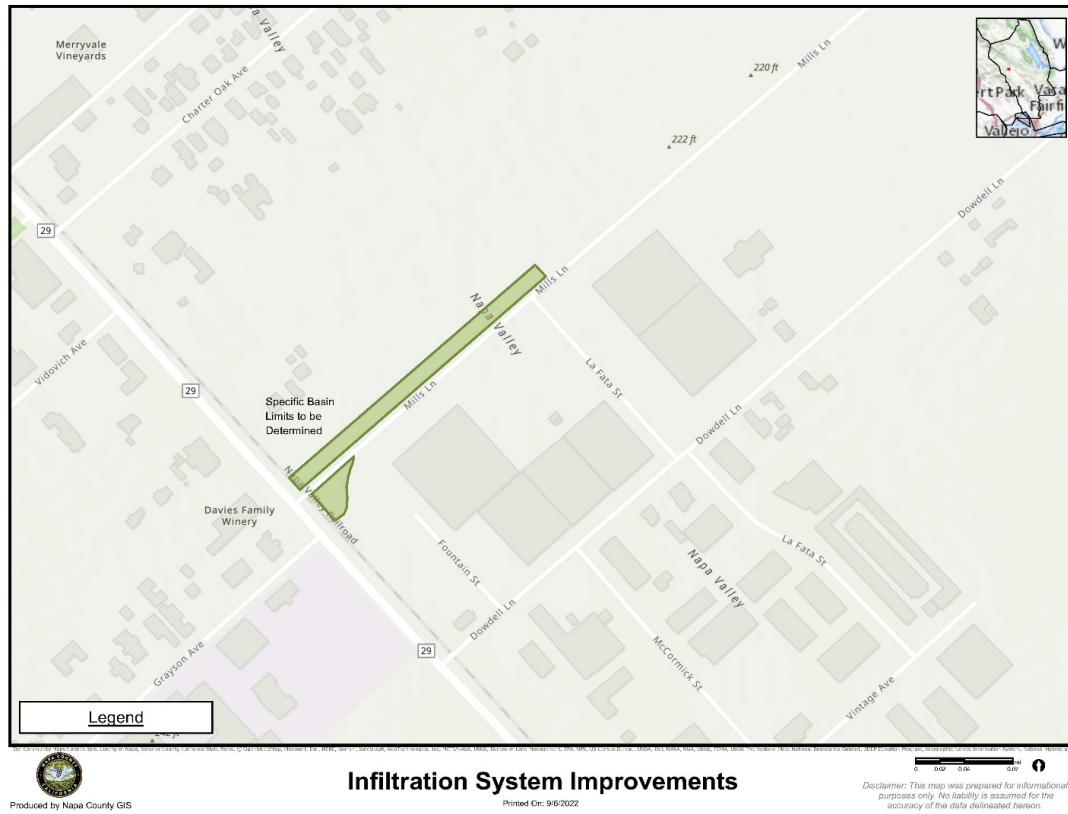


Exhibit G

83578.00106/40671059.11

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

Record Without Fee
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF ST. HELENA

AND

LMR DESTINATIONS LLC

Effective Date: November 26, 2020

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	3
1.1 Definitions.....	3
ARTICLE 2 EFFECTIVE DATE AND TERM	7
2.1 Effective Date	7
2.2 Initial Term of Agreement	7
2.3 City Representations and Warranties.....	8
2.4 Developer Representations and Warranties	8
ARTICLE 3 DEVELOPMENT OF THE PROPERTY.....	9
3.1 Vested Rights	9
3.2 Applicable Law	9
3.3 Development Timing	10
3.4 Regulation by Other Public Agencies.....	10
3.5 Life of Project Approvals.....	11
3.6 Developer’s Right to Rebuild	11
3.7 State and Federal Law.....	11
3.8 Subsequent Development Review	11
3.9 Effective Development Standards.....	11
3.10 Moratoria.....	12
ARTICLE 4 FEES	12
4.1 Impact Fees and Exactions.....	12
4.2 Processing Fees	12
4.3 Other Agency Fees.....	12
4.4 Connection Fees.....	12
ARTICLE 5 DEVELOPER OBLIGATIONS	13
5.1 Developer Obligations	13
5.2 City of St. Helena Business License	16
5.3 Sales Tax Point of Sale Designation.....	16
ARTICLE 6 ANNUAL REVIEW	16
6.1 Annual Review.....	16
ARTICLE 7 COOPERATION AND IMPLEMENTATION	17
7.1 Subsequent Approvals	17

TABLE OF CONTENTS
(continued)

	Page
7.2 Processing Applications for Subsequent Approvals	18
7.3 Construction and Reimbursement for Public Improvements.....	18
ARTICLE 8 AMENDMENT OF AGREEMENT AND PROJECT APPROVALS	20
8.1 Amendment by Written Consent	20
8.2 Major Amendments to Agreement.....	20
8.3 Minor Amendment.....	20
8.4 Requirement for Writing.....	21
8.5 Subsequent CEQA Review	21
ARTICLE 9 INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE	21
9.1 Insurance Requirements.....	21
9.2 Indemnity and Hold Harmless	21
9.3 Defense and Cooperation in the Event of a Litigation Challenge	22
9.4 Prevailing Wages	22
ARTICLE 10 TRANSFER AND NOTICE.....	23
10.1 Transfer	23
10.2 Successive Transfer	24
ARTICLE 11 MORTGAGEE PROTECTION	24
11.1 Mortgagee Protection.....	24
11.2 Mortgagee Not Obligated	24
11.3 Notice of Default to Mortgagee	24
11.4 No Supersedure	25
ARTICLE 12 DEFAULT; REMEDIES; TERMINATION	25
12.1 Breach and Default	25
12.2 Failure to Cure Default Procedure	25
12.3 Withholding of Permits.....	25
12.4 Termination.....	26
12.5 Specific Performance for Violation of a Condition	26
12.6 Legal Actions	26
12.7 Rights and Remedies Are Cumulative	26
12.8 No Damages.....	27

TABLE OF CONTENTS
(continued)

	Page
12.9 Resolution of Disputes.....	27
12.10 Remedies upon Transfer or Assignment.....	27
12.11 Appeals to City Council.....	27
12.12 Surviving Provisions.....	27
ARTICLE 13 GENERAL PROVISIONS	28
13.1 Covenants Binding on Successors and Assigns and Run with Land	28
13.2 Notice.....	28
13.3 Permitted Delays.....	28
13.4 Counterparts.....	29
13.5 Waivers	29
13.6 Construction of Agreement.....	29
13.7 Headings	29
13.8 Severability	29
13.9 Time is of the Essence	29
13.10 Extension of Time Limits	30
13.11 Signatures.....	30
13.12 Entire Agreement.....	30
13.13 Estoppel Certificate.....	30
13.14 Recordation of Termination.....	30
13.15 City Approvals and Actions.....	30
13.16 Negation of Partnership	30
13.17 No Third Party Beneficiaries	31
13.18 Governing State Law	31
13.19 Recordation.....	31
13.20 Exhibits	31
Exhibit A: Property Description	
Exhibit B: Site Map	
Exhibit C: Project Description	
Exhibit D: Existing Approvals	
Exhibit E: Applicable Law & Project Approval Excerpts	
Exhibit F: Mills Lane Improvements	
Exhibit G: Storm Drain Improvements	
Exhibit H: La Fata Sidewalk Improvements	

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”), dated as of the Effective Date, is entered into by and between the City of St. Helena, a California municipal corporation (“**City**”) and LMR Destinations LLC, a California limited liability company (“**Developer**”). Developer and City may be referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

R E C I T A L S

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of St. Helena enacted Municipal Code Chapter 17.156 (“**Development Agreement Regulations**”), which authorizes the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.”

C. Developer is the owner of that certain real property located at 1000 Mills Lane, St. Helena in the County of Napa, State of California and more particularly described and depicted in Exhibits A and B attached hereto and incorporated herein (the “**Property**”).

D. Developer has applied to the City to construct on the Property a maximum 65 room hotel with ancillary retail and related amenities (the “**Project**”). The Project is more fully described in Exhibit C, Project Description, and incorporated herein by reference.

E. The Project is the subject of a mitigated negative declaration (“MND”) prepared pursuant to the California Environmental Quality Act (“**CEQA**”) (Public Resources Code section 21000 *et seq.*) and approved by Resolution No. 2020-100 adopted by the City Council on October 13, 2020.

F. Prior to or concurrently with approval of this Agreement, the City will take several actions to review and plan for the future development and use of the Project (“**Existing Approvals**”). These include:

1. Ordinance No. 2020-9 approving this Agreement;
2. Resolution No. 2020-100 approving the Use Permit and Design Review for the Project;

3. Resolution No. 2020-100 approving the Lot Line Adjustment, Lot Merger, and Variance required for the Project; and

4. Resolution No. 2020-100 approving the MND.

A copy of the Existing Approvals are attached hereto as Exhibit D.

G. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project, which are or will be the subject of subsequent development applications and land use entitlements.

H. City finds that the Agreement will promote orderly growth and quality development in accordance with the goals and policies set forth in the General Plan; is compatible with the uses authorized in, and the regulations prescribed for, the district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

I. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and requirements set forth herein.

J. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Municipal Code section 17.156.070. The City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and found that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

K. On October 13, 2020 the City Council introduced Ordinance No. 2020-9 approving this Agreement and authorizing its execution, and adopted that Ordinance on October 27, 2020. The Ordinance became effective on November 26, 2020.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

"Affiliate" means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the applicable person or entity, whether by direct or indirect ownership of equity interests, by contract or otherwise.

"Agreement" shall mean this Development Agreement between City and Developer, including all Exhibits hereto.

"Applicable Law" is defined in Section 3.2.

"CalTrans" means the California Department of Transportation.

"CEQA" means the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, as amended from time to time.

"CEQA Guidelines" means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, *et seq.*), as amended from time to time.

"Changes in the Law" is defined in Section 3.7.

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

"City Council" means the City Council of the City of St. Helena.

"City Manager" means City's City Manager or his or her designee.

"City Parties" means and includes City and its elected and appointed officials, officers, employees, attorneys, contractors and representatives.

"Claims" means liabilities, obligations, orders, claims, damages, fines, penalties, and expenses, including attorneys' fees and costs.

"Connection Fees" means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

"Control" means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

"Controlling" and "Controlled" mean and refer to exercising or having Control.

"Default" is defined in Section 12.1.

"Developer" means LMR Property Acquisition Partners LLC and its permitted successor and assigns.

"Development Agreement Law" is defined in Recital B.

"Development Agreement Regulations" is defined in Recital B.

"Development Agreement Statute" is defined in Recital A.

"Discretionary Action" or **"Discretionary Approval"** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board, commission or department or any officer or employee of the City, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City, including any board, commission or department or any officer or employee of the City, to determine whether there has been compliance with statutes, ordinances or regulations.

"Effective Date" means the date that this Agreement becomes effective as determined under Section 2.1.

"Enacting Ordinance" refers to the Ordinance identified in Recital K.

"Exactions" means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable Law, including, but not limited to, the Highway 29 Specific Plan. For purposes of this Agreement, Exactions do not include Impact Fees.

"Existing Approvals" means and includes those permits and approvals for the Project granted by City to Developer as of the Effective Date as set forth in Recital F.

"Extension Term" is defined in Section 2.2.1.

"General Plan" means the City of St. Helena's General Plan, as amended from time to time.

"Highway 29 Specific Plan" means the Highway 29 Specific Plan approved by the City Council of the City of St. Helena on February 22, 2005.

"Housing Fees" means the nonresidential development project housing impact fees charged by the City to further affordable housing pursuant to Municipal Code section 17.146.040.

"Impact Fees" means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the

development project, including, any “fee” as that term is defined by Government Code section 66000(b).

“**Initial Term**” is defined in Section 2.2.

“**Litigation Challenge**” is defined in Section 9.3.

“**Major Amendment**” is defined in Section 8.2.

“**Minor Amendment**” is defined in Section 8.2.

“**MND**” is defined in Recital F.

“**Mortgage**” means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer’s rights under this Agreement

“**Mortgagee**” means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

“**Municipal Code**” means and refers to the City of St. Helena’s Municipal Code, as amended from time to time.

“**New City Laws**” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“**Notice of Breach**” is defined in Section 12.1.

“**Other Agency Fees**” is defined in Section 4.3.

“**Permitted Delay**” is defined in Section 13.3.

“**Permitted Transfer**” means any of the following types of Transfer by Developer, which unless otherwise provided do not require the City’s prior written approval:

1. Any Transfer to a lender pursuant to a Security Instrument as collateral for financing to pay all or any part of the cost of construction of the Project; or pursuant to a Security Instrument as collateral for a permanent financing for the Project.
2. Any Transfer directly resulting from the foreclosure or deed in lieu of foreclosure of a Security Instrument for a loan from a Lender for construction or permanent financing for the Project or as otherwise permitted under Article 11.
3. Any Transfer of stock or equity in the Developer that does not change management or operational Control of the Project, with no material change in beneficial ownership (with the exception of any conveyance to member(s) of the immediate family(ies) of

the transferor(s) or trusts for their benefit) and which constitutes a tax-free transaction under Federal income tax law and California real estate transfer tax.

4. A Property Transfer from Developer to an Affiliate provided that such Affiliate is Controlled by Long Meadow Ranch Partners, L.P., a California limited partnership.

“Planning Commission” means the City of St. Helena Planning Commission.

“Processing Fees” means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

“Project Approvals” means the Existing Approvals and all Subsequent Approvals.

“Project” is defined in Recital D.

“Property” is defined in Recital C.

“Property Transfer” means and refers to any “change in ownership,” as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

“Security Instrument” means any security instrument, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Lender (as applicable), then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a security instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

“Subdivision Map Act” means California Government Code sections 66410 through 66499.58, as it may be amended from time to time.

“Subsequent Approvals” is defined in Section 7.1.

“Term” means the Initial Term plus any Extension Term, if such Extension Term is granted under the terms of this Agreement.

“Total Cost” is defined in Section 7.3.1.

“Traffic Fees” means Impact Fees charged by the City to finance circulation improvements including those Impact Fees charged pursuant to Municipal Code section 3.32.100.

“Transfer” means any of the following:

1. Any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); or
2. Any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect equity interest(s) in the owner of such property, right or obligation by the holders of such equity interest(s); or
3. Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or
4. Any Property Transfer; or
5. The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Property or the Project.

“Transient Occupancy Tax” means those taxes levied by City pursuant to Municipal Code chapter 3.28, which are collected and remitted to City by hotel operators.

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 **Effective Date.** The Effective Date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that the Enacting Ordinance is adopted, or (b) the date this Agreement is fully executed by the Parties. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded in the official records of Napa County no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

2.2 **Initial Term of Agreement.** The **“Initial Term”** of this Agreement shall commence on the Effective Date and shall expire on the fifth (5th) anniversary of the Effective Date, unless earlier terminated.

2.2.1 **Extension of Initial Term.** The Initial Term of this Agreement may be extended from the date of expiration of the Initial Term until the date which is five (5) years following the expiration of the Initial Term (**“Extension Term”**), provided that at the end of the Initial Term: (a) Developer is not, at the time, in Default of any of its obligations hereunder following notice and expiration of applicable cure periods; (b) the applicable Developer warranties and representations in Section 2.4 below continue to be true and correct; and (c) no event has occurred which with the passage of time or giving of notice or both would constitute a Default by Developer hereunder. Following the expiration of the Term, or the earlier completion

of development of the Project and satisfaction of all of Developer's obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect; provided, however, that this termination shall not affect reimbursements to Developer under Section 7.3, Developer's obligation to pay the Affordable Housing Payment pursuant to Section 5.1.6, or any right or duty arising from entitlements or approvals, including the Project Approvals concurrently with, or subsequent to, the Effective Date. The Initial Term or Extension Term, as applicable, shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to New City Laws that are necessary to protect the physical health and safety of the public that are uniformly applied on a City-wide basis.

2.2.2 Memorandum of Extension. If the Extension Term is granted, City and Developer agree to execute, acknowledge and record in the official records of Napa County a memorandum evidencing approval of the Extension Term.

2.3 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.3.2 The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

2.3.4 During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written notice of such fact or condition to Developer.

2.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.4.1 Developer is duly organized and validly existing under the laws of the State of California, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.4.2 The execution and delivery of this Agreement and the necessary performance of the obligations of Developer hereunder have been duly authorized by all necessary company action and all necessary member approvals have been obtained.

2.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.4.4 Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

2.4.5 During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Approvals, the Subsequent Approvals, Applicable Law and this Agreement, which shall, among other things, control the permitted uses, density and intensity of use of the Property, requirements for on- and off-site infrastructure and public improvements, the Exactions, and the maximum height and size of buildings on the Property.

3.2 Applicable Law. City and Developer acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, "**Applicable Law**");

3.2.1 Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement. For purposes of convenience and clarity and to provide a centralized set of reference documents, Exhibit E describes and attaches portions of the Project Approvals and the Applicable Law, which sets forth the applicable development standards, including permitted uses, density and intensity of uses, maximum size and height of buildings, and exactions that are vested through this Agreement. The parties do not intend for Exhibit E to limit any vested rights or other rights or obligations specifically contemplated or conferred by this Agreement;

3.2.2 With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights and sizes, requirements for on- and off-site infrastructure and public improvements, in force and effect on the Effective Date;

3.2.3 New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.4 New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.5 New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.6 New City Laws that do not conflict with this Agreement or the Project Approvals, provided such new City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

3.2.7 New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.3 Development Timing. City and Developer acknowledge that Developer cannot at this time predict what portions of the Project will be included within any phase of the Project, when or the rate at which the phases will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement or the Project Approvals, Developer's vested rights under this Agreement include the right to develop the Property and the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its discretion, subject to the terms, requirements and conditions of the Project Approvals and this Agreement.

3.4 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall

have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

3.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be the longer of the Term or the term otherwise applicable to such Project Approval.

3.6 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term should it become necessary due to any casualty, including natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval consistent with all prior Project Approvals and Applicable City Law. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, Applicable City Law, and the requirements of CEQA.

3.7 State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one (1) or more provisions of this Agreement, the City and Developer shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project any such Changes in the Law. If Changes in the Law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

3.8 Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Law. However, any subsequent Discretionary Action or Discretionary Approval initiated by Developer that is not otherwise permitted by or contemplated in the Project Approvals, which changes the uses, intensity, density, building height or timing of the Project, or decreases the lot area, setbacks, yards, parking or other entitlements permitted on the Property shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

3.9 Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use and density on the Property which are permitted by this Agreement, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Law. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any Discretionary Action or Discretionary Approval which must be issued by the City in order for the Project to proceed, provided that Developer reasonably and satisfactorily complies with all preliminary procedures, actions, payments of Processing Fees, and criteria generally required of

developers by the City for processing applications for developments and consistent with this Agreement.

3.10 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise after the Effective Date, which relates to the rate, timing, or sequencing of the development or construction on all or any part of the Property, including, without limitation, any ordinance, resolution or other measure restricting or precluding the issuance of building permits, the City agrees that the ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless the changes are both (a) found by the City to be necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis.

ARTICLE 4 FEES

4.1 Impact Fees and Exactions. City may charge and, subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Impact Fees, Developer shall pay any and all Impact Fees imposed by City, including new Impact Fees adopted after the Effective Date; provided, however, City shall only require Developer to pay new Impact Fees (including increases in Impact Fees) that are uniformly applied by City to all substantially similar types of Development Projects and properties. Pursuant to St. Helena Municipal Code Section 17.146.040, Developer shall pay Traffic Fees upon City's issuance of a certificate of occupancy, while all other Impact Fees shall be paid prior to issuance of a building permit. In addition, City may impose and Developer shall comply with those Exactions required by this Agreement and the Project Approvals. Notwithstanding anything to the contrary contained in this Section 4.1, except as otherwise specifically provided in Section 3.2 above, in no event shall the City impose any additional Exactions (beyond those set forth in the Existing Approvals and this Agreement) in connection with the development of the Project, as long as such development is substantially consistent with the Project Approvals.

4.2 Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and Developer agrees to pay any and all Processing Fees which are in effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

4.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

4.4 Connection Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection Fee that is lawfully adopted.

ARTICLE 5 DEVELOPER OBLIGATIONS

5.1 Developer Obligations. In consideration of the rights and benefits conferred by City to Developer under this Agreement, Developer shall perform the public benefit obligations and pay to City the contributions set forth in this Article 5 all within the times set forth herein.

5.1.1 Mills Lane Improvements. Developer shall construct improvements to Mills Lane as depicted in Exhibit F (“**Mills Lane Improvements**”), which are consistent with City’s Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the first certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer, and before Developer receives a final certificate of occupancy for the Project.

5.1.2 Storm Drain Improvements. Developer shall construct those certain storm drain improvements necessary to extend and improve the storm drain along Mills Lane to serve properties on Mills Lane, La Fata Street, Fountain Street, Grayson Avenue, Main Street (to Charter Oak Avenue), and Vidovich Avenue and to construct an outfall for said storm drain into the Napa River (the “**Storm Drain Improvements**”). The Storm Drain Improvements shall be designed by City in accordance with the City’s long-standing plan for this separate project as contained in City’s Storm Drain Mater Plan dated September 2000 (*see* Table 4-1) and the Highway 29 Specific Plan (*see* pages 37-39, Exhibit 11), and are depicted in Exhibit G. City shall further be responsible for permitting required for the Storm Drain Project, which are anticipated to include permits from the California Department of Fish and Wildlife, San Francisco Regional Water Quality Control Board and Army Corps of Engineers. Developer shall commence construction of the Storm Drain Improvements after the City has secured the permits required for the Storm Drain Improvements, provided, however, that the Storm Drain Improvements shall be completed before the Developer receives a final certificate of occupancy for the Project.

5.1.3 La Fata Sidewalk Improvements. Developer shall design and construct those certain sidewalk improvements on the west side of La Fata Street as depicted in Exhibit H (the “**La Fata Sidewalk Improvements**”). Developer shall construct the La Fata Sidewalk in accordance with improvement plans as approved by the City Engineer. The La Fata Sidewalk Improvements shall be constructed concurrently with the Project and shall be completed prior to issuance of a final certificate of occupancy for the Project. In the event that the Developer secures access to an alternate employee parking lot prior to occupancy of the Project where Developer’s employees will no longer utilize the La Fata Sidewalk Improvements to access the Project site, the Developer may request that the City consider such alternate parking lot as an acceptable location for employee parking. In the event City approves such alternative parking lot for employee parking, which approval City may grant or deny in its sole discretion, Developer shall be relieved of the obligation to construct the La Fata Sidewalk Improvements pursuant to this Section 5.1.3.

5.1.4 Recycled Water Improvements. Developer shall construct and install additional piping to convey recycled water in the public right of way in Mills Lane extending from Highway 29 easterly to the eastern end of Mills Lane (the “**Recycled Water Pipe**”) in a

manner as directed by the City Engineer and shall be completed prior to November 1, 2022 as a prerequisite for a final certificate of occupancy for the Project. For purposes of this agreement “recycled water” means wastewater treated by the City’s wastewater treatment facility that meets State requirements for reuse, including but not limited to California Department of Public Health regulations contained in Title 17 and Title 22 of the California Code of Regulations. The Recycled Water Pipe shall be designed and at a size as directed by the City Engineer, but is anticipated to be a twelve (12) inch pipe and will be installed in the trench constructed for the Storm Drain Improvements. Developer shall construct and install the Recycled Water Pipe as a means of offsetting its water requirement in accordance with Chapter 13.12 of the St. Helena Municipal Code. The construction of the Recycled Water Pipe is being conducted in lieu of paying the in-lieu retrofit fee that would otherwise be required of the Project pursuant to Section 13.12.030(B) of the St. Helena Municipal Code.

5.1.4.1 To allow Developer’s Recycled Water Pipe to offset the Project’s use of City water, City shall seek options to improve its wastewater treatment facility to treat wastewater to the above referenced State requirements and shall install necessary piping such that the Recycled Water Pipe is delivering recycled water to Crane Park’s irrigation infrastructure (“Improvements”). City shall pursue efforts to complete these improvements on or before November 1, 2022, subject to CEQA and the right to not build the Improvements in any form. In the event the Improvements are not completed by November 1, 2022, City and Developer will cooperate to identify and implement measures calculated to save potable water in amounts equal to the Project’s use of City water until recycled water is delivered to Crane Park, if ever. Notwithstanding the above, nothing herein shall commit or otherwise require the City, or be interpreted as committing or requiring the City, to approve the Improvements, or any portion thereof. Further, the Parties acknowledge and agree that the City retains full discretionary authority with respect to the Improvements, and may deny or approve the Improvements, or any portion thereof. Similarly, the City retains full authority under CEQA and other environmental laws to impose any and all feasible mitigation to reduce potentially significant impacts and to consider and adopt alternatives to the Improvements, specifically including the “no project” alternative.

5.1.5 Affordable Housing. In lieu of paying the City’s nonresidential development project housing impact fee pursuant to City of St. Helena Municipal Code Section 17.146.040, Developer shall make a payment in the amount and manner set forth in this Section 5.1.6. Developer shall make a total payment to the City for affordable housing in the amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) (the “Affordable Housing Payment”). The Affordable Housing Payment shall be made to the City in the manner and for the purposes set forth in this Section.

5.1.5.1 One Million Dollars (\$1,000,000) (the “Initial Housing Payment”) shall be paid to the City prior to and as a condition of issuance of the building permit for the Project. The Initial Housing Payment shall be set aside by the City to be used by Our Town St. Helena or its designee (which designee must be approved by the City) (“OTSH”) to acquire that certain parcel designated as APN 009-660-005 and commonly known at the “Phelps Property” or an equivalent parcel suitable for the purpose of developing affordable housing as approved by the City in its discretion (the “Affordable Housing Parcel”) subject to and conditioned upon satisfaction of the following conditions:

(i) Prior to the time that the Initial Housing Payment is due and payable by Developer to City, OTSH shall provide evidence satisfactory to the City that OTSH has entered into a binding purchase option or binding purchase agreement for the acquisition of the Affordable Housing Parcel. If OTSH has not provided such evidence prior to the time the Initial Housing Payment is due and payable to the City, the Initial Housing Payment may be used by the City for any affordable housing purpose at its discretion, and the City shall have no further obligation to set aside the Initial Housing Payment for the acquisition of the Affordable Housing Parcel.

(ii) Subject to paragraph (i) above, the City shall deposit the Initial Housing Payment into escrow for the acquisition of the Affordable Housing Parcel at such time as requested by OTSH, provided that OTSH has satisfied the following conditions precedent:

(a) OTSH has provided evidence satisfactory to the City that OTSH has secured land use entitlements from the City and all other applicable governmental agencies for the development of not less than twenty (20) units of for-sale or rental housing on the Affordable Housing Parcel, including but not limited to a General Plan Amendment and Zone Change. Developer acknowledges that City's zoning, building and land use regulations shall be applicable to any development of the Affordable Housing Parcel, and nothing herein shall be construed as a waiver or limitation on the City's discretion in considering any application for land use entitlements on the Affordable Housing Parcel.

(b) OTSH has provided evidence satisfactory to the City that it has secured financing sufficient to construct and develop not less than 20 units of for-sale or rental housing with not less than 50% of the total units affordable to very low income households and not less than 50% of total units affordable lower income households, both as defined in St. Helena Municipal Code Section 17.144.020.

(c) OTSH has entered into an Affordable Housing Covenant or Regulatory Agreement with the City in a form satisfactory to the City Attorney, ensuring that the Affordable Housing Parcel shall be developed with affordable for-sale or rental housing consistent with the requirements of the project financing described in paragraph (b) above, which covenant or agreement shall be recorded against the Property at the time of acquisition of the Affordable Housing Parcel by OTSH.

(d) In the event that OTSH has not satisfied the conditions precedent described in paragraphs (a)-(c) above on or before three (3) years from the date of payment of the Initial Housing Payment to the City by Developer, the City shall have no further obligation to set aside the Initial Housing Payment for the acquisition of the Affordable Housing Site, and the City may use the Initial Housing Payment for any affordable housing purpose as City deems appropriate.

5.1.5.2 The remaining Two Million Two Hundred Thousand (\$2,200,000) of the Affordable Housing Payment (the "Second Housing Payment") shall be due and payable to the City at the earlier of (i) a Transfer of the Property by Developer, other than a Permitted Transfer, (ii) conversion of the Developer's construction financing for the Project to permanent financing, or (iii) sixty (60) months after issuance of a final certificate of occupancy for

the Project. The Second Housing Payment shall be deposited into the City's affordable housing fund to be used for affordable housing purposes as City deems appropriate. This obligation shall survive the expiration of the Term or any Extended Term of this Agreement and the City shall have all rights and remedies available under this Agreement or in law or equity to compel Developer to make such Second Housing Payment at or before the time required under this Section, even if the Term or any Extended Term has expired.

5.2 City of St. Helena Business License. Developer, at its expense, shall obtain and maintain a City of St. Helena business license at all times during the Term, and shall include a provision in all general contractor agreements for the Project requiring each such general contractor to obtain and maintain a City of St. Helena business license during performance of the work of construction.

5.3 Sales Tax Point of Sale Designation. Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

ARTICLE 6 ANNUAL REVIEW

6.1 Annual Review.

6.1.1 Purpose. As required by California Government Code section 65865.1 and Municipal Code section 17.156.120, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months solely to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining compliance by Developer with its obligations under this Agreement. Each annual review shall also document: (a) the status of the Project development, and (b) any extension of the Initial Term of this Agreement pursuant to Section 2.2.

6.1.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1.2. By December 1st of each year, Developer shall provide

documentation of its good faith compliance with this Agreement during the calendar year, and such other information as may reasonably be requested by the City Manager. Within ninety (90) days after receipt of Developer's documents of good faith compliance with this Agreement, the City Manager shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 13.2. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, Developer shall be notified in writing and the review for that period shall be concluded. If the City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the City Manager shall prepare a written report specifying why the Developer may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the City Manager's report and recommendations, if any, and any other information reasonably necessary to inform Developer of the nature of the proceeding. The City Council shall conduct a public hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. Developer shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of this Agreement, or there are significant questions as to whether Developer has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Agreement. In the event City determines Developer is not in good faith compliance with the terms and conditions of this Agreement, City may give the Developer a written Notice of Breach, in which case the provisions of Section 12.1, below, shall apply.

6.1.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 7 COOPERATION AND IMPLEMENTATION

7.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building

permits, design review permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, encroachment permits, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the Project, Project Approvals, Existing Approvals, vested rights and the terms and conditions of this Agreement. The City acknowledges and agrees that except as otherwise specifically provided in Section 3.3 above, as long as development of the Project sought in the Subsequent Approvals is substantially consistent with the Project, in no event shall the City impose any additional Exactions (beyond those set forth in the Existing Approvals) in connection with the development of the Project approved in the Subsequent Approvals.

7.2 Processing Applications for Subsequent Approvals.

7.2.1 Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

7.2.2 Timely Processing by City. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Approval, City shall, promptly and diligently, subject to City ordinances, policies and procedures, commence and complete all steps necessary to act on Developer's currently pending Subsequent Approval applications including: (a) providing at Developer's expense planning and processing of each pending Subsequent Approval application (provided that Developer shall pay such all costs at cost plus 10% for administrative costs incurred); (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending Subsequent Approval application.

7.3 Construction and Reimbursement for Public Improvements. Pursuant to Sections 5.1.1-5.1.5 of this Agreement, Developer is required to construct the Mills Lane Improvements, Storm Drain Improvements, Recycled Water Pipe, and La Fata Sidewalk Improvements, collectively referred to herein as the "**Public Improvements**". This section sets forth the manner in which the required Public Improvements will be planned, designed and constructed, and provides for reimbursement to Developer for costs incurred in conjunction with the construction of these Public Improvements in excess of Developer's share of the costs.

7.3.1 Planning and Design of Public Improvements. City will undertake and complete the planning and design of the Storm Drain Improvements, including preparation of final design plans, specifications, drawings and related materials as necessary for Developer to issue a request for bids for construction of the Storm Drain Improvements. Developer will undertake and complete the planning and design of the Mills Lane Improvements, La Fata Sidewalk Improvements and Recycled Water Pipe, including final design plans, specifications,

drawings and related materials as necessary to solicit bids for these improvements, which materials shall be subject to the review and approval by the City Engineer.

7.3.2 Construction of Public Improvements. Following completion of the design work described above, Developer shall bid the Mills Lane Improvements, Storm Drain Improvements and Recycled Water Pipe in conformance with all local and state bidding requirements applicable to the City. The City Engineer shall assist Developer as necessary to ensure compliance with applicable bidding requirements. The improvements described above may be bid as a single project, provided that if it is bid as a single project it will be broken into component parts in a manner as approved by the City Engineer, so that the costs of each component part is clearly indicated, to allow for calculation of Developer's share of the cost of each of the required Public Improvements in accordance with this section. The Developer shall bid the La Fata Sidewalk Improvements in a manner as Developer deems appropriate. Developer shall award and enter into the contracts for all the Public Improvements and shall be solely responsible for all project and construction management activities. The Public Improvements shall be inspected and accepted by the City at the appropriate times in accordance with the City's customary practice and processes.

7.3.3 Developer Share of Public Improvement Costs. Developer shall be solely responsible to pay the full cost of constructing the Public Improvements described herein, but shall be entitled to reimbursement from the City for a portion of the cost of constructing the Public Improvements in excess of the Developer's share of such costs. Developer's share of the cost of each of the required Public Improvements is as follows:

7.3.3.1 Developer's share of the cost of the Mills Lane Improvements shall be forty-one percent (41%) of the construction costs attributable to the Mills Lane Improvements as set forth in the bid documents for such improvements, including any change orders for such improvements that are reviewed and approved by the City Engineer.

7.3.3.2 Developer's share of the cost of the Storm Drain Improvements shall be eighteen percent (18%) of the construction costs attributable to the Storm Drain Improvements as set forth in the bid documents for such improvements, including any change orders for such improvements that are reviewed and approved by the City Engineer.

7.3.3.3 Developer shall pay the full construction cost attributable to the Recycled Water Pipe as set forth in the bid documents for such improvements, including any change orders for such improvements that are reviewed and approved by the City Engineer up to a maximum amount of Two Hundred Fifty-Six Thousand Five Hundred Forty-Nine Dollars (\$256,549). Any construction costs in excess of this maximum amount shall be subject to reimbursement by the City in accordance with Section 7.3.4.

7.3.3.4 Developer shall pay the full cost of construction of the La Fata Sidewalk Improvements with no reimbursement from the City.

7.3.3.5 The amounts for which Developer is solely responsible as set forth above are collectively referred to herein as the "Developer's Share of Public Improvements."

7.3.4 Reimbursement for Costs in Excess of Developer's Share of Public Improvements.

7.3.4.1 Following construction of the Public Improvements by Developer and acceptance of said Public Improvements by the City, the City shall reimburse Developer for the construction costs of the Public Improvements in excess of the Developer's Share of Public Improvements, as set forth in the bid documents for such Public Improvements, including any change orders reviewed and approved by the City Engineer, in the manner set forth below.

7.3.4.2 City shall reimburse Developer an amount equal to fifty percent (50%) of the Transient Occupancy Tax ("TOT") received by the City from Developer pursuant to Chapter 3.28 of the St. Helena Municipal Code, until the construction costs in excess of Developer's Share of Public Improvements have been reimbursed to Developer in full. Reimbursement shall be made on a quarterly basis within thirty (30) days after the City has confirmed the amount of TOT paid by Developer for the prior quarter, provided that the City may, at its discretion, make additional or larger payments to the Developer toward to the total reimbursement amount. City may use any source of funds it deems appropriate to make the reimbursement payment required hereunder, including general fund moneys, impact fees as appropriate for the constructed improvements or other funds available to pay for the construction of capital improvements. City's obligation to reimburse Developer pursuant to this section shall survive the expiration of the Term and any Extended Term.

ARTICLE 8 AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City's annual review and Section 12.1 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65867, 65867.5, and 65868.

8.2 Major Amendments to Agreement. Any amendment to this Agreement which affects or relates to (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "**Major Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a "**Minor Amendment**" and shall not, except to the extent otherwise required by Applicable Law, require notice of public hearing before the Parties may execute an amendment hereto. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Amendment or a Minor Amendment.

8.3 Minor Amendment. The City Manager or his or her designee shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Amendments.

8.4 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors in interest.

8.5 Subsequent CEQA Review. No additional CEQA documentation shall be required unless Developer proposes substantial changes in the Project that result in unmitigated environmental impacts beyond those analyzed in the Prior CEQA documents or in the Prior CEQA Analysis. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, at Developer's expense, shall conduct such additional CEQA review as expeditiously as possible.

ARTICLE 9 INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE

9.1 Insurance Requirements. Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, until the earlier of (a) the expiration of this Agreement; or (b) the completion of the Project, a commercial general liability policy in an amount not less than two million (\$2,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of one million (\$1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Developer's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

9.2 Indemnity and Hold Harmless. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project by or on behalf of Developer, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims arise from the sole active negligence or willful misconduct of City or City Parties.

9.3 Defense and Cooperation in the Event of a Litigation Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or the Project Approvals (“**Litigation Challenge**”), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (a) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (b) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer; (c) Developer shall reimburse City, within ten (10) business days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City’s administrative, legal, and court costs and City Attorney oversight expenses; and (d) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys’ fees or cost awards, including attorneys’ fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City’s approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so.

9.4 Prevailing Wages. Without limiting the foregoing, Developer acknowledges the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* (“**Prevailing Wage Laws**”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects, as defined. If work on off-site improvements pursuant to this Agreement is being performed by Developer as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation under the contract in question is \$1,000 or more, Developer agrees to fully comply with such Prevailing Wage Laws. Developer understands and agrees that it is Developer’s obligation to determine if Prevailing Wages apply to work done on the Project or any portion of the Project. Upon Developer’s request, the City shall provide a copy of the then current prevailing rates of per diem wages. Developer shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work subject to Prevailing Wage Laws, and shall post copies at the Developer’s principal place of business and at the Property. Developer shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement from any claim or liability arising out of any failure or alleged failure by Developer to comply with the Prevailing Wage Laws associated with any “public works” or “maintenance” projects associated with Project development.

ARTICLE 10 TRANSFER AND NOTICE

10.1 Transfer. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of on- and off-site public improvements and public services and benefits, certain restrictions on the right of Developer to Transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement.

10.1.1 Developer agrees to and accepts the restrictions set forth in this Section 10.1 as reasonable and as a material inducement to City to enter into this Agreement. The Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in Control of the Developer, as well as any and all changes in the interest or the degree of Control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

10.1.2 Except as expressly permitted in this Agreement, the Developer represents to the City that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law, until after the completion of the Project and all of Developer's obligations under this Agreement; provided, however, that the City may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the completion of the Project and such obligations under this Agreement. In deciding whether to approve or disapprove any proposed Transfer, the City may consider the proposed transferee's financial strength and the experience of the proposed transferee and its senior management in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred. Any Transfer made in contravention of this Section 10.1 shall be voidable at the election of the City and this Agreement may be terminated by the City or the City may exercise any other remedy available to the City under the terms of this Agreement, provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

10.1.3 The Developer shall provide the City no less than thirty (30) days prior written notice of any proposed Permitted Transfer which the Developer desires to enter into prior to the completion of the Project and Developer's obligations under this Agreement, other than a Permitted Transfer for which no notice shall be required. The Developer shall have the burden of demonstrating to the City's reasonable satisfaction that the proposed Permitted Transfer meets the conditions and requirements of this Agreement with respect to Permitted Transfers.

10.1.4 Once the Developer has completed all its obligations under Article 5 of this Agreement, including but not limited to payment of the full Affordable Housing Payment, and

received a final certificate of occupancy for the Project, this Section 10.1 shall no longer apply to Transfers by Developer. City acknowledges that in the event Developer has completed all obligations under Article 5 except for making the Second Housing Payment, and Developer intends to make the Second Housing Payment concurrently with the Transfer of the Project, City shall not have discretion to approve or deny such transfer except to require the making of the Second Housing Payment concurrent with the Transfer, and Developer shall still be obligated to notify City of such Transfer in accordance with this Section 10.1.

10.2 Successive Transfer. In the event there is more than one Transfer under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Transfer.

ARTICLE 11 MORTGAGEE PROTECTION

11.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Napa County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 11.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default

claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 120 days from the date the City delivers the Notice of Default to Developer.

11.4 No Supersedure. Nothing in this Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to Permitted Delays or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "Default." In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("Notice of Breach"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2 Failure to Cure Default Procedure. If after Default or Notice of Breach, the Planning and Building Director finds and determines that Developer remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or an Assignee, as the case may be, has not cured default pursuant to this Section, and that the City shall terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 12.10 below. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

12.3 Withholding of Permits. In the event of a Default by Developer, or following notice of breach to Developer pursuant to Section 12.1 above and during/following the cure period

provided therein, upon a finding by the City Manager that Developer is in breach, City shall have the right to refuse to issue any permit or other Subsequent Approvals to which Developer would otherwise have been entitled pursuant to this Agreement until such Default or breach is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.4 Termination. In the event of an uncured Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.12.

12.5 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition. If City issues a Project Approval pursuant to this Agreement and Developer fulfills its obligations under this Agreement in reliance upon a specified condition being satisfied by the City in the future, and if the City then fails to satisfy such condition, Developer shall be entitled to specific performance for the purpose of causing City to satisfy such condition.

12.6 Legal Actions.

12.6.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the limitation of damages in Section 12.7, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Napa County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.6.2 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon CS Lawyer's Incorporating Service, Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.7 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude

the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.8 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

12.9 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.9 shall in any way be interpreted as requiring that Developer, City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.

12.10 Remedies upon Transfer or Assignment. Notwithstanding anything to the contrary contained in this Article 12, if Developer has transferred all or a portion of its interest in the Property pursuant to Section 10.1 above, then the City may only exercise its remedies under this Article 12 against the defaulting Developer or Assignee and such party's portion of the Property.

12.11 Appeals to City Council. Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, that appeal shall be taken, if at all, within twenty (20) days after the mailing of the finding and/or determination to Developer. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after the mailing, or within any additional period as may be agreed upon by Developer and the Council.

12.12 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Article 9.

ARTICLE 13 GENERAL PROVISIONS

13.1 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.2 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City:	City Clerk City of St. Helena 1572 Railroad Avenue St. Helena, CA 94574
with a copy to:	City Attorney City of St. Helena 1572 Railroad Avenue St. Helena, CA 94574
If to Developer:	LMR Destinations LLC Attn: Ted Hall P.O. Box 477 Rutherford, CA 94573
with a copy to:	Rob Anglin Holman Teague Roche Anglin, LLP 1455 First Street, Suite 217 Napa, CA 94559 Telephone: (707) 927-4280

Notices are deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

13.3 Permitted Delays. Performance by either of the Parties of an obligation hereunder shall be excused during any period of “**Permitted Delay**.” Permitted Delay shall mean delay beyond the reasonable control of a Party caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party’s

financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance. In no event shall any Permitted Delay extend the Term of this Agreement.

13.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.5 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

13.6 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

13.7 Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

13.8 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

13.9 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

13.10 Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.11 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City.

13.12 Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.13 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs expended by the City Attorney's Office in connection therewith. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The City Manager shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

13.14 Recordation of Termination. Upon completion of performance of the Parties or termination of this Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of Napa County.

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

13.16 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the

businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.17 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

13.18 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

13.19 Recordation. As provided in Government Code Section 65868.5, the City Clerk of St. Helena shall record a copy of this Agreement with the Registrar-Recorder of the County of Napa within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording.

13.20 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- Exhibit A: Property Description
- Exhibit B: Site Map
- Exhibit C: Project Description
- Exhibit D: Existing Approvals
- Exhibit E: Applicable Law & Project Approval Excerpts
- Exhibit F: Mills Lane Improvements
- Exhibit G: Storm Drain Improvements
- Exhibit H: La Fata Sidewalk Improvements

[SIGNATURES ON FOLLOWING PAGE]

Page 141 of 302

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF ST. HELENA, a municipal corporation

By: _____

Mark Prestwich, City Manager

[Signature must be notarized]

ATTEST:

By: _____

Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

By: _____

Ethan Walsh, City Attorney

DEVELOPER:

LMR DESTINATIONS LLC, a California limited liability company

By: Long Meadow Ranch Partners, L.P.
a California limited partnership
Its: Manager

By: LMR GP LLC,
a California limited liability company
Its: General Partner

By: _____

Ted W. Hall,
Its Manager

[Signature must be notarized]

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

STATE OF CALIFORNIA

COUNTY OF Napa

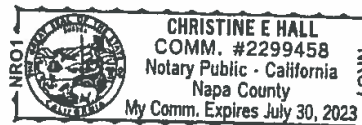
On this 17th day of November, 20__ before me, Christine E. Hall,
Notary Public, personally appeared Ted W Hall, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Christine E Hall

(Seal)



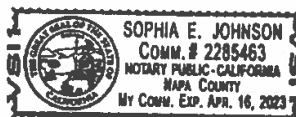
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Napa

On this 19 day of November, 2020 before me, Sophia E. Johnson,
Notary Public, personally appeared Mark Prestwich, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: Sophia E. Johnson (Seal)

EXHIBIT A

That certain property located in the City of St. Helena, County of Napa, California, described as follows:

PARCEL TWO, as shown on the map entitled "Parcel Map of the Lands of Carl Doumani", filed March 18, 2009, in Book 26 of Parcel Maps at page(s) 22-23, in the office of the County Recorder of Napa County.

APN: 009-070-049

Commencing at the most southerly corner of Parcel Four as shown in Book 26 of Parcel Maps at pages 22 through 23, recorded on March 18, 2009 in the office of the Napa County Recorder; thence along the southwesterly line of said Parcel Four and the southwesterly line of Parcel One of said Parcel Map North 58°45'00" West 469 feet to the TRUE POINT OF BEGINNING; thence continuing along the southwesterly line of said Parcel One North 58°45'00" West 171 feet to the northwest corner thereof; thence along the lines of said Parcel One North 31°15'00" East 575.38 feet, South 58°45'00" East 640 feet and South 31°15'00" West 25.00 feet to the southeasterly corner of Parcel Three of said Parcel Map; thence along the common line between said Parcels Three and One and the northwesterly extension thereof North 58°45'00" West 469.00 feet; thence South 31°15'00" West 550.38 feet to the true point of beginning.

APN: 009-070-052

Beginning at the most southerly corner of Parcel Four as shown in Book 26 of Parcel Maps at pages 22 through 23, recorded on March 18, 2009 in the office of the Napa County Recorder; thence along the southwesterly line of said Parcel Four and the southwesterly line of Parcel One of said Parcel Map North 58°45'00" West 469 feet; thence leaving said southwesterly line North 31°15'00" East 374.38 feet to the northwesterly extension of the common line between said Parcel Four and Parcel Three of said Parcel Map; thence along said extension and said common line South 58°45'00" East 469 feet; thence South 31°15'00" West 374.38 feet to the point of beginning.

APN: 009-070-053

Beginning at the most southerly corner of Parcel Three as shown in Book 26 of Parcel Maps at pages 22 through 23, recorded on March 18, 2009 in the office of the Napa County Recorder, said southerly corner also being the most easterly corner of Parcel Four of said Parcel Map; thence along the common line between said Parcels Three and Four and the northwesterly extension thereof North 58°45'00" West 469 feet; thence North 31°15'00" East 176 feet to the northwesterly extension of the common line between said Parcel Three and Parcel One of said Parcel map; thence along said extension and common line South 58°45'00" East 469 feet to the most easterly corner of said Parcel Three; thence along the southeasterly line of said Parcel Three South 31°15'00" West 176 feet to the point of beginning.

APN: 009-070-054

EXHIBIT B

SITE MAP



Lodging Site Plan
Farmstead at Long Meadow Ranch
St. Helena, California

Figure 3

EXHIBIT C

PROJECT DESCRIPTION

Long Meadow Ranch Lodging Project – 1000 Mills Lane

The applicant is requesting approval of a use permit, design review, lot line adjustment, lot merger, variance, water agreement, and development agreement in order to construct a 65 room hotel spread throughout 10 individual buildings that are configured with either 6 or 7 guest rooms per building. The lodging buildings will total approximately 32,100 square feet and will be single story with a maximum height of 29 feet. The lodging component of the Project would occur on approximately 6.1 acres of an overall 10 acre site; the remaining 3.9 acres would continue to be used for agricultural purposes.

Each guest room will have two bicycles assigned and stored at the room for guests' exclusive use. In addition, staffed courtesy electric-powered carts will also be available to ferry guests between properties. EVA charging stations will be provided for guests' vehicles and the Project's courtesy vehicles. Throughout the lodging portion of the property, farming will continue with an edible landscape of herbs, fruit and citrus trees, and vegetables planted along the pathways. The perimeter of the property will be lined two- and three-deep with fruit trees, creating a commercial fruit orchard, as well as providing a visual buffer to Main Street and Mills Lane. In addition to the lodging buildings described above, the Project includes the following components:

A 9,882 sf multi-purpose building with the following amenities:

- Guest reception and administration area;
- Office space;
- A bar and lounge area;
- A meeting/classroom with a demonstration kitchen primarily for lodging guests, however cooking and food preparation classes will also be open to the public on a scheduled and by appointment basis;
- A commercial kitchen which will prepare daily breakfast, assemble room service meals, provide prep for cooking demonstrations, and support the daily chef's table featuring wine and food pairings for up to 20 people per sitting. The Chef's Table will service both lodging guests and also be open to the public by reservation only;
- Outdoors areas for lodging guest use only; and
- Staff facilities located in the multi-purpose building will include a break room, restrooms, lockers and showers, and covered bicycle parking.

Additional Facilities and Buildings:

- A 3,452 sf utility and service building which would include a bicycle center for guests, housekeeping, pool support and a green energy facility. This building would also accommodate a small laundry area serving incidental needs for the pool, gym, spa and lodging.
- A 3,114 sf spa building which would include four treatment rooms and two saunas;
- A 2,652 sf pool and fitness building which would include a gym, lockers, and showers;
- Two outdoor pools, including one children's pool, would be located in-between the three buildings; and
- Two (2) 1,000 sf agricultural barns in the northeast corner of the agriculturally zoned area will house tractors, farm equipment and will accommodate repair and maintenance activities.

<u>Proposed Floor Area Summary:</u>	
	<u>PROPOSED (gsf)</u>
Guest Lodging	32,100
Multi-purpose Building	9,882
Pool & Fitness Building	2,652
Spa Building	3,114
Utility Building	3,452
Agricultural Barns	2,000
TOTAL:	53,200 sf

The spa, pool and fitness building and associated pools would be for use by lodging guests only. Construction of the buildings described above would result in approximately 53,200 sf of new commercial floor area on the currently vacant property.

Employment: On average up to 65 employees, split into 3 shifts will work daily at the property. If employees travel to work by automobile, they will park at the supplemental parking lot located at McCormick and Dowdell. Secure covered bicycle storage, showers and lockers will also be provided for employees. A transportation demand manager (TDM) will be appointed to

facilitate employee car-pooling and other programs to reduce vehicle miles traveled (VMT). Ten employees already working at the current restaurant will support breakfast and room service at the lodging facility. An additional 11 employees will be added to the existing marketing, sales, reservations and support services already operating for Farmstead at Long Meadow Ranch (these employees will work at the LMR offices at 801 Main Street, St. Helena).

Access and Parking: Automobile access to the lodging facilities will be from Mills Lane.

Mills Lane will be realigned with Grayson Avenue at Highway 29 and widened to accommodate two lanes of traffic and parallel parking on both sides of the street. In addition, a 10' class 1 sidewalk and landscaping strip will be added on the north side of the street to accommodate pedestrian and bicycle traffic. Stop signs will be added at the north end of La Fata and at the exit from the Lodging driveway entrance. With the improvements of Mills Lane, a proper connection to La Fata will be completed at the same time. Also, a sidewalk will be added to the west side of La Fata. LMR will complete the construction of the Mills Lane and La Fata Street improvements prior to the opening of the lodging with costs allocated per the Highway 29 Specific plan, development agreement and conditions of approval.

The entrance to the registration parking court and parking lot will be aligned with La Fata Street. There will be 80 onsite parking spaces. All employee parking will be at the supplemental lot located at McCormick and Dowdell. Employees will not be allowed to park on site or on neighboring side streets. The applicant will provide an on-call shuttle for employees to both sites when needed at night. Secure bicycle parking will also be available for general public guests not staying at the lodging.

Water: The lodging and related facilities' needs for potable water (identified as approximately 5.8 acre-feet annual requirement) will be fulfilled through a connection to the City of St. Helena water system. Existing on-site non-potable wells will service all agricultural and landscaping activities. The pool will initially be filled by water from outside the City of St. Helena. To achieve the City's requirements for water neutrality the Developer and City have negotiated for Developer to provide an innovative program to achieve water neutrality through the Development Agreement. As set forth in the terms of the Development Agreement, the Developer has agreed to construct and install recycled water infrastructure (i.e., purple pipe) in Mills Lane extending from Highway 29 easterly to the eastern end of Mills Lane. As the City's wastewater treatment plant transitions to tertiary treatment, the City plans to implement a water recycling system that would allow for use of recycled water for irrigation and landscaping purposes. The piping that the Developer has agreed to install will, at a minimum, provide the ability to irrigate the landscaping at Crane Park and the fields at St. Helena Elementary School with recycled water, which would provide projected annual water savings of more than two times the annual water usage for the lodging project. Developer has agreed to fund these improvements at a cost of up to \$256,549, which is more than \$100,000 more than the in-lieu fees that Developer would pay under the City's water neutrality ordinance (the in-lieu fee would have been \$142,341.73). In addition to the Development Agreement, the applicant will enter into a water agreement that will set a cap on allowable water usage for the project and require that the applicant construct the recycled water improvements described in this section.

EXHIBIT D
EXISTING APPROVALS

83578.00106\33448026.1

Exhibit D

CITY OF ST. HELENA

ORDINANCE NO. 2020-9

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ST. HELENA APPROVING A
DEVELOPMENT AGREEMENT WITH LMR
DESTINATIONS, LLC RELATING TO THE
FARMSTEAD LODGING PROJECT AT 1000 MILLS
LANE**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of St. Helena (the "City") has enacted regulations encompassed in St. Helena Municipal Code Chapter 17.156 (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, in accordance with the Development Agreement Statute and the Development Agreement Regulations, LMR Destinations, LLC, a California limited liability company (the "Developer") has applied to the City for certain land use entitlements and a development agreement for the development of the Farmstead Lodging Project, a 65 room single story hotel project, which in addition to the guest rooms includes a multi-purpose building for guest reception/administration, a bar and lounge area, meeting/classroom with demonstration kitchen, commercial kitchen and staff facilities; a utility and service building; a spa building; a pool and fitness building; two outdoor pools; two agricultural barns; and approximately 3.9 acres of land used for agricultural purposes (the "Project"); and

WHEREAS, on October 13, 2020, the City Council approved Resolution No. 2020-100 adopting a Mitigated Negative Declaration for the Project (the "Mitigated Negative Declaration"), finding there is no substantial evidence in support of a fair argument that the proposed Project will have a significant, adverse impact on the environment with the mitigation measures proposed and adopting a resolution approving Design Review, Use Permit, Lot Line Adjustment, Lot Merger, Variance and Water Agreement (the "Project Entitlements") for the Farmstead at Long Meadow Ranch Project at 1000 Mills Lane; and

WHEREAS, Developer desires to carry out the development of the Project consistent with the General Plan, the Highway 29 Specific Plan and the Development Agreement and the vested entitlements referenced therein; and

WHEREAS, the Development Agreement will assure both the City and the Developer that the Project will proceed as proposed and that the public improvements and other amenities and funding obligations of the Developer will be accomplished as proposed; and that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, the Planning Commission of the City held a duly noticed public hearing on August 18, 2020 on the Mitigated Negative Declaration, Project Entitlements and the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public and made a recommendation to the City Council on the adoption of the Mitigated Negative Declaration and approval of the Project Entitlements and the Development Agreement; and

WHEREAS, pursuant to Section 65867 of the Government Code, the City Council held a duly noticed public hearing on October 13, 2020 on the Mitigated Negative Declaration, Project Entitlements and the Development Agreement, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to the Development Agreement Regulations.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines that the provisions of the Development Agreement are consistent with the General Plan and Highway 29 Specific Plan. Specifically, the Project to be developed pursuant to the Development Agreement is consistent with the land use designations for the parcel upon which the Project will be developed. The lodging component of the Project will be constructed on the portion of the parcel that is within the City's Urban Limit Line and is designated as Service Commercial (SC), where lodging is an allowable use. The portions of the parcel that are outside the Urban Limit Line will remain in agricultural use, consistent with the requirements of the General Plan. The Project will further numerous policies of the General Plan as more

specifically enumerated in the City staff reports prepared for this Ordinance, in that the Project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities. The Project would enhance the character in the SC district by redeveloping an under-utilized site in the commercial district. The Project would also be oriented toward an upscale market, consistent with the Napa Valley's reputation as a producer of world-class wines. Further, the Project is consistent with the Highway 29 Specific Plan and would implement its direction by providing for the realignment of Mills Lane with Grayson Avenue consistent with the goals of the Highway 29 Specific Plan.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The City's General Plan;
- (c) The City's Highway 29 Specific Plan;
- (d) Resolution No. 2020-100, adopted by the City Council on October 13, 2020, making findings as to the Mitigated Negative Declaration for the Project, including the Statement of Findings and the Mitigation Monitoring and Reporting Program, and adopted a resolution approving Design Review, Use Permit, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement for Mills Lane, approved by and incorporated in said Resolution, which Resolution and exhibits are incorporated herein by reference as if set forth in full;
- (e) Resolution No. ___ of the Planning Commission of the City of St. Helena recommending that the City Council approve a Development Agreement with LMR Destinations, LLC relating to the Farmstead Lodging Project;
- (f) All City staff reports (and all other public reports and documents) prepared for the City Council, relating to the Development Agreement and other actions relating to the Property;
- (g) All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Development Agreement, and other actions relating to the Property; and
- (h) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto.

SECTION 6. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. This ordinance shall become effective on and after the thirtieth (30th) day following its adoption.

SECTION 9. The Mayor shall sign, and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of applicable law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of St. Helena, California, at a regular meeting of the City Council held on the 27th day of October, 2020 by the following vote:

Mayor Ellsworth:	<u>Yes</u>
Vice Mayor Dohring:	<u>Yes</u>
Councilmember Chouteau:	<u>Yes</u>
Councilmember Knudsen:	<u>Yes</u>
Councilmember Koberstein:	<u>Yes</u>




Geoff Ellsworth, Mayor

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 13th day of October, 2020 by the following vote:

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


Cindy Tzaopoulos, City Clerk

EXHIBIT A

Farmstead Development Agreement

[Inserted behind this cover page]

CITY OF ST. HELENA

RESOLUTION NO. 2020-100

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA ADOPTING A
MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND
REPORTING PROGRAM, AND ADOPTING A RESOLUTION APPROVING DESIGN
REVIEW, A USE PERMIT, A LOT LINE ADJUSTMENT, A LOT MERGER, A
VARIANCE, AND A WATER AGREEMENT FOR THE FARMSTEAD AT LONG
MEADOW RANCH PROJECT AT 1000 MILLS LANE IN THE CITY OF ST. HELENA,
CALIFORNIA**

PROPERTY OWNER: LMR Destinations LLC

APN: 009-070-49,52,53,54

Recitals

1. LMR Destinations LLC has submitted applications to the City of St. Helena for a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, Water Agreement and Development Agreement approval in order to construct an new 65 room hotel and associated facilities at 1000 Mills Lane in the Service Commercial and Twenty-acre Agriculture districts as described below:
 - A 9,882 sf multi-purpose building; and
 - A 3,452 sf utility and service building; and
 - A 3,114 sf spa building; and
 - A 2,652 sf pool and fitness building; and
 - Two outdoor pools, including one children's pool; and
 - Two (2) 1,000 sf agricultural barns.
2. Pursuant to CEQA Guidelines Sections 15072 and 15073, a Draft Mitigated Negative Declaration and included Initial Study was circulated for public review and comment from May 29, 2020 until June 29, 2020; and
3. The Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of potentially significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and
4. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and
5. A public notice was published in the Napa Valley Register and mailed to residents and occupants within 300 feet of the project site in compliance with state and local law; and
6. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on September 14, 2020 and September 17, 2020; and
7. At conclusion of the meeting on September 17, 2020, the Planning Commission recommended that the City Council of the City of St. Helena adopt the Mitigated

Negative Declaration and Mitigation Monitoring and Reporting Program and approve a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement approving a Development Agreement thereby authorizing the modifications described in the staff report and the reviewed plans based on the findings below and subject to the conditions of approval enumerated herein.

Resolution

- A. In reviewing the findings in this Resolution, the City Council relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.
- B. CEQA Findings:
 - 1. The City Council has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration, public comments, and all other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; and
 - 2. The Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA; and
 - 3. On the basis of the whole record, there is no substantial evidence that the Project as designed, conditioned, and mitigated, will have a significant effect on the environment; and
 - 4. The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
 - 5. Based on the foregoing, the City Council approves the Initial Study/Mitigated Negative Declaration and adopts the Mitigation Monitoring and Reporting Program for the Project.
 - 6. The custodian of the documents and other materials that constitute the record of proceedings is Cindy Tzafopoulos, City Clerk and may be inspected at 1572 Railroad Avenue, St. Helena, CA 94574.
- C. In accordance with the design review criteria identified in SHMC Section 17.164.030, the City Council finds that the project demonstrates the following:
 - 1. *Consistency and compatibility with applicable elements of the General Plan and Highway 29 Specific Plan in that the proposed structures are consistent with the intent of applicable General Plan and Highway 29 Specific Plan policies pertaining to development in the Service Commercial and Agricultural Districts.*
 - 2. *Compatibility of design with the immediate environment of the site in that the project has been designed to be compatible with the surrounding environment.*
 - 3. *Relationship of the design to the site is found to be consistent in that the project has been designed to be compatible with the site and the surrounding area.*

4. *That the design is compatible in areas considered by the board as having a unified design or historical character in that the project has been designed to be compatible with the site and the surrounding area.*
 5. *That the design promotes harmonious transition in scale and character in areas between different designated land uses in that the project is of a similar scale and character to other development in the immediate area.*
 6. *Compatibility with future construction both on and off the site in that the proposed project will blend in with existing and future construction in the immediate vicinity.*
 7. *That the architectural design of structures and their materials and colors are appropriate to the function of the project in that the project has been professionally designed to suit the site and its surroundings.*
 8. *That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community in that the improvements have been designed to be compatible with the site and its surroundings.*
 9. *That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures in that landscaping and open space will enhance the overall appearance of the property and the immediate vicinity.*
 10. *That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles in that access to the site will be provided via a realigned Mills Lane. Additional pedestrian connectivity will be provided by new sidewalks on LaFata Street and a pedestrian path connecting the property to 738 Main Street.*
 11. *That natural features are appropriately preserved and integrated with the project in that the project has been designed to be compatible with the site and its surroundings.*
 12. *That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions in that the proposed siding, colors, and roofing materials are consistent with the site context and compatible with surrounding design.*
 13. *That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site in that project landscaping and open space will enhance the project site and its surroundings.*
 14. *That sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials in that project related construction is required to meet all California Building Codes and City of St. Helena development standards.*
- D. In accordance with SHMC Section 17.168.050, the City Council adopts the following use permit findings to support the motion to recommend approval of the use permit:

1. *That the proposed uses would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community in that proposed uses are related to a new hotel and would largely occur indoors within new buildings.*
2. *That the proposed uses would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties in that the proposed project is subject to City noise regulations and is not anticipated to produce frequent noise audible beyond the property line.*
3. *That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan as traffic related impacts have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
4. *That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection in that impacts to these services have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
5. *That the proposed uses would provide adequate ingress and egress to and from the proposed location in that ingress and egress to the project site would be provided via a realigned Mills Lane.*
6. *That allowing the proposed uses would not conflict with the City's goal of maintaining the economic viability of a local serving economy in that the proposed project would be consistent with General Plan Update 2040 policies.*
7. *That the proposed uses would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located as the proposed project is consistent with the intent of the Service Commercial and A-20 zoning districts.*
8. *That the proposed uses would not be in conflict with the City's General Plan in that the project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities.*
9. *That the proposed uses would not be injurious to public health, safety, or welfare in that the proposed uses consist of a new hotel and ancillary facilities and would largely occur indoors within new buildings.*
10. *That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan in that this use permit only applies to this property and to this specific use.*
11. *That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available in that the proposed project has provided required off-street parking.*
12. *That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use in that the project site can adequately be served by existing streets and a realigned Mills Lane.*

- E. In accordance with SHMC Section 17.172.050, the City Council adopts the following findings to support the motion to recommend approval of the variance:
1. *A hardship peculiar to the property, not created by the owner, exists as this requirement doesn't follow modern operational models and creates operational inefficiencies and therefore constitutes a peculiar hardship that is appropriately addressed and may be resolved through consideration of a Variance.*
 2. *Other hotels in the SC district are not burdened by this requirement, therefore, the variance is necessary for the preservation and enjoyment of substantial property rights available to other properties in the same district and vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his or her neighbors.*
 3. *The authorization of the variance will not be a substantial detriment to adjacent properties and will not materially impair the purpose and intent of this title or the public interest, or adversely affect the general plan.*
 4. *Inasmuch as there are not a significant number of similar properties in the vicinity or zoning district, it is not reasonably practicable to formulate a general regulation for such condition or situation. In other words, there are not enough hotels to make it necessary or practical to amend the zoning code to address this peculiar situation.*
 5. *An approval of this Variance to allow for a 24/7 365 day/year on-site manager opposed to requiring that a manager physically live on-site will enhance the public health, safety and welfare of the community.*
- F. In accordance with the requirements of SHMC Chapter 16.08, the City Council approves the lot line adjustment and lot merger as described in the staff report.
- G. The City Council approves design review, a use permit, a variance, a lot line adjustment, a lot merger, and a water agreement, for the above-described project located at 1000 Mills Lane subject to the following conditions of approval. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

Planning Department Conditions of Approval

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.
2. This approval shall be vested pursuant to the development agreement, provided however that the approval may be extended under the terms of the development agreement or for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals.
3. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
4. All required fees, unless otherwise specified in the development agreement, including planning fees, development impact fees, building fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit except as expressly

provided herein. Fees shall be those in effect at the time of the issuance of the building permit.

5. Developer shall make a payment for the purpose of furthering the City's affordable housing goals in accordance with the requirements of Section 5.1.6 entered into by and between Developer and the City for this project. The Development Agreement requires \$1,000,000 to be paid to the City prior to issuance of the building permit, and the remaining \$2,200,000 to be paid at the earlier of (i) Transfer of the Property by Developer, other than a Permitted Transfer ("Transfer" and "Permitted Transfer" are defined in the Development Agreement); (ii) conversion of Developer's construction financing for the Project to permanent financing, or (iii) sixty (60) months after issuance of a final certificate of occupancy for the Project.
6. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.
7. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
8. Provided they are in general compliance with this approval and the development agreement, minor modifications may be approved by the Planning and Building Director.
9. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
10. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
11. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on September 14, 2020 and September 17, 2020, and by the City Council on October 13, 2020 except as modified herein.
12. If the property is sold or otherwise conveyed to new owners, the owner or successor in interest is required to notify the Planning Director in writing within 30 days of the change in ownership. The use permit shall then be brought before the Planning Commission for review in order for the City to assess whether operational practices that are different than what is approved in this use permit may occur and whether a use permit amendment is required.

13. For attendees who are not lodging guests, 1) the chef's table and demonstration classes shall occur during off-peak hours, 2) the chef's table is limited to 20 persons per event and 3) the demonstration classes are limited to 40 persons per event.
14. The spa, fitness building, pools, and outdoor seating areas are for the use of guests only.
15. Bar and lounge activities shall comply with the City's noise ordinance.
16. All live and amplified music must comply with applicable City noise regulations.
17. With the exception of handicapped employees, all employees shall park in the off-site supplemental lot; employees shall not park on-site or on neighboring streets.
18. All guests and visitors must park on-site or at applicant provided off-site parking.
19. Planters and tree wells must be bordered by a six-inch high concrete curb or equivalent barrier approved by the City.
20. A minimum of 20% of the subject property must remain maintained landscaping and shall be kept in a weed-free condition.
21. The owner or successor in interest shall notify the City in writing if the lease option for the off-site parking lot to be used for employee parking at Dowdell/McCormick is lost or the lease is otherwise terminated or expires. The owner or successor in interest shall provide evidence that a parking lot with a similar number of parking spaces has been secured (and is approximately the same distance from the project site or applicant provides appropriate transportation from parking to project site).
22. Prior to issuance of a Certificate of Occupancy, the applicant shall designate a Transportation Demand Management (TDM) coordinator to establish programs to ensure VMT by guests and employees are reduced, including, but not limited to, employee car and vanpooling, employer-sponsored transit passes, bicycle-sharing, showers, lockers, secure bike storage, and winery tours for guests with pickup and drop-off at the lodge.
23. Prior to issuance of a Certificate of Occupancy, the developer shall provide verification that an on-call shuttle service is available during all hours as long as there is an off-site employee parking lot.
24. Prior to issuance of a Certificate of Occupancy, the developer shall install a shelter at the off-site Dowdell Lane parking lot.
25. Prior to issuance of a grading permit, the project site shall be adequately fenced and secured to prevent trespassing.
26. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
27. Prior to issuance of a Certificate of Occupancy, the applicant shall provide two (2) courtesy bicycles per guest room.
28. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following

reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

Public Works Department Conditions of Approval

29. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.
30. For any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.
31. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.
32. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties. The Developer shall submit a storm drain system design calculations for the project in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal. The calculations shall include a hydrology map, hydrology and hydraulic calculations, pipe size calculations, inlet capacity calculations, and other information necessary to support the proposed design.
33. Prior to the issuance of a Certificate of Occupancy, the Developer shall install storm drain Detention system improvements as required to maintain post development 10-year runoff from the pre-development levels. The Developer shall submit storm drain detention system supporting calculations for review and approval prior to improvement plan approval.
34. Prior to the issuance of a Certificate of Occupancy, the Developer shall install detention system inlets sized to pass at minimum the 25-year flows.
35. A grading and drainage plan shall be prepared for the project that includes a design that allows for a 100-year overland release. All graded building pads shall be above the 100-year overland release elevation.

36. The grading plans provided by the Developer for review shall include the existing topography shown with contour lines labeled at one-foot intervals and extending a minimum of 100-feet beyond the limits of the site, or sufficient distance to indicate impacts on adjacent properties.
37. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum
38. Prior to the issuance of a grading permit or building permit (whichever occurs first), the project property owner shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Construction Storm Water Pollution Prevention Plan (SWPPP). This is required because the overall project grading involves an area of disturbed surface soil that is greater than or equal to one acre, .
39. The Developer shall execute a City of St. Helena Water Agreement with an annual water use cap of 1,953,928 gallons per year prior to issuance of a Building Permit.
40. Due to the new water demand on the City system in the amount of 1,953,928 gallons per year, the Developer shall implement an alternative innovative method of mitigating water use as allowed under Section 13.12.030(B) of the SHMC, and approved by City Council in the Development Agreement prior to certificate of occupancy. The required offsite improvements to offset water demand as required pursuant to the Development Agreement is as follows: The Developer shall construct and install \$256,549 worth of water infrastructure (i.e., purple pipe) in Mills Lane between Highway 29 easterly to the eastern end of Mills Lane. This purple pipe is intended to connect to a future wastewater treatment facility and deliver recycled water to Crane Park's irrigation infrastructure by November 1, 2022, significantly reducing the City's use of potable water. No certificate of occupancy for the Lodging component may be issued, until either the Developer has demonstrated or City has confirmed that either: (a) the water savings from the irrigation of Crane Park with recycled water from the wastewater treatment facility offsets the Lodging component's anticipated water demand, or (b) the Developer has identified and implemented other measures calculated to save potable water in amounts equal to the Project's anticipated use of City water permanently or until recycled water is delivered to Crane Park. Such improvements shall be constructed and approved by the City Engineer in accordance with the terms of the Development Agreement prior to the issuance of a final certificate of occupancy for the Project. Developer may be eligible for partial reimbursement of the costs of construction of the improvements required under this condition in accordance with the terms of the Development Agreement.
41. The Developer shall adhere to the executed Water Agreement with the City and shall incorporate water conservation practices into the proposed project per the Water Availability Analysis prepared by Sherwood Design Engineers, dated May 2, 2017 and the revision dated September 2, 2020. The water conservation requirements shall be replicated in full on the architectural plans.
42. Prior to issuance of a Certificate of Occupancy, all parcels shall be connected to the City of St. Helena municipal water system and installed per City of St. Helena standards.
43. Prior to issuance of a grading or building permit (whichever occurs first) a detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all

permanent post-construction stormwater treatment BMPs shall be prepared by the applicant's engineer and submitted for review approval. The Plan shall be prepared in accordance with the latest edition of the *Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual* and the requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).

44. Prior to the issuance of a Certificate of Occupancy, a Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drain and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted by the applicant's engineer for review and approval by the City Engineer. Once approved, the property owner shall enter into an agreement with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.
45. If proposed/new landscaping involves an area greater than 500 square feet or rehabilitation of more than 2,500 square feet, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo compliance shall be demonstrated as part of the building permit submittal.
46. Prior to issuance of a grading permit, a detailed Soils Investigation/Geotechnical Report shall be prepared by the developer and submitted for review. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.
47. Prior to issuance of a grading permit, unless otherwise explicitly permitted, all existing abandoned wells, septic tanks/systems and/or underground fuel storage tanks shall be abandoned under permit and inspection of Napa County Department of Environmental Services or other designated agency. If there are none, the Developers project engineer shall provide a letter describing the scope of the search done to make this determination.
48. Per the September 14, 2020 Technical Memo titled "Hydrogeologic Evaluation of Possible Impact of Proposed Irrigation-Supply Pumping on Local Aquifer Systems Proposed Farmstead Lodge Property" by Richard Slade and Associates, the applicant shall adhere to the following:
 - a) Prior to certificate of occupancy, the applicant shall initiate a groundwater monitoring program for the three active onsite wells. This will include frequent, consistent, and accurate monitoring of water levels, frequent monitoring of pumping rates and pumped volumes of groundwater and could also include verifying the accuracy of the existing flow meters in Well #1- PWS and Well #2-IRR. Water level monitoring should continue to utilize pressure transducers set to a depth just above the depth setting of the new pump in Well #1-PWS and Well #2-IRR. A new transducer should be installed and properly calibrated in the Shared well, along with a proper dual reading flow meter that is installed at an appropriate location on the discharge pipe near its wellhead. These transducer installations must include occasional corroboration using a manual water level sounder. The acquired data shall be

- downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; and
- b) Prior to certificate of occupancy, the applicant shall have completed one of the following options on the inactive well:
- i. Shall demolish the inactive well per State and County standards (DWR, Bulletin 74-90); or
 - ii. Leave the inactive well on the parcel as part as a permanent groundwater monitoring well. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; or
 - iii. Submit the appropriate permit applications to the City and the County to rehabilitate the inactive well in order to utilize it for an emergency back-up supply well. The well will be required to be monitored similarly as the three active wells and submitted to the City Public Works Department on an annual basis by June 30.
49. Prior to the issuance of a grading permit, the site plan shall show the location of any trees within the project area. Provide a tree protection plan for approval by the Public Works Director prior to approval of the building permit. The plan shall be coordinated with any civil grading/drainage/improvement plans.
50. The Developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.
51. Prior to the issuance of a Certificate of Occupancy, the Developer shall underground all on-site utility lines per St. Helena Municipal Code. The cost of undergrounding shall be the responsibility of the Developer.
52. Due to the economic and engineering infeasibility of undergrounding regional serving overhead power lines, such existing lines may remain on overhead power poles.
53. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.
54. Remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.
55. Proposed separations between public water facilities and other utilities shall meet the minimum separations as specified by the Department of Health and the City of St. Helena Public Works Standards.

56. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.
57. Wastewater discharged is subject to all of the requirements and limitations set forth in Chapter 13.24, Wastewater Discharge, of the St. Helena Municipal Code.
58. Prior to the issuance of the first building permit for 1000 Mills Lane, the Developer shall apply for annexation to the St. Helena Municipal Sewer District No. 1. The application shall be completed in accordance with the City of St. Helena's Sewer Annexation Procedures including all annexation, impact, connection, and sewer fees.
59. Prior to issuance of a building permit, in order to confirm the theoretical assumptions in the Theoretical Sewer Capacity provided by Sherwood Design Engineers dated May 2, 2017, the Developer is required to perform 7-day flow monitoring at the downstream sanitary sewer manholes (No. 1-89 and No. 1-94) to verify that the existing sewer pipe has adequate capacity to accommodate the proposed additional flows. Peak sewer flows will not be allowed to exceed 2/3 full pipe. If the proposed wastewater discharge regimen increases peak flows to greater than 2/3 full pipe at the monitored locations and with the current infrastructure, the owner may be subject to paying a share of the cost of sewer upgrades with a dollar amount proportional to the increase in wastewater flow as a result of the site development.
 - c) Concurrent with the building permit application, the Developer shall apply for and obtain a Wastewater Discharge Permit from the Department of Public Works as specified in St Helena Municipal Code Section 13.24.50. The permit conditions will require:
 - a. Discharge flow rate shall not exceed 5,150 gallons per day.
 - b. The onsite force main system shall provide protection from accidental discharge of prohibited materials or other wastes regulated as defined in Chapter 13.24, Wastewater Discharge, of St. Helena Municipal Code. Such facilities shall be provided and maintained at the Owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval prior to building permit approval.
 - c. Owner shall continuously maintain records of all daily flows for a rolling three year period. Said records shall be made available to the City for review upon request.
 - d. The City shall have the right to inspect all parts of the onsite force main system at anytime during normal business hours. Failure to take immediate corrective actions on any deficiencies found may result in enforcement actions as provided under the St. Helena Municipal Code or other applicable law.
60. Prior to the issuance of a Certificate of Occupancy, the Developer is required to install a wastewater flow meter measuring the total volume of wastewater leaving the project site, into the City's sewage collection infrastructure, and after installation,

have the wastewater flow meter calibrated yearly. Annual wastewater flow meter calibration records are to be maintained by the project ownership and made available to City staff upon request. The style, design, manufacturer, and location of this meter must be of a form found to be acceptable by the City. The costs associated with the installation and calibration of this meter are required to be fully borne by the Developers, and the results of the flow measurement are to be utilized to determine the amount of the wastewater bills for the uses on site. Said meter is required to be installed and functional prior to occupancy of the project.

61. Prior to issuance of a certificate of occupancy, trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.
62. Where applicable, the applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced by Napa County Department of Environmental Management.
63. Provide details of all proposed fencing, walls, and gates on all plans submitted for building permit review.
64. Prior to Certificate of Occupancy, the Developer shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards.
65. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.
66. The Developer shall be required to pay a fair share fee contribution in the amount of 23.3% towards the Dowdell Lane and Highway 29 signalization at the time such improvement is constructed by the City.
67. The Developer shall construct those certain storm drain improvements necessary to extend and improve the storm drain along Mills Lane. These storm drain improvements will serve properties on Mills Lane, La Fata Street, Fountain Street, Grayson Avenue, Main Street (to Charter Oak Avenue), and Vidovich Avenue and to construct an outfall for said storm drain into the Napa River. The Storm Drain Improvements shall be designed by City in accordance with the City's long-standing plan for this separate project is contained in City's Storm Drain Master Plan dated September 2000 (*see* Table 4-1) and the Highway 29 Specific Plan (*see* pages 37-39, Exhibit 11). City shall further be responsible for permitting required for the Storm Drain Project, which shall likely include permits from the California Department of

Fish and Wildlife, San Francisco Regional Water Quality Control Board, and the United States Army Corp of Engineers. Developer shall commence construction of the Storm Drain Improvements after the City has secured the permits required for the Storm Drain Improvements, provided, however, that the Storm Drain Improvements shall be completed before the Developer receives final certificate of occupancy for the Project. Upon completion of the storm drain improvements described in this condition, Developer shall be eligible for reimbursement of costs in excess of its proportionate share of costs in accordance with the terms of the Development Agreement.

68. Developer shall construct improvements to Mills Lane, which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the first certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer, and before Developer receives a final certificate of occupancy for the Project.
69. The Developer shall construct all on and offsite improvements in accordance with the improvement plans and supporting calculations that are prepared by a registered civil engineer and reviewed by the City of St. Helena Public Works Department. The improvement plans and supporting calculations shall include detailed designs for all utilities, water, grading, drainage, erosion control and paving.
70. Prior to issuance of a grading or building permit, the Developer shall be required to obtain a City encroachment permit for improvements on public right-of-way.
71. The following offsite improvements shall be installed by the Developer, completed prior to the issuance of a Certificate of Occupancy and will be provided on a separate offsite improvement plan set:
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, all required public frontage and street improvements shall be designed and built in accordance with City of St. Helena ordinances, Public Works Department Standard Specifications, and Caltrans requirements.
 - Specific offsite improvements include, in general, pavement widening, realignment of Mills Lane in accordance with the Highway 29 Specific Plan, signal upgrade at Highway 29/Main Street/Grayson Avenue/Mills Lane, signage, striping, street lighting, required accessible pedestrian curb ramps, and a new railroad crossing.
 - The typical half cross section of Mills Lane shall consist of a landscape strip, 10' path, curb and gutter, 8' parking strip, and 12' travel lane.
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the City water main from La Fata to the City's 12" water main on Highway 29 and install adequately spaced fire hydrants per the approval of the City's Fire Chief.
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the sewer main on La Fata to the project site.

- As identified in the 2019 Traffic Study by Crane Transportation Group, the Developer shall extend the sidewalk from La Fata Street to Mills Lane with a crosswalk to the project site. The La Fata Sidewalk improvements shall further be completed in accordance with the terms of the Development Agreement.
 - The improvement plans shall include a Construction Traffic Control Plan.
 - The improvement plans shall include an Erosion and Sediment Control Plan.
 - The improvement plans shall include a Joint Trench Plan (as necessary).
72. The Developer shall be required to obtain a Caltrans encroachment permit for improvements on and immediately adjacent to Highway 29 as necessary to complete the offsite improvements as outlined above.
73. The Developer shall be required to obtain permits necessary to complete work on the railroad right-of-way as necessary in conjunction with the offsite improvements as outlined above.
74. The Developer shall construct all on and offsite improvements which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the final certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer and before the Developer receives a final certificate of occupancy for the Project.
75. Prior to issuance of a certificate of occupancy, the Developer shall pay traffic impact fees based on the Master Fee Schedule, and the fee will assume all square footage calculated at the lodging rate.
76. Prior to issuance of a certificate of occupancy, the Developer shall demonstrate that water to fill the swimming pools came from outside St. Helena.

Building Department Conditions of Approval

77. A building permit is required for all onsite demolition, construction and/or change of occupancy.
78. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2019 Title 24 codes.
79. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.
80. The applicant shall provide a construction waste management plan with the building permit application.
81. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.
82. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.

83. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.

84. Properties which are on septic systems and proposing substantial renovations may require approval from the Napa County Environmental Health Department. Applicants are encouraged to engage with the County early in the building permit review process to reduce the potential for delay.

Fire Department Conditions of Approval

85. Plans submitted for building permit shall exhibit compliance with the current St. Helena Fire Code, as adopted and codified in St. Helena Municipal Code Chapter 15.36.

86. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.

87. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary is required. Fire resistant construction of interior walls shall be determined by type of occupancy.

88. Any gates installed to control vehicular access to a property are required to be setback 30-feet from the property line and/or edge of pavement, whichever is greater. No vehicle gates may be installed without Fire Department and Public Works Department review and explicit approval.

I HEREBY CERTIFY that the City of St. Helena City Council approved the foregoing at a Regular Meeting of the St. Helena City Council on October 13, 2020, by the following vote:

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

APPROVED:


Geoff Ellsworth, Mayor



ATTEST:


Cindy Tzafopoulos, City Clerk

Exhibit D (Ord. 2020-9)
Page 16

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EXHIBIT E

APPLICABLE LAW AND PROJECT APPROVAL EXCERPTS

- St. Helena General Plan Update 2040 as adopted in June 2019, located at:
https://www.cityofstheleena.org/sites/default/files/fileattachments/planning_resources/page/3505/final_plan_compiled.pdf
- Highway 29 Specific Plan as adopted February 22, 2005, located at:
https://www.cityofstheleena.org/sites/default/files/fileattachments/planning_resources/page/2961/highway_29_specific_plan_final_dtd_feb_22_2005.pdf
- St. Helena Zoning Code Chapter 17.52 (Service Commercial (SC) District) effective as of November 26, 2020
- City Council Resolution No. 2020-100 and all conditions of approval contained therein (attached as part of Exhibit E)
- Ordinance No. 2020-9 (attached as part of Exhibit E)
- Farmstead at Long Meadow Ranch Projects Initial Study/Mitigated Negative Declaration (including but not limited to all mitigations measures incorporated therein) as certified by Resolution 2020-100, located at:
<https://www.cityofstheleena.org/planning/page/farmstead-long-meadow-ranch>

EXHIBIT F MILLS LANE IMPROVEMENTS

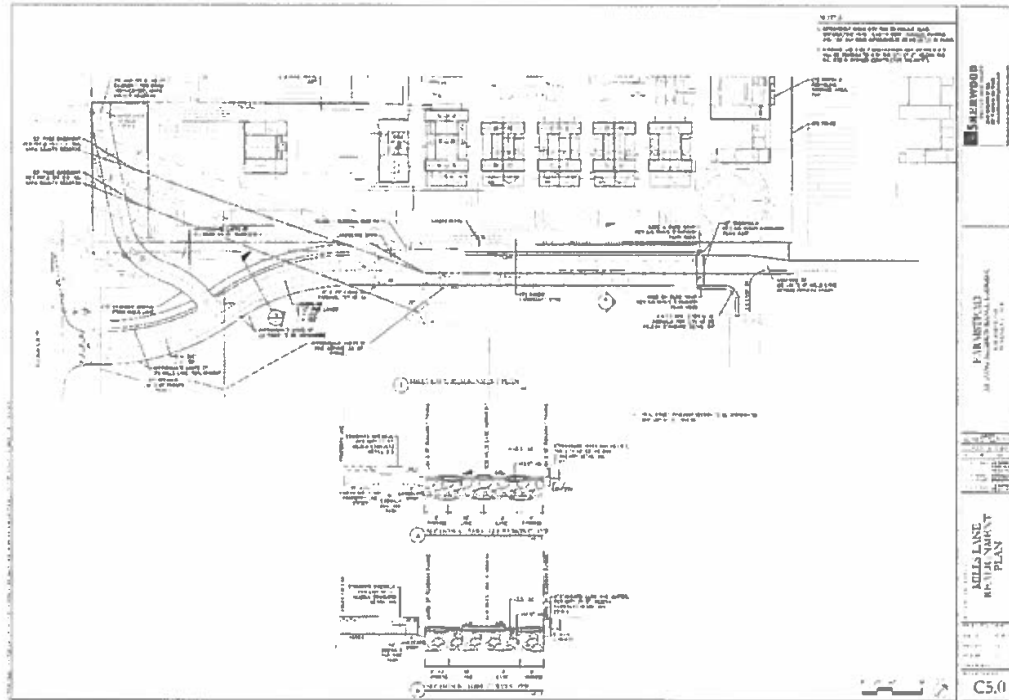


EXHIBIT G
STORM DRAIN IMPROVEMENTS

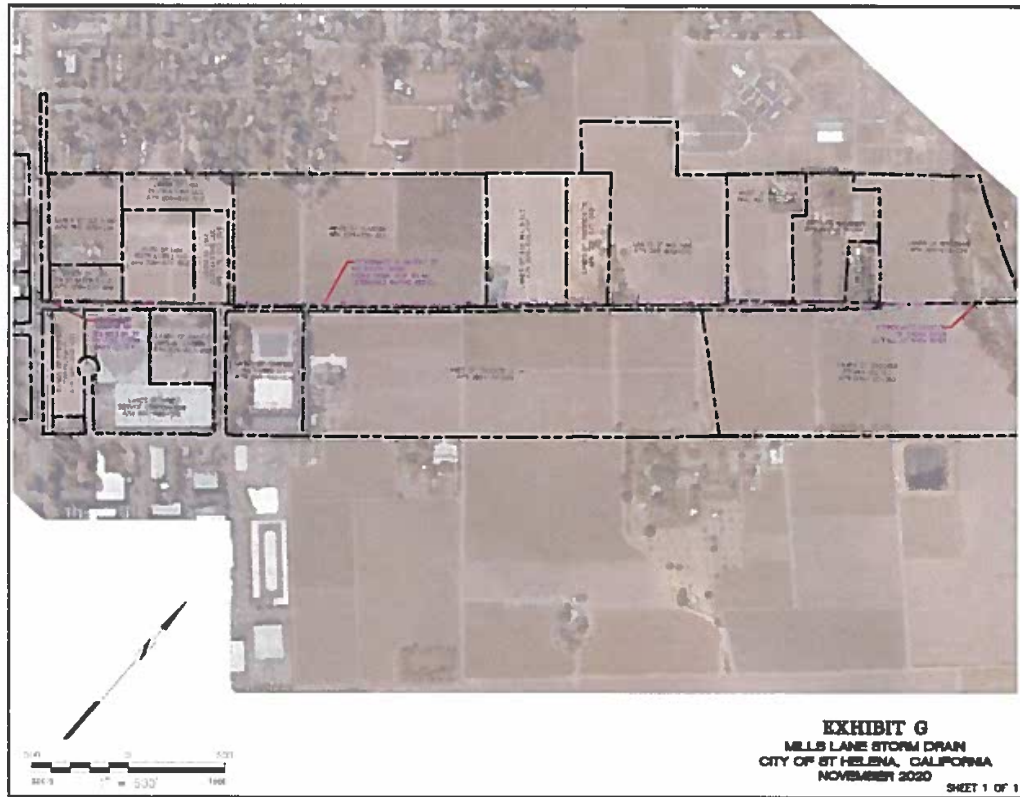
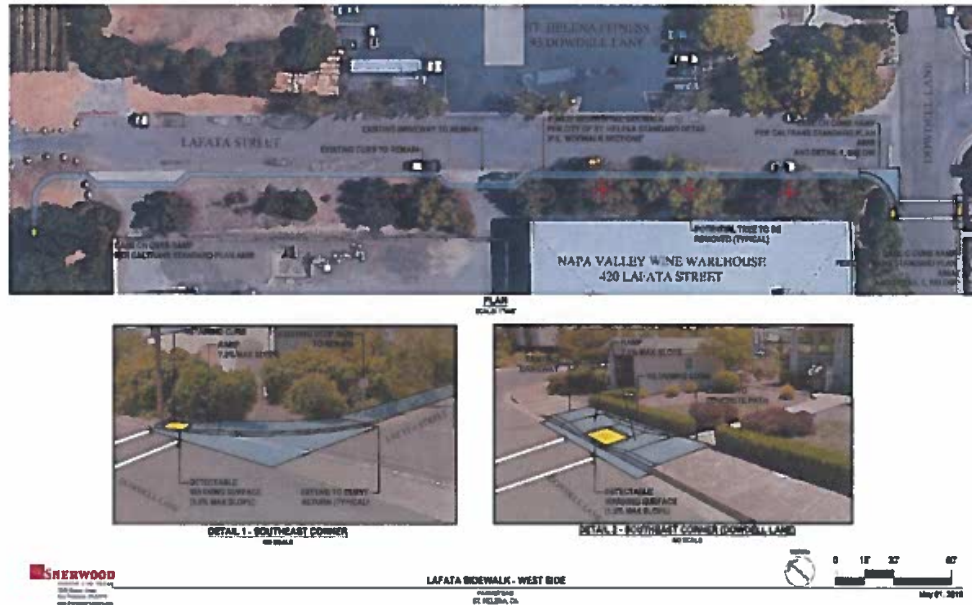


EXHIBIT H

LA FATA SIDEWALK IMPROVEMENTS



ORDINANCE NO. _____**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT WITH LMR DESTINATIONS, LLC RELATING TO THE FARMSTEAD LODGING PROJECT AT 1000 MILLS LANE**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of St. Helena (the "City") has enacted regulations encompassed in St. Helena Municipal Code Chapter 17.156 (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, On October 13, 2020, in accordance with the Development Agreement Statute and the Development Agreement Regulations, the City Council adopted Ordinance No. 2020-9 approving a Development Agreement (the "Development Agreement") with LMR Destinations, LLC, a California limited liability company (the "Developer") for the development of a 65 room single story hotel project, which in addition to the guest rooms includes a multi-purpose building for guest reception/administration, a bar and lounge area, meeting/classroom with demonstration kitchen, commercial kitchen and staff facilities; a utility and service building; a spa building; a pool and fitness building; two outdoor pools; two agricultural barns; and approximately 3.9 acres of land used for agricultural purposes (the "Project"); and

WHEREAS, The Development Agreement required the Developer to construct certain storm drain improvements adjacent to Mills Lane and extending to the Napa River prior to occupancy of the Project; and

WHEREAS, The storm drain improvements are not necessary for the Project. The Project is required to be designed to retain stormwater flows from up to a ten year storm event through on-site detention systems, and stormwater flows from up to a 25 year storm event can be released from the Project site into an infiltration system that will allow such stormwater flows to infiltrate into the ground; and

WHEREAS, City and Developer desire to eliminate the requirement in the Development Agreement to construct the storm drain improvements and instead have Developer provide for an infiltration system in the Mills Lane right of way, and are therefore amending the Development Agreement to replace the requirement to construct the storm drain with a requirement to include an infiltration system within the Mills Lane right of way that will retain storm water runoff from the Project up to a 25 year storm event, all as more specifically set forth in the First Amendment to

Development Agreement by and between City of St. Helena and LMR Destinations LLC as attached hereto as Exhibit A and incorporated herein by this reference (the “Development Agreement Amendment”); and

WHEREAS, the Development Agreement Regulations provide at St. Helena Municipal Code Section 17.156.080 and 17.56.100 that the Planning Commission shall hold a duly noticed public hearing on any proposed development agreement or amendment to a development agreement, and following such public hearing the Planning Commission shall make a recommendation to the City Council on whether or not to approve the development agreement, which recommendation shall include whether or not the development agreement proposed: (a) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan; (b) is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located; (c) is in conformity with public convenience, general welfare and good land use practice; (d) will be detrimental to the health, safety and general welfare; (e) will adversely affect the orderly development of property or the preservation of property values. The recommendation shall include the reasons for the recommendation;

WHEREAS, the Development Agreement as amended by the Development Agreement Amendment will assure both the City and the Developer that the Project will proceed as proposed and that the public improvements and other amenities and funding obligations of the Developer will be accomplished as proposed; and that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, the Planning Commission held a duly noticed public hearing at a Special Meeting on September 29, 2022, on the Development Agreement Amendment and the Use Permit Amendment during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public and recommended approval to the City Council in accordance with Section 17.156.080 of the St. Helena Municipal Code through this Resolution.

WHEREAS, the City Council held a duly noticed public hearing on October 11, 2022 on the Development Agreement Amendment and an associated amendment to the Use Permit for the Project, during which public hearing the City Council received comments from the Developer, City staff, and members of the general public; and

WHEREAS, the City Council desires to approve the requested amendments accordance with Section 17.156.080 of the St. Helena Municipal Code through approval of this Ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ST. HELENA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement Amendment attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to the Development Agreement Regulations.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines that the provisions of the Development Agreement Amendment are consistent with the General Plan and Highway 29 Specific Plan. Specifically, the Project to be developed pursuant to the Development Agreement as amended is consistent with the land use designations for the parcel upon which the Project will be developed. The lodging component of the Project will be constructed on the portion of the parcel that is within the City's Urban Limit Line and is designated as Service Commercial (SC), where lodging is an allowable use. The portions of the parcel that are outside the Urban Limit Line will remain in agricultural use, consistent with the requirements of the General Plan. The Project will further numerous policies of the General Plan as more specifically enumerated in the City staff reports prepared for this Ordinance, in that the Project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities. The Project would enhance the character in the SC district by redeveloping an under-utilized site in the commercial district. The Project would also be oriented toward an upscale market, consistent with the Napa Valley's reputation as a producer of world-class wines. Further, the Project is consistent with the Highway 29 Specific Plan and would implement its direction by providing for the realignment of Mills Land with Grayson Avenue consistent with the goals of the Highway 29 Specific Plan.

SECTION 4. On the basis of the whole record, the City has determined that the minor modifications made to the infrastructure conditions of approval and development agreement terms for the Project are consistent with the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan previously prepared and adopted for the Project on October 13, 2020, and would not result in new impacts or any substantial changes to any significant effects previously identified. Specifically, substantial changes are not proposed in the Project that would require major revisions of the Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects have not occurred; new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Mitigated Negative Declaration was adopted, as applicable, showing any of the following, has not come to light: (i) that the Project would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the

applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt. Thus, based on these findings and all evidence in the record, the City has determined that none of the conditions specified in State CEQA Guidelines section 15162 requiring preparation of a subsequent or supplemental EIR or MND would occur and no additional environmental review is required;

SECTION 5. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The City's General Plan;
- (c) The City's Highway 29 Specific Plan;
- (d) Resolution No. 2020-100, adopted by the City Council on October 13, 2020, making findings as to the Mitigated Negative Declaration for the Project, including the Statement of Findings and the Mitigation Monitoring and Reporting Program, and adopted a resolution approving Design Review, Use Permit, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement for Mills Lane, approved by and incorporated in said Resolution, which Resolution and exhibits are incorporated herein by reference as if set forth in full;
- (e) Resolution No. ____ of the Planning Commission of the City of St. Helena recommending that the City Council approve the Development Agreement Amendment with LMR Destinations, LLC relating to the Farmstead Lodging Project;
- (f) All City staff reports (and all other public reports and documents) prepared for the City Council, relating to the Development Agreement Amendment and other actions relating to the Property;
- (g) All documentary and oral evidence received at public hearings or submitted to the City during the comment period relating to the Development Agreement Amendment, and other actions relating to the Property; and
- (h) All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to development within and surrounding the City; State laws and regulations and publications.

SECTION 6. The City Council hereby approves the Development Agreement Amendment, attached hereto as Exhibit A, subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto.

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement Amendment pursuant to the terms of the Development Agreement Amendment.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This ordinance shall become effective on and after the thirtieth (30th) day following its adoption.

SECTION 10. The Mayor shall sign, and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of applicable law.

[Ordinance continued on following page]

INTRODUCED by the City Council of the City of St. Helena at a regular meeting of the City Council held on the 11th day of October, 2022 and **PASSED, APPROVED AND ADOPTED** by the City Council of the City of St. Helena, California, at a regular meeting of the City Council held on the 25th day of October, 2022 by the following vote:

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

ST. HELENA:

Mayor

ATTEST:

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 11th day of October, 2022 and was passed, approved and adopted at a regular meeting of the City Council on the 25th day of October, 2022 by the following vote:

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

City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

City Attorney

EXHIBIT A

First Amendment to Farmstead Development Agreement

[Inserted behind this cover page]

CITY OF ST. HELENA

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA GRANTING
A USE PERMIT AMENDMENT APPROVAL TO LMR DESTINATIONS LLC FOR THE
PROJECT LOCATED AT
1000 MILLS LANE (File No. PL_22-046)**

PROPERTY OWNER: LMR Destinations LLC

APN: 009-070-057

Recitals

1. On October 13, 2020, the City Council of the City of St. Helena adopted Resolution No. 2020-100, approving a Use Permit, Design Review, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement to allow LMR Destinations, LLC (the “Developer”) to construct a new 65 room hotel and associated facilities at 1000 Mills Lane in the Service Commercial and Twenty-acre Agriculture districts as described below (the “Project”):
 - A 9,882 sf multi-purpose building; and
 - A 3,452 sf utility and service building; and
 - A 3,114 sf spa building; and
 - A 2,652 sf pool and fitness building; and
 - Two outdoor pools, including one children’s pool; and
 - Two (2) 1,000 sf agricultural barns.
2. On October 13, 2020, the City Council additionally adopted Ordinance No. 2020-9 approving a Development Agreement for the Project, which vested certain rights to Developer in developing the Project and included additional obligations and public benefits that Developer agreed to provide as consideration for the rights vested by the Development Agreement.
3. The City prepared an Initial Study/Mitigated Negative Declaration for the Project, which was independently reviewed and analyzed by the City Council, along with public comments, and all other information in the record and the City Council considered the information contained therein, prior to acting upon or approving the Project; and
4. Based on its review of the Initial Study/Mitigated Negative Declaration and all other testimony and information presented to the Council in conjunction with the Project the City Council, on behalf of the City as lead agency for the Project, determined based on its independent judgment and analysis that there was no substantial evidence that the Project as designed, conditioned, and mitigated, will have a significant effect on the environment; and

5. The City Council therefore approved the Mitigated Negative Declaration (SCH No. 2020050553) (“MND”) and Mitigation Monitoring and Reporting Program (“MMRP”) for the Project on October 13, 2020; and
6. The Development Agreement required the Developer to construct certain storm drain improvements adjacent to Mills Lane and extending to the Napa River prior to occupancy of the Project; and
7. The storm drain improvements are not necessary for the Project. The Project is required to be designed to retain stormwater flows from up to a ten year storm event through on-site detention systems, and stormwater flows from up to a 25 year storm event can be released from the Project site into an infiltration system that will allow such stormwater flows to infiltrate into the ground; and
8. City and Developer desire to eliminate the requirement in the Development Agreement to construct the storm drain improvements and instead have Developer provide for an infiltration system in the Mills Lane right of way, and are therefore amending the Development Agreement to replace the requirement to construct the storm drain with a requirement to include an infiltration system within the Mills Lane right of way that will retain storm water runoff from the Project up to a 25 year storm event; and
9. The conditions of approval for the Use Permit as adopted by Resolution No. 2020-100 contemplated that the Developer would be constructing the storm drain, and incorporated the requirement to construct the storm drain as set forth in the Development Agreement into the conditions of approval; and
10. Based on the amendment to the Development Agreement; the City desires to amend the conditions of approval for the Use Permit to replace the requirement to construct the storm drain with the requirement to construct the infiltration system, and make minor conforming edits to the conditions of approval as noted with underline and strikeout; and
11. A public notice of the public hearing before the City Council for this proposed amendment to the Use Permit and the proposed Amendment to the Development Agreement for the Project was published in the Napa Valley Register and mailed to residents and occupants within 300 feet of the project site in compliance with state and local law; and
12. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on September 29, 2022; and
13. The Planning Commission at a Special Meeting on September 29, 2022 recommended that the City Council of the City of St. Helena approve the Amendment to the Use Permit, and the First Amendment to the Development Agreement for the Project based on the findings below and subject to the conditions of approval enumerated herein.
14. The City Council of the City of St. Helena desires to approve the Amendment to the Use Permit, and the First Amendment to the Development Agreement for the Project based on the findings below and subject to the conditions of approval enumerated herein.

Resolution

- A. In reviewing the findings in this Resolution, the City Council relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.
- B. CEQA Findings:
1. The City Council has independently reviewed and analyzed the Mitigated Negative Declaration and Mitigation Monitoring Plan previously approved for the Project as well as public comments, and all other information in the record and has considered the information contained therein, prior to acting upon or approving the proposed amendment to the Development Agreement or the Use Permit Amendment; and
 2. On the basis of the whole record, the City has determined that the minor modifications made to the infrastructure conditions of approval and development agreement terms for the Project site are consistent with the MND and MMRP previously prepared and adopted for the Project on October 13, 2020, and would not result in new impacts or any substantial changes to any significant effects previously identified. Specifically, substantial changes are not proposed in the Project that would require major revisions of the Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects have not occurred; new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Mitigated Negative Declaration was adopted, as applicable, showing any of the following, has not come to light: (i) that the Project would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt. Thus, based on these findings and all evidence in the record, the City has determined that none of the conditions specified in State CEQA Guidelines section 15162 requiring preparation of a subsequent or supplemental EIR or MND would occur and no additional environmental review is required; and
 3. The custodian of the documents and other materials that constitute the record of proceedings is Cindy Tzafopoulos, City Clerk and may be inspected at 1572 Railroad Avenue, St. Helena, CA 94574.

- C. In accordance with SHMC Section 17.168.050, the City Council adopts the following use permit findings to support the motion to recommend approval of the amendment to the use permit:
1. *That the proposed uses would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community in that proposed uses are related to a new hotel and would largely occur indoors within new buildings.*
 2. *That the proposed uses would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties in that the proposed project is subject to City noise regulations and is not anticipated to produce frequent noise audible beyond the property line.*
 3. *That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan as traffic related impacts have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
 4. *That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection in that impacts to these services have been identified in the Mitigated Negative Declaration and been determined to be less than significant.*
 5. *That the proposed uses would provide adequate ingress and egress to and from the proposed location in that ingress and egress to the project site would be provided via a realigned Mills Lane.*
 6. *That allowing the proposed uses would not conflict with the City's goal of maintaining the economic viability of a local serving economy in that the proposed project would be consistent with General Plan Update 2040 policies.*
 7. *That the proposed uses would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located as the proposed project is consistent with the intent of the Service Commercial and A-20 zoning districts.*
 8. *That the proposed uses would not be in conflict with the City's General Plan in that the project would support both a local and visitor serving component to the City's economy by providing jobs, tax revenue, and additional amenities.*
 9. *That the proposed uses would not be injurious to public health, safety, or welfare in that the proposed uses consist of a new hotel and ancillary facilities and would largely occur indoors within new buildings.*
 10. *That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan in that this use permit only applies to this property and to this specific use.*
 11. *That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available in that the proposed project has provided required off-street parking.*

12. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use in that the project site can adequately be served by existing streets and a realigned Mills Lane.

- D. The City Council further recommends that based on the foregoing, approval of an amendment to the use permit for the above-described project located at 1000 Mills Lane to amend the conditions of approval for such use permit as set forth herein. The conditions of approval listed herein shall amend, replace and supersede the conditions of approval included in Resolution No. 2020-100 in their entirety, and shall hereafter constitute the conditions of approval for the Project. The conditions of approval included herein show the changes to such conditions through strike-through and underlining of the original conditions. The conditions set forth herein are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed. All other entitlements granted by Resolution No. 2020-100, including Design Review Approval, Lot Line Adjustment, Lot Merger, Variance, and Water Agreement remain in full force and effect as approved on October 13, 2020.

Planning Department Conditions of Approval

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.
2. This approval shall be vested pursuant to the development agreement, provided however that the approval may be extended under the terms of the development agreement or for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals.
3. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
4. All required fees, unless otherwise specified in the development agreement, including planning fees, development impact fees, building fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit except as expressly provided herein. Fees shall be those in effect at the time of the issuance of the building permit.
5. Developer shall make a payment for the purpose of furthering the City's affordable housing goals in accordance with the requirements of Section 5.1.6 entered into by and between Developer and the City for this project. The Development Agreement requires \$1,000,000 to be paid to the City prior to issuance of the building permit, and the remaining \$2,200,000 to be paid at the earlier of (i) Transfer of the Property by Developer, other than a Permitted Transfer ("Transfer" and "Permitted Transfer" are defined in the Development Agreement); (ii) conversion of Developer's construction financing for the Project to permanent financing, or (iii) sixty (60) months after issuance of a final certificate of occupancy for the Project.
6. Compliance with all permit conditions shall occur in accordance with specific regulations but in all cases no later than prior to occupancy or initiation of use unless another time is set by law or by this approval. Occupancy or final inspection of a project may be withheld if all conditions, including payment of fees for services rendered by the City, are not met.

7. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
8. Provided they are in general compliance with this approval and the development agreement, minor modifications may be approved by the Planning and Building Director.
9. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
10. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
11. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on September 14, 2020 and September 17, 2020, and by the City Council on October 13, 2020 except as modified herein.
12. If the property is sold or otherwise conveyed to new owners, the owner or successor in interest is required to notify the Planning Director in writing within 30 days of the change in ownership. The use permit shall then be brought before the Planning Commission for review in order for the City to assess whether operational practices that are different than what is approved in this use permit may occur and whether a use permit amendment is required.
13. For attendees who are not lodging guests, 1) the chef's table and demonstration classes shall occur during off-peak hours, 2) the chef's table is limited to 20 persons per event and 3) the demonstration classes are limited to 40 persons per event.
14. The spa, fitness building, pools, and outdoor seating areas are for the use of guests only.
15. Bar and lounge activities shall comply with the City's noise ordinance.
16. All live and amplified music must comply with applicable City noise regulations.
17. With the exception of handicapped employees, all employees shall park in the off-site supplemental lot; employees shall not park on-site or on neighboring streets.
18. All guests and visitors must park on-site or at applicant provided off-site parking.
19. Planters and tree wells must be bordered by a six-inch high concrete curb or equivalent barrier approved by the City.
20. A minimum of 20% of the subject property must remain maintained landscaping and shall be kept in a weed-free condition.

21. The owner or successor in interest shall notify the City in writing if the lease option for the off-site parking lot to be used for employee parking at Dowdell/McCormick is lost or the lease is otherwise terminated or expires. The owner or successor in interest shall provide evidence that a parking lot with a similar number of parking spaces has been secured (and is approximately the same distance from the project site or applicant provides appropriate transportation from parking to project site).
22. Prior to issuance of a Certificate of Occupancy, the applicant shall designate a Transportation Demand Management (TDM) coordinator to establish programs to ensure VMT by guests and employees are reduced, including, but not limited to, employee car and vanpooling, employer-sponsored transit passes, bicycle-sharing, showers, lockers, secure bike storage, and winery tours for guests with pickup and drop-off at the lodge.
23. Prior to issuance of a Certificate of Occupancy, the developer shall provide verification that an on-call shuttle service is available during all hours as long as there is an off-site employee parking lot.
24. Prior to issuance of a Certificate of Occupancy, the developer shall install a shelter at the off-site Dowdell Lane parking lot.
25. Prior to issuance of a grading permit, the project site shall be adequately fenced and secured to prevent trespassing.
26. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
27. Prior to issuance of a Certificate of Occupancy, the applicant shall provide two (2) courtesy bicycles per guest room.
28. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

Public Works Department Conditions of Approval

29. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm

Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.

30. For any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.
31. Improvement plans shall incorporate all grading, drainage, and utilities shown on the approved Use Permit package, those improvements agreed to in public hearings, the requirements of these conditions of approval, and those improvements required by any codes in effect at the time of plan submittal.
32. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties. The Developer shall submit storm water infiltration system design calculations for the project in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal. The calculations shall include a hydrology map, hydrology and hydraulic calculations, pipe size calculations, inlet capacity calculations, and other information necessary to support the proposed design.
33. Prior to the issuance of a Certificate of Occupancy, the Developer shall install storm drain Detention system improvements as required to maintain post development 10-year runoff from the pre-development levels. The Developer shall submit storm drain detention system supporting calculations for review and approval prior to improvement plan approval.
34. Prior to the issuance of a Certificate of Occupancy, the Developer shall install detention system inlets sized to pass at minimum the 25-year flows.
35. A grading and drainage plan shall be prepared for the project that includes a design that allows for a 100-year overland release. All graded building pads shall be above the 100-year overland release elevation.
36. The grading plans provided by the Developer for review shall include the existing topography shown with contour lines labeled at one-foot intervals and extending a minimum of 100-feet beyond the limits of the site, or sufficient distance to indicate impacts on adjacent properties.
37. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum
38. Prior to the issuance of a grading permit or building permit (whichever occurs first), the project property owner shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Construction Storm Water Pollution Prevention Plan (SWPPP). This is required because the overall project grading involves an area of disturbed surface soil that is greater than or equal to one acre, .

39. The Developer shall execute a City of St. Helena Water Agreement with an annual water use cap of 1,953,928 gallons per year prior to issuance of a Building Permit.
40. Due to the new water demand on the City system in the amount of 1,953,928 gallons per year, the Developer shall implement an alternative innovative method of mitigating water use as allowed under Section 13.12.030(B) of the SHMC, and approved by City Council in the Development Agreement prior to certificate of occupancy. The required offsite improvements to offset water demand as required pursuant to the Development Agreement is as follows: The Developer shall construct and install \$256,549 worth of water infrastructure (i.e., purple pipe) in Mills Lane between Highway 29 easterly to the eastern end of Mills Lane. This purple pipe is intended to connect to a future wastewater treatment facility and deliver recycled water to Crane Park's irrigation infrastructure by November 1, 2024, significantly reducing the City's use of potable water. No certificate of occupancy for the Lodging component may be issued, until either the Developer has demonstrated or City has confirmed that either: (a) the water savings from the irrigation of Crane Park with recycled water from the wastewater treatment facility offsets the Lodging component's anticipated water demand, or (b) the Developer has identified and implemented other measures calculated to save potable water in amounts equal to the Project's anticipated use of City water permanently or until recycled water is delivered to Crane Park. Such improvements shall be constructed and approved by the City Engineer in accordance with the terms of the Development Agreement prior to the issuance of a final certificate of occupancy for the Project. Developer may be eligible for partial reimbursement of the costs of construction of the improvements required under this condition in accordance with the terms of the Development Agreement.
41. The Developer shall adhere to the executed Water Agreement with the City and shall incorporate water conservation practices into the proposed project per the Water Availability Analysis prepared by Sherwood Design Engineers, dated May 2, 2017 and the revision dated September 2, 2020. The water conservation requirements shall be replicated in full on the architectural plans.
42. Prior to issuance of a Certificate of Occupancy, all parcels shall be connected to the City of St. Helena municipal water system and installed per City of St. Helena standards.
43. Prior to issuance of a grading or building permit (whichever occurs first) a detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all permanent post-construction stormwater treatment BMPs shall be prepared by the applicant's engineer and submitted for review approval. The Plan shall be prepared in accordance with the latest edition of the *Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual* and the requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).
44. Prior to the issuance of a Certificate of Occupancy, a Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drainage and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted by the applicant's engineer for review and approval by

the City Engineer. Once approved, the property owner shall enter into an agreement with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.

45. If proposed/new landscaping involves an area greater than 500 square feet or rehabilitation of more than 2,500 square feet, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo compliance shall be demonstrated as part of the building permit submittal.
46. Prior to issuance of a grading permit, a detailed Soils Investigation/Geotechnical Report shall be prepared by the developer and submitted for review. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.
47. Prior to issuance of a grading permit, unless otherwise explicitly permitted, all existing abandoned wells, septic tanks/systems and/or underground fuel storage tanks shall be abandoned under permit and inspection of Napa County Department of Environmental Services or other designated agency. If there are none, the Developers project engineer shall provide a letter describing the scope of the search done to make this determination.
48. Per the September 14, 2020 Technical Memo titled "Hydrogeologic Evaluation of Possible Impact of Proposed Irrigation-Supply Pumping on Local Aquifer Systems Proposed Farmstead Lodge Property" by Richard Slade and Associates, the applicant shall adhere to the following:
 - a) Prior to certificate of occupancy, the applicant shall initiate a groundwater monitoring program for the three active onsite wells. This will include frequent, consistent, and accurate monitoring of water levels, frequent monitoring of pumping rates and pumped volumes of groundwater and could also include verifying the accuracy of the existing flow meters in Well #1- PWS and Well #2-IRR. Water level monitoring should continue to utilize pressure transducers set to a depth just above the depth setting of the new pump in Well #1-PWS and Well #2-IRR. A new transducer should be installed and properly calibrated in the Shared well, along with a proper dual reading flow meter that is installed at an appropriate location on the discharge pipe near its wellhead. These transducer installations must include occasional corroboration using a manual water level sounder. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; and
 - b) Prior to certificate of occupancy, the applicant shall have completed one of the following options on the inactive well:
 - i. Shall demolish the inactive well per State and County standards (DWR, Bulletin 74-90); or
 - ii. Leave the inactive well on the parcel as part as a permanent groundwater monitoring well. The acquired data shall be downloaded and reviewed on a quarterly basis by the applicant and submitted to the City Public Works Department on an annual basis by June 30; or

- iii. Submit the appropriate permit applications to the City and the County to rehabilitate the inactive well in order to utilize it for an emergency back-up supply well. The well will be required to be monitored similarly as the three active wells and submitted to the City Public Works Department on an annual basis by June 30.
- 49. Prior to the issuance of a grading permit, the site plan shall show the location of any trees within the project area. Provide a tree protection plan for approval by the Public Works Director prior to approval of the building permit. The plan shall be coordinated with any civil grading/drainage/improvement plans.
- 50. The Developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.
- 51. Prior to the issuance of a Certificate of Occupancy, the Developer shall underground all on-site utility lines per St. Helena Municipal Code. The cost of undergrounding shall be the responsibility of the Developer.
- 52. Due to the economic and engineering infeasibility of undergrounding regional serving overhead power lines, such existing lines may remain on overhead power poles.
- 53. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.
- 54. Remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.
- 55. Proposed separations between public water facilities and other utilities shall meet the minimum separations as specified by the Department of Health and the City of St. Helena Public Works Standards.
- 56. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.
- 57. Wastewater discharged is subject to all of the requirements and limitations set forth in Chapter 13.24, Wastewater Discharge, of the St. Helena Municipal Code.
- 58. Prior to the issuance of the first building permit for 1000 Mills Lane, the Developer shall apply for annexation to the St. Helena Municipal Sewer District No. 1. The application shall be completed in accordance with the City of St. Helena's Sewer Annexation Procedures including all annexation, impact, connection, and sewer fees.
- 59. Prior to issuance of a building permit, in order to confirm the theoretical assumptions in the Theoretical Sewer Capacity provided by Sherwood Design Engineers dated May 2, 2017, the Developer is required to perform 7-day flow monitoring at the downstream sanitary sewer manholes (No. 1-89 and No. 1-94) to verify that the existing sewer pipe has adequate

capacity to accommodate the proposed additional flows. Peak sewer flows will not be allowed to exceed 2/3 full pipe. If the proposed wastewater discharge regimen increases peak flows to greater than 2/3 full pipe at the monitored locations and with the current infrastructure, the owner may be subject to paying a share of the cost of sewer upgrades with a dollar amount proportional to the increase in wastewater flow as a result of the site development.

- c) Concurrent with the building permit application, the Developer shall apply for and obtain a Wastewater Discharge Permit from the Department of Public Works as specified in St Helena Municipal Code Section 13.24.50. The permit conditions will require:

- a. Discharge flow rate shall not exceed 5,150 gallons per day.
- b. The onsite force main system shall provide protection from accidental discharge of prohibited materials or other wastes regulated as defined in Chapter 13.24, Wastewater Discharge, of St. Helena Municipal Code. Such facilities shall be provided and maintained at the Owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval prior to building permit approval.
- c. Owner shall continuously maintain records of all daily flows for a rolling three year period. Said records shall be made available to the City for review upon request.
- d. The City shall have the right to inspect all parts of the onsite force main system at anytime during normal business hours. Failure to take immediate corrective actions on any deficiencies found may result in enforcement actions as provided under the St. Helena Municipal Code or other applicable law.

- 60. Prior to the issuance of a Certificate of Occupancy, the Developer is required to install a wastewater flow meter measuring the total volume of wastewater leaving the project site, into the City's sewage collection infrastructure, and after installation, have the wastewater flow meter calibrated yearly. Annual wastewater flow meter calibration records are to be maintained by the project ownership and made available to City staff upon request. The style, design, manufacturer, and location of this meter must be of a form found to be acceptable by the City. The costs associated with the installation and calibration of this meter are required to be fully borne by the Developers, and the results of the flow measurement are to be utilized to determine the amount of the wastewater bills for the uses on site. Said meter is required to be installed and functional prior to occupancy of the project.

61. Prior to issuance of a certificate of occupancy, trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.
62. Where applicable, the applicant shall be required to submit to the requirements for annual inspections of food/beverage service establishments and businesses that handle hazardous wastes for illicit stormwater discharges as required by the State National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges. The annual stormwater illicit discharge inspections are performed and invoiced by Napa County Department of Environmental Management.
63. Provide details of all proposed fencing, walls, and gates on all plans submitted for building permit review.
64. Prior to Certificate of Occupancy, the Developer shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards.
65. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.
66. The Developer shall be required to pay a fair share fee contribution in the amount of 23.3% towards the Dowdell Lane and Highway 29 signalization at the time such improvement is constructed by the City.
67. Developer shall, at its sole cost and expense, design and construct stormwater infiltration system improvements adjacent to the Mills Lane improvements described in Condition No. 68 and within the existing public right of way for Mills Lane, which infiltration system improvements shall be designed to retain and infiltrate at a minimum 25 year stormwater flows. The development of 1000 Mills Lane shall include inlets from the development to the infiltration system improvements to manage at minimum such 25 year stormwater flows. The infiltration system improvements shall be constructed prior to or concurrently with the development of 1000 Mills Lane and in accordance with improvement plans approved by the City Engineer and verified to meet the standards for retention and infiltration as set forth herein. Developer shall complete the infiltration system improvements required by this condition prior to the issuance of the first certificate of occupancy for 1000 Mills Lane by the City.
68. Developer shall construct improvements to Mills Lane, which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the first certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer, and before Developer receives a final certificate of occupancy for the Project.

69. The Developer shall construct all on and offsite improvements in accordance with the improvement plans and supporting calculations that are prepared by a registered civil engineer and reviewed by the City of St. Helena Public Works Department. The improvement plans and supporting calculations shall include detailed designs for all utilities, water, grading, drainage, erosion control and paving.
70. Prior to issuance of a grading or building permit, the Developer shall be required to obtain a City encroachment permit for improvements on public right-of-way.
71. The following offsite improvements shall be installed by the Developer, completed prior to the issuance of a Certificate of Occupancy and will be provided on a separate offsite improvement plan set:
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, all required public frontage and street improvements shall be designed and built in accordance with City of St. Helena ordinances, Public Works Department Standard Specifications, and Caltrans requirements.
 - Specific offsite improvements include, in general, pavement widening, realignment of Mills Lane in accordance with the Highway 29 Specific Plan, signal upgrade at Highway 29/Main Street/Grayson Avenue/Mills Lane, signage, striping, street lighting, required accessible pedestrian curb ramps, and a new railroad crossing.
 - The typical half cross section of Mills Lane shall consist of a landscape strip, 10' path, curb and gutter, 8' parking strip, and 12' travel lane.
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the City water main from La Fata to the City's 12" water main on Highway 29 and install adequately spaced fire hydrants per the approval of the City's Fire Chief.
 - In accordance with civil site plans prepared by Sherwood Design Engineers, dated May 6, 2019, the Developer shall extend the sewer main on La Fata to the project site.
 - As identified in the 2019 Traffic Study by Crane Transportation Group, the Developer shall extend the sidewalk from La Fata Street to Mills Lane with a crosswalk to the project site. The La Fata Sidewalk improvements shall further be completed in accordance with the terms of the Development Agreement.
 - The improvement plans shall include a Construction Traffic Control Plan.
 - The improvement plans shall include an Erosion and Sediment Control Plan.
 - The improvement plans shall include a Joint Trench Plan (as necessary).
72. The Developer shall be required to obtain a Caltrans encroachment permit for improvements on and immediately adjacent to Highway 29 as necessary to complete the offsite improvements as outlined above.
73. The Developer shall be required to obtain permits necessary to complete work on the railroad right-of-way as necessary in conjunction with the offsite improvements as outlined above.

74. The Developer shall construct all on and offsite improvements which are consistent with City's Highway 29 Specific Plan, prior to or concurrently with the development of the Project and shall complete the Mills Lane Improvements prior to the issuance of the final certificate of occupancy for the Project by the City. Construction shall be completed in accordance with improvements plans as approved by the City Engineer and before the Developer receives a final certificate of occupancy for the Project.
75. Prior to issuance of a certificate of occupancy, the Developer shall pay traffic impact fees based on the Master Fee Schedule, and the fee will assume all square footage calculated at the lodging rate.
76. Prior to issuance of a certificate of occupancy, the Developer shall demonstrate that water to fill the swimming pools came from outside St. Helena.

Building Department Conditions of Approval

77. A building permit is required for all onsite demolition, construction and/or change of occupancy.
78. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2019 Title 24 codes.
79. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.
80. The applicant shall provide a construction waste management plan with the building permit application.
81. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.
82. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.
83. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.
84. Properties which are on septic systems and proposing substantial renovations may require approval from the Napa County Environmental Health Department. Applicants are encouraged to engage with the County early in the building permit review process to reduce the potential for delay.

Fire Department Conditions of Approval

85. Plans submitted for building permit shall exhibit compliance with the current St. Helena Fire Code, as adopted and codified in St. Helena Municipal Code Chapter 15.36.
86. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.
87. One hour minimum fire resistant construction on all exterior walls within 10' of property boundary is required. Fire resistant construction of interior walls shall be determined by type of occupancy.
88. Any gates installed to control vehicular access to a property are required to be setback 30-feet from the property line and/or edge of pavement, whichever is greater. No vehicle gates may be installed without Fire Department and Public Works Department review and explicit approval.

I HEREBY CERTIFY that the City of St. Helena City Council approved the foregoing at a Regular Meeting of the St. Helena City Council on October 13, 2022, by the following vote:

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

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



City Council

October 11, 2022

Farmstead DA Amendment and Use Permit Amendment #PL22-046 DA 2022-001



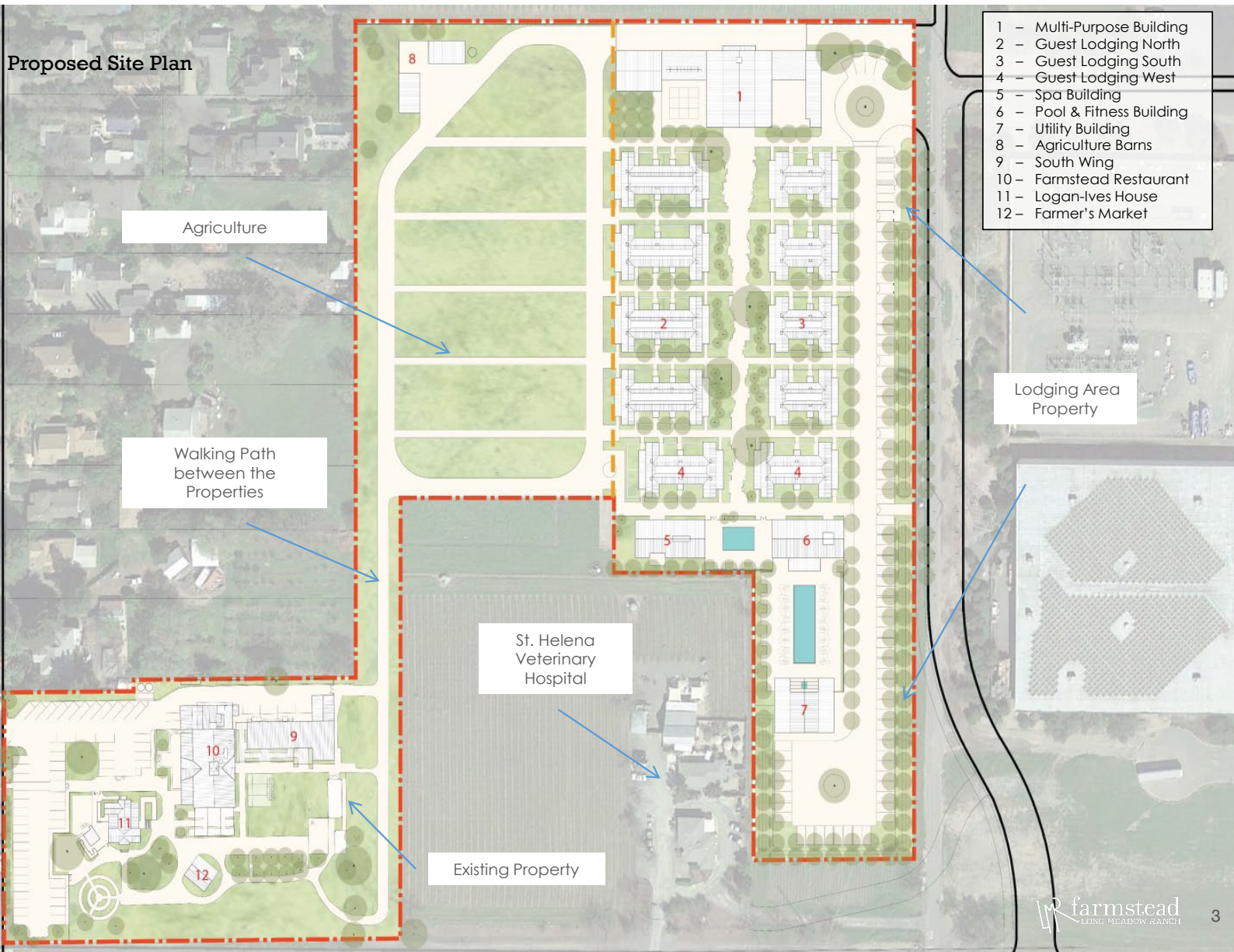
BACKGROUND-FARMSTEAD LODGING PROJECT

- October 13, 2020, City Council approved a Use Permit, Design Review and Development Agreement
- Scope of Project: 65 hotel rooms, multi-purpose building, fitness center and spa





Proposed Site Plan





Scope of Infrastructure Changes

STORM DRAIN

- Construction of Storm Drain in Mills Lane not needed
- Developer to construct an infiltration system in Mills Lane ROW
- Designed for up to a 10 year storm event
- Cost savings from not building storm drain to fund recycled water system



Amendment to Use Permit

- Resolution changes conditions numbers 32, 40,44, and 67
- The condition of approvals amendments - underline for new text and strikeout for deleted text



Development Agreement Amendment

- SHMC Chapter 17.156 requires public hearing
- Revised approach to addressing storm drainage
- Additional monetary contribution toward the City's future recycled water project
- Change to timing of completion of recycled water improvements
- Clarifies reimbursement of developer costs



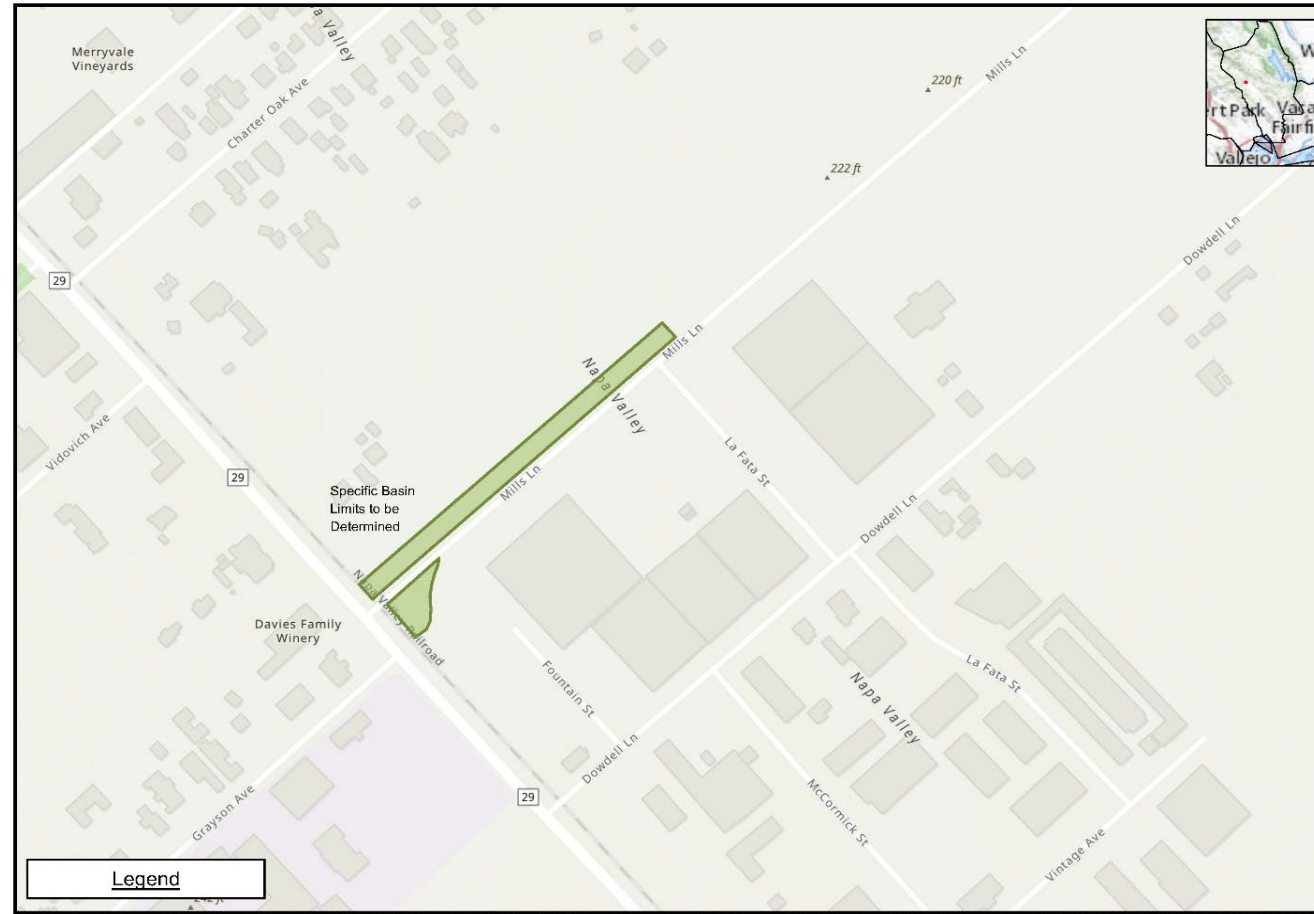
Recommendation

Staff recommends that the City Council:

1. Find that none of the conditions specified in State CEQA Guidelines section 15162 require the preparation of a subsequent or supplemental EIR or MND and no additional environmental review is required; and
2. Introduce and waive the first reading of an Ordinance approving a Development Agreement Amendment between the applicant and the City of St. Helena for the LMR Destinations LLC lodging project at 1000 Mills Lane; and
3. Adopt the attached resolution making specific findings and approve a Use Permit Amendment for the LMR Destinations LLC lodging project at 1000 Mills Lane.



Infiltration System Improvements



Produced by Napa County GIS

Infiltration System Improvements

Printed On: 9/18/2022



Disclaimer: This map was prepared for informational purposes only. No liability is assumed for the accuracy of the data delineated hereon.



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: OLD BUSINESS

Subject: Second Reading and Proposed Adoption of an Ordinance adopting St. Helena Police Department Policy 707 "Military Equipment" as required by AB 481 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 clarification on how the policy would be adopted and implemented. This item now provides for the policy to be adopted by ordinance as required by AB 481. The policy also makes clear that the City does not currently use, possess or allocate funds for any Military Equipment as defined in the policy, and that prior to acquiring or using any military use equipment, the City would have to amend the policy by ordinance to allow for such military equipment, and comply with all noticing and procedural requirements set forth in AB 481.

The first reading was conducted and approved at the September 27, 2022, regular City Council meeting.

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)).

AB 481 requires a military equipment use policy to be adopted by ordinance before the City can use any military equipment (as more specifically defined in the policy) in its law enforcement activities. The Police Department does not currently own or use any military equipment, and has no plans to do so, but desires to have a policy in place that is consistent with state law in order to be clear on the process that must be followed with regard to the acquisition or use of any military equipment.

Section 707.4 of the policy makes clear that the St. Helena Police Department does not use, possess or allocate any funds for military equipment at this time. If the Department sought to acquire, use or possess military equipment in the future, the policy would have to be amended to add the desired military equipment to Section 707.4. Pursuant to Section 707.5, the City Council would have to hold a public hearing before adding any military equipment to its allowed inventory, and the policy amendments that would allow that addition must be posted on the City's website for at least 30 days prior to the required public hearing.

FISCAL IMPACT

None

RECOMMENDED ACTION

Conduct the second reading and adopt the Ordinance Police Department Policy No. 709 (Military Equipment Policy) In Accordance With AB 481.

ATTACHMENTS

[Attachment 1 - Policy 707 Public Hearing Notice](#)

[Attachment 2 - Assembly Bill No. 481](#)

[Attachment 3 - Ordinance Adopting AB 481 Policy](#)

[Attachment 4 - St. Helena Military Equipment Policy](#)

[Attachment 5 - Presentation](#)

**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 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

Ch. 406

— 2 —

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 incurrment 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

Ch. 406

— 6 —

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

— 9 —

Ch. 406

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

ORDINANCE NO. 2022-

**ADOPTING POLICE DEPARTMENT POLICY NO. 709
(MILITARY EQUIPMENT POLICY) IN ACCORDANCE WITH AB 481**

WHEREAS, on September 30, 2021, Governor Newsom signed into law Assembly Bill (“AB”) 481 to address the funding, acquisition, and use of military equipment, as that term is defined by Government Code section 7070(c); and

WHEREAS, AB 481 requires adoption of a military equipment policy (“Policy”) by the City Council before the St. Helena Police Department (“Department”) may take action to request military equipment; seek funds (such as grants or in-kind donations) for acquiring military equipment; actually acquire military equipment, either permanently or temporarily by owning, borrowing, or leasing; collaborate with other law enforcement agencies to deploy or use military equipment in the agency’s territorial jurisdiction; use new or existing military equipment in a manner not previously subject to AB 481’s scope; solicit or respond to a proposal for, or enter into an agreement with, any person or entity to seek funds for, apply for, acquire, use, or collaborate in using military equipment; or to acquire military equipment through any other means not specifically detailed in the statute; and

WHEREAS, in accordance with AB 481, the proposed Policy was made available on the website on the Department website at least thirty (30) days prior to the public hearing by the City Council to adopt the Policy; and

WHEREAS, in accordance with AB 481, the Policy is on the agenda as an open session item at a regular meeting of the City Council, and public comment on the item will be allowed in accordance with the Brown Act; and

WHEREAS, this Ordinance shall be reviewed by the City Council at least annually, and based on an annual military equipment report that will be submitted to the City Council pursuant to AB 481, the City Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval.

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

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

SECTION 2: Findings. Pursuant to Government Code section 7071(d)(1), as may be amended or renumbered from time to time, the City Council hereby makes the following findings in support of its adoption of the Policy:

- A. The military equipment identified in the Policy is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- B. The proposed Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- C. If the Department purchases military equipment pursuant to the Policy, 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.

SECTION 3: Adoption of Military Equipment Policy. The City Council hereby adopts the Policy No. 709, Military Equipment Policy, attached hereto as Exhibit "A".

SECTION 4: CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 5: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

SECTION 6: 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 27th day of September, 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 Hall:	_____
Councilmember Hardy:	_____

APPROVED:

Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

Cindy Tzafoopoulos, City Clerk

Exhibit "A"

[Insert AB 481 Policy]

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 Hall:	_____
Councilmember Hardy:	_____

Policy
707

St. Helena Police Department
St Helena PD Policy Manual

Military Equipment

707.1 PURPOSE AND SCOPE

State

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

State

Definitions related to this policy include (Government Code § 7070):

Governing body – The City Council of the City of St. Helena (“City Council”).

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.

St. Helena Police Department

St Helena PD Policy Manual

Military Equipment

707.2 POLICY

State

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

Best Practice **MODIFIED**

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 City Council 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 City Council.
- (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

State **MODIFIED**

The following constitutes a list of qualifying equipment for the Department:

Currently the Saint Helena Police Department does not use, possess, or allocate funds any Military Equipment as defined by this Policy (Government Code § 7070).

707.5 APPROVAL

State **MODIFIED**

The Chief of Police or the authorized designee shall obtain approval from the City Council prior to acquiring any listed military equipment by way of an ordinance amending Section 707.4 of this military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure

St. Helena Police Department

St Helena PD Policy Manual

Military Equipment

the proposed amendments to the military equipment policy are submitted to the City Council and are 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 City Council 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 City Council.
- (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

State MODIFIED

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 St. 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

State MODIFIED

Upon approval of this military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the City Council 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.

St. Helena Police Department
St Helena PD Policy Manual

Military Equipment

707.8 COMMUNITY ENGAGEMENT

State

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.

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).



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: **OLD BUSINESS**

Subject: **Water Penalty Update, Discussion and Direction for Water Penalties**

CEQA **Not a CEQA project**
Determination:

Prepared By: April Mitts, Assistant City Manager

Reviewed By: Anil Comelo, City Manager

Approved By: Anil Comelo, City Manager

BACKGROUND

On October 27, 2020, the City Council established Phase II Water Regulations and, in accordance with the St. Helena Municipal Code (SHMC), established the Water Advisory Board consisting of one City Council member, one Planning Commissioner, one winery customer, and two public members, one of whom shall solely be a residential customer.

Per the Municipal Code, the Water Advisory Board shall meet at least monthly and may grant permits for uses of water, for exceptions to water conservation measures, or for water connections otherwise prohibited.

On July 27, 2021, the City Council adopted a resolution designating that the Water Advisory Board can hear/make a determination for reduction of penalties for those customers who receive a penalty as a result of a water leak.

On October 26, 2021, based on the Water Advisory Board's recommendation, City Council adopted Resolution No. 2021-136 providing administrative approval of specified penalty waiver requests which meet the Water Advisory Board's established criteria.

On October 29, 2021, the Water Advisory Board approved a checklist and established criteria for administrative approval of water penalty waiver requests.

DISCUSSION

The purpose of this report is to provide the City Council with an overview of water penalties including:

- Activity by the Water Advisory Board (WAB),
- Feedback to the City Council from the WAB and City staff
- Summary of penalties assessed, waived, and paid, and a summary of expenses related to the Phase II emergency.

In addition, staff is seeking Council direction on collection of outstanding penalties.

At a future date, staff will recommend to the City Council changes in the penalty structure and other recommended administrative changes based upon lessons learned from the last implementation of the penalties.

Water Advisory Board (WAB) - Activity

The Water Advisory Board met 19 times since April 30, 2021 to conduct business prescribed by the City's Municipal Code (exception request review/approval) and City Council (Water Penalty Leak Appeals).

In December 2021, the City moved from a Phase II Water Emergency back into a Phase I Water Emergency. This shift eliminated water penalties for water use exceeding designated allocations; however, water conservation is still a priority in Phase I. While the immediate Phase II emergency had been removed, the WAB continued to be an active committee with the last meeting held on May 6, 2022. SHMC Section 13.04.230 Subsection C.8. states, "Unless the city council otherwise directs, the board will disband when the water emergency is no longer in effect." At this point the current WAB has been disbanded and, if a Phase II emergency appears to be imminent, the City Council begin the process of appointing a new WAB.

Table 1 provides a summary of all actions to-date by the Water Advisory Board (WAB) and actions taken through administrative review.

Table 1

Description	# of Items
Exception Requests Granted – Admin Lot Size	359
Exception Requests Granted – Admin Medical	14
Exception Requests Granted – Admin Misc.	34
Exception Requests Granted – WAB	2
Penalty Waivers Approved – Administrative	126
Penalty Waivers Approved – WAB	38
Penalty Waivers Denied	9

Water Advisory Board (WAB) - Feedback

At the March 18, 2022 meeting of the WAB, staff presented a Phase II summary report and provided the WAB with the opportunity to discuss anything learned during the process, discuss any challenges, and identify opportunities for improvement. It was noted that staff would be preparing a report to the City Council and would include any feedback received by the WAB. The feedback provided by the WAB is included at Attachment 1.

Staff concurs fully with the feedback provided by the WAB, especially with respects to the importance of being better prepared for the next Phase II emergency. Of particular interest to staff is the reevaluation of the assessment of penalties as the current structure is difficult for customers to comprehend and is not easy to administer.

Staff Feedback - December 9, 2021

On December 9, 2021, a meeting was held which included several staff members from Public Works, Finance, and the City Manager as well as the two Council Water Ad Hoc committee members - Mayor Ellsworth and Councilmember Hardy. The objective of this meeting was to talk about the emergency and find ways to improve the administration and customer interactions. During this meeting statistical information was provided and staff expressed their own experiences. Staff described issues/obstacles encountered and normal tasks not completed because employees were diverted to work associated with the penalties and water emergency.

While certainly not an exhaustive list, common themes included:

1. Need for water education including conservation
2. Lack of empathy/understanding for City staff
3. Rude/aggressive behavior by some customers
4. Stress experienced by staff because of the increased workload and inability to complete regular work assignments
5. Inadequacies of the current meter system
6. Need for simplification of the penalty structure
7. Importance of standard vocabulary/definitions
8. Improved customer education and communications

Penalties

Penalties were imposed during the Phase II Water Emergency from June 2021 through November 2021. The total penalties assessed was \$6.1 million. Through the direction of the Council, as well as what is outlined in the municipal code, a majority of the penalties were waived or reversed through the following mechanisms:

1. Penalty forgiveness program - Waiver of penalties incurred in June and July if customers did not exceed their allocation in August, September, October, and November.
2. Penalty appeal waiver - Waiver of penalties incurred as a result of a leak which has been corrected.

3. Allocation adjustments - Adjustment of allocation based on an exception granted. Most allocation adjustments were a result of lot size allowances per the municipal code, household occupant updates, and medical exemptions.
4. Administratively reversed due to the penalty being assessed without proper notice to customers. This occurred for properties which have a designated landscape meter where staff were unable to provide notification to customers on their allocation based on the municipal code requirements.

Table 2 provides a summary of the activity by category.

Table 2

Description	# of Accounts	Amount
Total Penalties Imposed		\$6,110,845
Penalty Forgiveness	324	(\$233,201)
Penalty Appeal Waiver	167	(\$2,180,921)
Allocation Adjustment	339	(\$1,426,242)
Penalty Assessed without Notice	15	(\$196,416)
TOTAL PENALTIES ASSESSED		\$2,074,064
TOTAL PENALTIES PAID TO-DATE		(\$1,109,632)
OUTSTANDING PENALTIES TO BE PAID*, **	85	\$964,432

*There are three request for fee waivers totaling \$261,321. Depending on Council direction, the unpaid penalty amount may change.

** The average unpaid balance is \$11,346.

There are currently three penalty waiver requests which are outside the purview of the WAB and/or Administrative approval. All three water customers have requested an appeal be brought before City Council for consideration. The three requests are presented in Table 3.

Table 3*

Type of Request	Waiver Request
Customer is requesting a waiver of only the 75% June and 50% July suspended penalties and will pay the 25% June penalty, 50% July penalty, August penalty, and September penalty.	\$10,574.26
Customer is requesting a full penalty waiver.	\$19,228.30
Customer received penalties in June, July, and August but has not incurred any penalties since.	\$251,379.28

*These three appeals will be brought back to Council at a later date for consideration.

Fiscal Impact**Expenses**

The fiscal impact associated with outside contracts to implement the Phase II water emergency are summarized in Table 4.

Table 4

Task	Amount Spent
Communications Strategy (outreach)	\$ 46,034
Penalty Policy Development	\$ 57,684
Penalty Implementation	\$ 25,000
Data Integration (monthly penalties)	\$ 12,481
Water Regulations Code Enforcement	\$ 62,795
Additional Administrative Support	\$ 36,606
Mailers	\$ 26,878
Urgency Ordinance Development	\$ 8,578
TOTALS	\$276,056

In addition to the above expenses incurred there was, and still is, significant staff time involved in the implementation of the Phase II emergency. Table 5 provides a summary of the estimated staff time and staff costs incurred to-date associated with the Phase II Water Emergency. Please note this table does not take into consideration the increase in phone calls/emails with customers, preparation for Council meetings prior to implementation of urgency ordinance and adoption of penalty structure, and other miscellaneous items which occurred on a daily basis regarding the emergency.

Table 5

Staff Task	Total Est. Hours	Total Est. Costs
Exception Requests	202	\$ 9,765
Household Surveys	550	\$ 21,280
Penalty Waivers	346	\$ 26,268
Penalty Reconciliation	100	\$ 8,721
Account Adjustments	777	\$ 33,811
WAB Meeting and Mtg Prep (staff only)	266	\$ 10,097
Detailed Meter Reads and Analysis	369	\$ 22,140
Farmer's Market Outreach (2021 only)	234	\$ 7,254
Penalty Assessments	120	\$ 7,200
Weekly Phase II Water Meetings	120	\$ 6,000
Mailer/Outreach Preparation	22	\$ 1,320
TOTALS	3,168	\$166,752

The net cost for implementation of the cost for the Phase II Water Emergency is estimated to be \$442,808 which includes consultants and City staff.

Penalties

Table 6 provides a summary of all penalty's imposed, penalties paid, and unpaid penalties to-date. Please note the total penalties take into consideration penalty adjustments related to allocation adjustments, penalty appeal waivers, and penalty waived as part of the penalty forgiveness program.

Table 6

Total Penalties	Penalties Paid	Unpaid Penalties*
\$2,074,064	\$1,109,632	\$964,432

*There are three request for fee waivers totaling \$261,321. Depending on Council direction, the unpaid penalty amount may change.

Loss Revenues

As anticipated, revenue losses were experienced as a result of the water emergency and the dramatic reduction of water use. During the development of the FY 2021-22 budget (July 1, 2021 through June 30, 2022); staff reduced the estimated revenues for both the water and wastewater funds. Table 7 provides a summary of the estimated revenues (via the water and wastewater study), the FY 2021-22 adopted revenues, and the FY 2021-22 actual revenues.

Table 7

	FY22 Estimated Revenues Rate Study	FY 22 Estimated Revenues Adopted Budget	FY 22 Actual Revenues
Water	\$7.1 million	\$6.2 million	\$5.8 million
Wastewater	\$4.2 million	\$3.4 million	\$3.4 million

Summary of Fiscal Impact

While the total penalties paid to-date is \$1,109,632 (noted in Tables 2 and 6) there were offsetting costs incurred as a result of the Phase II emergency as well as a loss in revenues. Additionally, on February 22, 2022, as part of the mid-year budget adjustment, City Council authorized the use of \$450,000 in penalty funds collected for the first payment of the settlement agreement reached between Hall Vineland, LLC and Hall Vista, LLC v. City of St. Helena. Table 8 provides a summary of the penalties received and the associated costs (excluding staffing costs noted in Table 6).

Table 8

Item	Expense
Penalties Paid	\$1,109,632
External Contract Work (Table 4)	(\$276,056)
Loss Revenues (Water) Adopted v. Actual (Table 7)	(\$400,000)
Settlement Agreement	(\$450,000)
Net	(\$16,424)
Unpaid Penalties	\$964,432
Net if 100% of Unpaid Penalties are Collected	\$948,008

Council Discussion and Direction

The staff briefing tonight is to provide Council a summary of the activity surrounding the Phase II Water Penalty assessments, recommended next steps, as well as receive direction for the unpaid penalties.

Collection of Outstanding Penalties

In consultation with the City Attorney there are three avenues for collection of outstanding penalties: (1) hardship agreements - an already approved method, (2) use of a collection agency, or (3) small claims court. Costs for the use of a collection agency typically range from 20% to 40% depending on the difficulty in recovery. The costs for use of small claims court is unknown at this time. Once direction is received from Council, a notification will be provided to customers and will include the option of completing a Hardship Agreement for payment of outstanding penalties prior to enacting another recovery mechanism.

Staff Recommended Next Steps

As noted throughout this report, there are many nuances to the Phase II Water Emergency and there is a need for subsequent, more in-depth Council discussion and policy revision. This includes, but is not limited to: current penalty structure and water restriction allocations in Phase II and Phase III as directed by the Municipal Code. The City is currently in a Phase I Water Emergency and, while a Phase II emergency is not necessarily eminent, due to the current drought conditions it is important to plan ahead for moving forward into Phase II based on lessons learned.

Staff's recommendation is to engage the two Council Water Ad Hoc committee members - Mayor Ellsworth and Councilmember Hardy, and work with staff on:

1. Policy recommendations for consideration by the full Council; and
2. Develop a refined list of what is needed if the City enters into a Phase II emergency
 - e.g.:
 - a. Customer outreach
 - b. Use of consultants
 - c. Hiring of a dedicated Project Manager for the emergency
 - d. Notification of allocations
 - e. Implementation of penalties
 - f. Additional support staff to assist with the increased workload

RECOMMENDED ACTION

Receive and file report and provide direction to staff for collection of unpaid penalties and confirmation of staff recommendations for next steps.

ATTACHMENTS

[Attachment 1 - Water Advisory Board Feedback](#)

Water Advisory Board - Feedback

At the March 18, 2022 meeting of the WAB, staff presented a summary report and provided the WAB with the opportunity to discuss anything learned during the process, discuss any challenges, and identify opportunities for improvement. It was noted staff would be preparing a report to the City Council and would include any feedback received by the WAB. The feedback provided by the WAB is provided below:

Communication

1. Start water education earlier - A lot of customers were not aware the City was in a Phase I emergency and it was not until penalties were assessed that customers started paying attention.
2. Customers indicated they did not get enough time before the penalties were assessed.
3. Have a system to broadcast information to all users, this would include an annual notification to all customers to update their account information
4. Update the City's website
5. Build a packet for all new water customers which includes the following:
 - a. Welcome letter
 - b. Notification this is a drought area and that there are regulations as well as the conditions of the St. Helena area
 - c. Provide information that the City encourages water conservation and include water education information
 - d. Provide information on Phase II allocations and penalty structure
 - e. Application - add a line for additional contacts and have multiple levels of communication
6. Public Works - meet and educate customers on how irrigation works and setting their systems up correctly

Leaks

1. It was the consensus that the leak letters are valuable; however, it is the recommendation that additional information is provided in the letter explaining what triggers a leak letter being sent.
2. City to provide more education or provide a resource tool for assistance.
 - a. Irrigation systems - this is the top contributor for leaks
 - b. Pool Leaks
 - c. Include information on the challenges to finding a leak, how to find a leak, and fixing leaks

Historical Water Use

1. During Phase I notify customers of their historical use as people tend to use water and not pay attention to how much they use.

2. During Phase I notify customers of their allocation if a Phase II is triggered.
3. Phase II Water Allocations - The SHMC allows for an additional 20 gallons per day per square foot for larger lot sizes. The language specifies that this allocation is for landscaped area, the problem is how to verify the actual landscaped area. The WAB recognizes this is labor intensive and is a staffing issue.
4. Irrigation
 - a. Align watering days for Phase I and Phase II in the SHMC
 - b. Potentially change time allowed for irrigation to give the water customer the opportunity to see where leaks may be happening.

Penalties

1. The current penalty structure is challenging, difficult to administer, and difficult to explain to customers. The WAB recommends re-evaluation of the current structure which may include: a maximum penalty such as the penalty does not exceed ____% their total water bill.
2. The WAB expressed concern over the amount of staff time, resources, and costs incurred to implement the penalty structure and, in the end, were the penalties effective in saving water or is it possible to look at different approaches - could the City achieve conservation without the utilization of penalties?

Final Comments

In 2014 a Phase II was triggered; however, before the WAB met for the first time, or penalties were imposed, Phase II restrictions were lifted. It was the consensus of the WAB that staff and the WAB are now more prepared if/when a Phase II is triggered again. In particular the WAB noted the following items were put in place during the Phase II Water Emergency declared in 2021:

- a. Development of an administrative tool to approve Penalty Waivers to ensure consistency.
- b. Having standards for review in place.
- c. Applications for appeals became more uniform.



Water Penalty Update

By: April Mitts, Assistant City Manager



Purpose

- Report on Activity by the Water Advisory Board
- Feedback for City Council
- Present Summary of Penalties
- Council Direction



Background

- Phase I – July 1, 2020
 - Reservoir 60%
- Phase II – October 27, 2020
 - Reservoir 39.4%
- Phase II Penalties
 - June 2021 through November 2021
- Revert back to Phase I – December 2021



Penalty Related Actions

Description	# of Items
Exception Requests Granted – Admin Lot Size	359
Exception Requests Granted – Admin Medical	14
Exception Requests Granted – Admin Misc.	34
Exception Requests Granted – WAB	2
Penalty Waivers Approved – Administrative	126
Penalty Waivers Approved – WAB	38
Penalty Waivers Denied	9



Penalty Related Actions - Revenues

Description	# of Accts	Amount
Total Penalties Imposed	1,204	6,110,845
Penalty Forgiveness	324	(233,201)
Penalty Appeal Waiver	167	(2,180,921)
Allocation Adjustments	339	(1,426,242)
Penalty Assessed without Notice	15	(196,416)
<i>TOTAL PENALTIES ASSESSED</i>		<i>2,074,064</i>
TOTAL PENALTIES PAID TO-DATE		(1,109,632)
OUTSTANDING PENALTIES TO BE PAID		964,432



Penalty Related Actions - Expenses

Description	Amount
Communications Strategy (Outreach)	46,034
Penalty Policy Development	57,684
Penalty Implementation	25,000
Data Integration (Monthly Penalties)	12,481
Water Regulations Code Enforcement	62,795
Additional Administrative Support	36,606
Mailers	26,878
Urgency Ordinance Development	8,578
TOTALS	276,056



Penalty Related Actions - Staffing

Staff Task	Est. Hours	Est. Costs
Exception Requests	202	9,765
Household Surveys	550	21,280
Penalty Waivers	346	26,268
Penalty Reconciliation	100	8,721
Account Adjustments	777	33,811
WAB Meeting and Meeting Prep (staff only)	266	10,097
Detailed Meter Reads and Analysis	369	22,140
Farmer's Market Outreach (2021 only)	234	7,254
Penalty Assessments	120	7,200
Weekly Phase II Water Meetings	120	6,000
Mailer/Outreach Preparation	22	1,320
TOTALS	3,168	166,752



Loss Revenues

	FY 22 Estimated Rate Study	FY 22 Estimated Adopted Budget	FY 22 Actual	Difference Adopted vs. Actual
Water	\$7.1 million	\$6.2 million	\$5.8 million	(400,000)
Wastewater	\$4.2 million	\$3.4 million	\$3.4 million	-0-



Summary of Fiscal Impact

Item	Amount
Penalties Paid	1,109,632
External Contract Work	(276,056)
Loss Revenues (Water) Adopted v. Actual	(400,000)
Net	433,576
Unpaid Penalties	964,432
<i>Net if 100% of Unpaid Penalties are Collected</i>	<i>*1,398,008</i>

*On 2/22/22 City Council authorized the use of \$450,000 in penalty funds collected

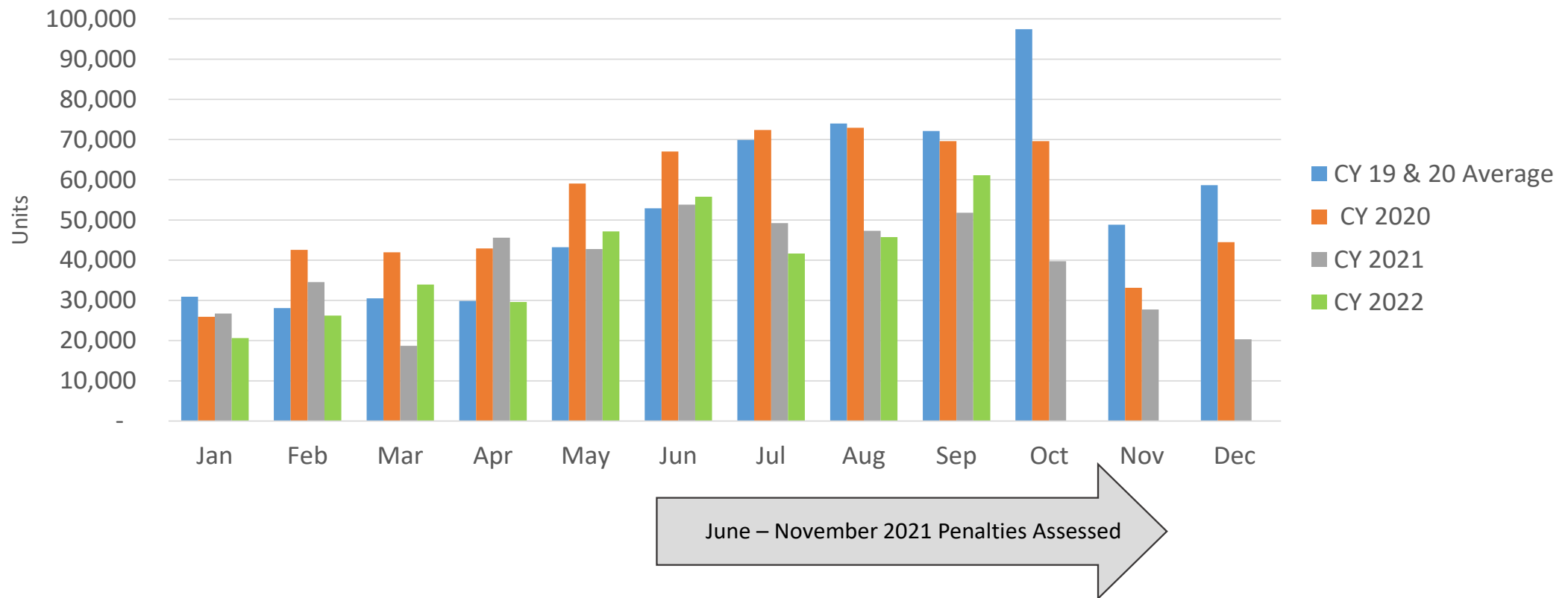


Feedback – Staff and WAB

Feedback
Water Education – Use and Conservation
Lack of Empathy/Understanding for City Staff
Rude/Aggressive Behavior by some Customers
Stress Experienced by Staff
Inadequacies of the Current Meter System
Need for Simplification of the Penalty Structure
Importance of Standard Vocabulary/Definitions
Improved Customer Education and Communications



Historical Water Use - All Users





Historical Water Use – YOY % Change

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018	24%	15%	-7%	-21%	-3%	-8%	9%	-10%	-8%	51%	-62%	24%
2019	-18%	-6%	-8%	-10%	27%	-15%	-11%	-5%	-10%	-24%	151%	57%
2020	-7%	56%	43%	51%	22%	38%	10%	1%	2%	-17%	-53%	-38%
2021	3%	-19%	-55%	6%	-28%	-20%	-32%	-35%	-26%	-43%	-16%	-54%
2022	-23%	-24%	82%	-35%	10%	4%	-15%	-3%	18%			
	Phase I											
	Phase II											
	Penalties											



Discussion and Direction – 2 items

1. Collection of Outstanding Penalties

- Hardship Agreements
- Collection Agency
- Small Claims Court



Discussion and Direction – 2 items

2. Staff Recommended Next Steps:

- ❖ Engage 2 Council Water Ad Hoc Committee Members and Staff
 - Develop policy recommendations
 - Revisit Current Penalty Structure
 - Revisit Current Water Allocations
 - Develop refined Phase II Emergency List
 - Customer Outreach
 - Use of Consultants
 - Project Manager
 - Notification of Allocations
 - Implementation of Penalties
 - Additional Support Staff



Questions?



Report to the City Council
Regular City Council - 11 Oct 2022

Agenda Section: NEW BUSINESS

Subject: Appointment of a Subcommittee to Review and Make Recommended Changes to the City Council, Committees, Boards and Commission Rules of Procedure for the Conduct of Meetings & Standards of Conduct document.

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

BACKGROUND

On May 11, 2021, the City Council adopted updates to its Rules of Procedures for the Conduct of City Meetings and Standards of Conduct (Attachment 1). The purpose of these protocols is to provide an effective environment for the City Council to provide leadership. It is expected the document will be reviewed on a regular basis and amended from time to time.

DISCUSSION

At the September 27, 2022 City Council meeting, Mayor Ellsworth made a request for the City Council to consider review of the current St. Helena City Council Standards of Conduct. Vice Mayor Dohring concurred with the recommendation.

Council provided direction to bring this item back to Council at the next meeting so an appointment of a sub-committee consisting of two Council members could be made. This sub-committee will work with the City Manager, City Clerk and City Attorney to review and make recommendations to the City Council for any updates to the Standards of Conduct.

FISCAL IMPACT

None

RECOMMENDED ACTION

Appointment of a subcommittee of the City Council to review and make recommended changes to the City Council, Committees, Boards and Commission Rules of Procedure for the Conduct of Council Meetings & Standards of Conduct document.

ATTACHMENTS

[Attachment 1 - 2021-63 RESCINDING RESOLUTION 2019-18 ADOPTING RULES OF PROCEDURE FOR CONDUCT OF COUNCIL MEETINGS AND STANDARDS OF CONDUCT](#)

CITY OF ST. HELENA

RESOLUTION NO. 2021-63

RESCINDING RESOLUTION NO. 2019-18 ADOPTING RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS AND CITY COUNCIL STANDARDS OF CONDUCT, AND RE-ESTABLISHING RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS AND RE-ESTABLISHING CITY COUNCIL STANDARDS OF CONDUCT

RECITALS

- A. WHEREAS, City Council Rules of Procedure for the Conduct of Council Meetings are established to provide an effective environment for the City Council to provide leadership; and
- B. WHEREAS, City Council Standards of Conduct are established to provide guidance to Council Members to assist in fully understanding the role and scope of the responsibilities of office; and
- C. WHEREAS, City Council reviews City Council Rules of Procedure for the Conduct of Council Meetings and reviews City Council Standards of Conduct and revise as deemed necessary; and
- D. WHEREAS, on May 11, 2021 the City Council adopted a new Council Vision and Council Mission; and
- E. The City Council Rules of Procedure for the Conduct of Council Meetings & Standards of Conduct have been updated to include the new Council Vision and Council Mission.

RESOLUTION

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

- 1. Resolution No. 2019-18 Adopting Rules of Procedure for the Conduct of Council Meetings is hereby rescinded; and
- 2. City Council Rules of Procedure and Standards of Conduct are adopted and hereby made part of this resolution. Attached hereby as Exhibit A.

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

Mayor Geoff Ellsworth: Yes

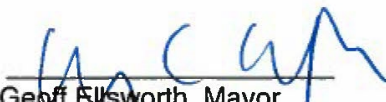
Vice Mayor Paul Dohring: Yes

Council Member Anna Chouteau: Yes

Council Member Lester Hardy: Yes

Council Member Eric Hall: Yes

APPROVED:


Geoff Ellsworth, Mayor

ATTEST:


Cindy Tzafopoulos, City Clerk



Exhibit A - City Council Rules of Procedure and Standards of Conduct

Exhibit A



CITY COUNCIL

RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

&

STANDARDS OF CONDUCT

TABLE OF CONTENTS

1. PURPOSE.....	4
1.1 Council-Manager Form of Government.....	4
1.2 City Council Vision and City Council Mission.....	4
 2. RULES OF PROCEDURE FOR THE CONDUCT OF	
COUNCIL MEETINGS	5
2.1 Regular Meeting	5
2.2 Special, Emergency, and Adjourned Meetings	5
2.3 Regular Meeting Agenda	6
2.4 Public Testimony and Comments Before the Council	7
2.5 Roll Call and Voice Votes	8
2.6 Consent Items	9
2.7 Reports.....	9
2.8 Closing Time of Council Meetings	9
2.9 Old Business.....	9
2.10 New Business.....	9
2.11 Office of the Mayor.....	10
2.12 Office of Mayor Pro Tempore (Vice Mayor)	10
2.13 Action by the Council.....	10
2.14 Adoption by Majority Vote.....	11
2.15 Discussion.....	11
2.16 Ratification of Actions.....	11
2.17 Procedural Motions.....	11
2.18 Withdrawal of Motion.....	12
2.19 Duty to Vote.....	13
2.20 Introduction and Passage of Ordinance.....	13
2.21 Closed Sessions.....	13
2.22 Quorum.....	14
2.23 Telephonic Attendance Of Council Members At Council Meetings.....	14
2.24 Public Hearings.....	16
2.25 Appointments to Committees and Boards.....	16
2.26 Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century.....	17

3. CITY COUNCIL STANDARDS OF CONDUCT	17
3.1 Policy Purpose.....	17
3.2 Ethics.....	17
3.3 Code of Ethics and Conduct.....	20
3.4 Enforcement and Sanctions.....	25
3.5 Implementation.....	29

APPENDIX

Exhibit—*Rosenberg's Rules of Order*. Simple Parliamentary Procedures for the 21st Century

1. PURPOSE

The purpose for establishing City Council Protocols is to provide an effective environment for the City Council to provide leadership. The protocols may be amended by resolution adopted by a majority vote of the Council Members and should be reviewed on a regular basis to ensure that the document remains helpful to the Council by providing a framework for effective leadership.

The protocols set forth herein are not intended to limit the inherent power and general legal authority of the City Council. Any of the protocols herein may be waived by a majority vote of the Council Members when it is deemed that there is good cause to do so based upon the particular facts and circumstances.

1.1 Council-Manager Form of Government

The City of St. Helena operates according to the Council-Manager form of government which vests authority in an elected City Council which, in turn, hires an appointed executive, the City Manager. The City Council is composed of five members elected from the City on a nonpartisan basis to serve overlapping four-year terms. The Mayor is elected at-large to serve a two-year term as presiding officer at City Council meetings and as the official head of the City for legislative and ceremonial purposes. The City Manager is appointed by the City Council and serves at the pleasure of that body.

The City Council is the City's legislative and policy-making body. Acting as a whole, the City Council is responsible for setting the direction of City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. The City Manager is responsible for the overall administration of the City, which includes implementation of the general policies set by the City Council in addition to the day-to-day operation of all City functions. The City Manager, with the help of the Staff, provides the City Council with the information needed to fulfill its policy-making role.

The Council-Manager form of government separates legislative and executive responsibilities in a manner similar to state and federal governments. This system provides "checks and balances" of both policy and administrative branches of government by limiting the power of each.

1.2 City Council Vision and City Council Mission

Council Vision

St. Helena strives to be a diverse, inclusive, family-friendly, economically and environmentally sustainable community which prudently manages all of its resources, continues to improve its infrastructure, ensures its water security, provides a full range of housing, business, cultural and recreational

opportunities and cherishes its historic, small-town character, beautiful natural environment and high quality of life.

Council Mission

The City of St. Helena is dedicated to serving its citizens by:

- Promoting a culture of equity, diversity and inclusion
- Supporting thriving families and ensuring the health and wellbeing of our youth
- Ensuring our long-term economic sustainability and focusing on new and diverse sources of revenue
- Preventing, preparing for, and mitigating fire and other local emergencies
- Improving and maintaining City infrastructure
- Updating our water management policies to ensure an adequate water supply
- Responding innovatively to climate change challenges and adopting environmentally sustainable best practices
- Preserving our historic, small-town, rural character
- Expanding recreational, active transportation and cultural opportunities
- Facilitating innovative, well-designed housing for residents of all backgrounds, ages and income levels
- Encouraging full civic participation and ongoing communication
- Strengthening regional collaboration with other public entities and building partnerships with local service providers and stakeholders

(See Resolution Number 2021-___, dated May 11, 2021.)

2. RULES OF PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

2.1 Regular Meeting

The Council shall hold a Regular Meeting on the second and fourth Tuesday of each month, except that the Council may by motion at a Regular Meeting and with adequate public notice, either cancel that meeting or reschedule it to some other date.

Regular Meetings shall be held at the Vintage Hall Board Room, 465 Main Street, St. Helena, and shall begin at 6:00 p.m. If it is necessary to hold a closed session prior to the start of a Regular Meeting, the closed session may begin earlier than the normal starting time to allow the Regular Meeting to begin at 6:00 p.m. The closed session shall begin in an open meeting and the Council shall adjourn to closed session.

2.2 Special, Emergency, and Adjourned Meetings

(a) **Special Meetings.** The Mayor or the Vice Mayor in the Mayor's absence or a majority of the members of the Council or the City Manager may at any time call a Special Meeting. At least twenty-four hours before a Special Meeting, written notice of the meeting stating its time and place and the subjects to be considered shall be (a) delivered to the Mayor and each Councilmember personally or by any other means; (b) posted on the Council's principal bulletin board, City website and place of meeting; and (c) emailed to the agenda subscribers. Only those items of business specified in the notice may be considered at a Special Meeting called in this manner.

(b) **Emergency Meeting.** The Council may hold an Emergency Meeting in emergency situations as set forth in the City's Municipal Code and State Law.

(c) **Adjourned Meeting.** A properly called Regular, Special, or Emergency Meeting may be adjourned to a time and place specified. A copy of the notice of adjournment shall be posted as specified on the door of the place where the meeting was held within twenty-four hours after the time of the adjournment. Further notice need not be given of an adjourned session of a properly called Regular, Special, or Emergency Meeting.

2.3 Regular Meeting Agenda

(a) **Setting and Posting of Agenda.** The agenda of business to come before the Council at a Regular Meeting shall normally be closed at the end of eighteen business days preceding the meeting. Under State Law the agenda for a Regular Meeting must be posted at least seventy-two (72) hours prior to the scheduled convening of the Regular Meeting, and no items may be added to the agenda fewer than seventy-two (72) hours prior to the meeting except as may be allowed by State Law. The City Council endeavors to publish the meeting agenda at least ten days prior to the meeting.

(b) **Placing Items on the Council Agenda.** Each City Council agenda shall specifically provide for a discussion of Future Agenda Items. Any Council Member may request that an item be considered on a future agenda during that portion of the City Council meeting and, upon agreement by a second Council Member concurring that Staff time and City resources should be expended on the item, the item shall be placed on the soonest practical regularly scheduled Council meeting as determined by the City Manager. A member of the public may request that an item be placed on a future agenda during Public Forum or through other communication with a Council Member. Staff reports may not be prepared on Council Member requested items until Council discussion has occurred and direction provided by the Council unless Staff otherwise determines. If Council action is contemplated, proposed action shall be included in the Staff report. The City

Manager may also add any item of business to a future agenda in his or her sole discretion.

(c) **Agenda Packet Distribution.** Each Councilmember shall be furnished a copy of the agenda and the package of agenda material by 5:00 p.m., on the Friday eleven days preceding a Regular Meeting, and the agenda and agenda materials shall be available for public inspection and distribution or copying at that time. Each Councilmember may opt out from receiving a paper agenda and instead receive and review the agenda electronically on a City issued iPad. Any agenda materials not included in the agenda package by 5:00 p.m., that Friday shall be separately identified, and the Council may by majority vote continue such agenda item until the following meeting to allow for proper study of the materials.

(d) **Order of Agenda.** The business of the Council shall be taken up for consideration in substantially the following order except as may be otherwise ordered:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Forum
5. Reports by Staff and City Council, Future Agenda Items and AB 1234 Reports
6. Presentations and Public Recognitions
7. Staff Briefing
8. Consent Items and Items Removed from Consent
9. Public Hearings
10. Old Business
11. New Business
12. Items likely to be placed on the next or future meeting agenda.
13. Adjournment

(e) A copy of the agenda and the package of agenda materials shall be made available for public inspection at City Hall and at the St. Helena Public Library at or near the time they are circulated to the City Council.

2.4 Public Testimony and Comments Before the Council

(a) **Addressing the Council Generally.** Each person addressing the Council may give his or her name and address (optional) in an audible tone of voice for the record. Each person's comments are limited to four minutes except as provided in section (b) regarding land use Public Hearings. In the further interest of time, speakers may be asked to limit their comments to

new materials and not repeat what a prior speaker said. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede their allotted time to another speaker. The Mayor may extend time for the speaker.

(b) Addressing Council at Land Use Public Hearings. An applicant appellant at a land use Public Hearing shall be permitted to address the Council for 15 minutes following the Staff report. If there is a spokesperson for the opposition, the spokesperson shall be permitted to speak for 15 minutes. All other speakers are limited to four minutes each. Applicant shall first be permitted five minutes at close of public comments for rebuttal. If the applicant is the appellee the appellant shall have 15 minutes, the applicant appellee shall have 15 minutes, the appellant five minutes, and the applicant appellee five minutes.

(c) Presentation by Spokesperson. Whenever any group of persons wishes to address the Council on the same subject matter, it shall be proper for the Mayor to request that a spokesperson be chosen by the group to address the Council, and, in case additional matters are to be presented at the time by any other member of the group, to limit the number of persons so addressing the Council so as to avoid unnecessary repetition before the Council.

(d) Irrelevant Testimony. The Mayor shall rule out of order any testimony not relevant to the agenda item then under discussion.

(e) Protocol. The purpose of public testimony is for Councilmembers to benefit from the views of the public. Comments from the public should be directed towards the Council. Councilmembers and Staff should avoid entering into a dialogue with members of the public who may address the Council. Questions raised by members of the public may be referred to Staff.

(f) Public Comment on Agendized Items. Members of the public are entitled to speak on any item on the agenda during a Public Hearing on the subject matter opened by the Mayor. Each person is entitled to speak on any agenda item only once at any meeting, and the right to speak at the appropriate time waives any further right to address the Council on that item at that meeting. Participation in debate on any item before the Council shall be limited to members of the Council, although Councilmembers may ask members of the public for additional information.

(g) Public Comment on Non-Agendized Items. Members of the public are entitled to speak on matters of municipal concern not on the agenda, during consideration of that portion of the meeting agenda entitled "Public Forum" when that item is called by the Mayor. Each person is entitled to speak on non-agendized items only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future

agendas, but in accordance with State Law, no substantive discussion may take place unless and until the matter properly appears on the agenda.

2.5 Roll Call and Voice Votes

A roll call vote shall be taken on the approval of the Consent Calendar, the introduction of ordinances, and the adoption of ordinances, resolutions, and orders for the payment of money. Roll call votes shall be entered in the minutes of the Council showing those members voting yes, those voting no, and those abstaining or absent.

Any other motion may be passed by voice vote provided, however, that any Councilmember may request a roll call vote on any items to be voted on.

2.6 Consent Items

Those items on the agenda considered routine by the City Manager shall be grouped together under "Consent Items" and the recommended actions approved by a single vote of the Council. At the request of any Councilmember or any other person, a Consent Item shall be considered separately following approval of the remaining "Consent Items." Items approved under the heading "Consent Items" will appear in the Council minutes in their proper form, as if approved item by item.

2.7 Reports

Under the agenda heading "Reports" the City Manager, other City Staff, and Councilmembers may make reports on matters not on the agenda. Also at this time, Councilmembers or Staff may identify issues or agenda items that need to be addressed by the City Attorney during the meeting, and may propose future agenda items.

2.8 Closing Time of Council Meetings

Council meetings shall adjourn by 9:00 p.m. However, the Council may by majority vote extend the meeting up to an additional thirty minutes (9:30 p.m.) if the Council deems such extension necessary. A unanimous Council vote shall be required to extend the meeting past 9:30 p.m. and adjourn by 10:00 p.m. Otherwise, the meeting shall be adjourned to another day acceptable to the Council, or unfinished business may be continued to the next regular meeting.

2.9 Old Business

"Old Business" will include uncompleted items carried over from a prior meeting agenda and placed under this agenda heading for consideration.

2.10 New Business

The Council shall not consider any resolution, motion, or matter which does not affect the conduct of the business of the City of St. Helena or its corporate powers or duties as a municipal corporation nor shall the Council consider any resolution or motion supporting or disapproving any legislation or action pending in the Legislature of the State of California, the Congress of the United States or before any officer or agency of the State or Nation unless such proposed legislation or action, if adopted, will affect the conduct of the municipal business or the powers and duties of the City of St. Helena or its officers or employees as such.

2.11 Office of the Mayor

The Mayor shall preside at meetings of the Council, shall be entitled to vote on all matters, and shall be considered a Councilmember for all purposes, including the determination of whether a quorum is present. The Mayor will recognize members that wish to speak.

The Mayor shall have the following powers:

- a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- b) To enforce the Council's rules regarding public testimony and to determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- c) To ensure that the public has reasonable opportunity to be heard;
- d) To entertain and answer questions of parliamentary law or procedure;
- e) To call a brief recess at any time;
- f) To adjourn in an emergency;
- g) To appoint a Vice Mayor subject to Council approval who shall serve during the term of the Mayor, and becomes the Mayor Pro Tempore in the Mayor's absence.

2.12 Office of Mayor Pro Tempore

A Councilmember who serves as Mayor pro tempore shall be entitled to vote on all matters and shall be considered a Councilmember for all purposes, including the determination of whether a quorum is present. In the Mayor's absence, the Mayor pro tempore shall have the Mayor's powers and duties. If the Mayor should become physically or mentally unable to perform the duties of his or her office, the other Councilmembers may by unanimous vote declare the Mayor is incapacitated and confer the Mayor's powers and duties on the Mayor pro tempore.

When the Mayor declares that he or she is no longer incapacitated, and a majority of the Council concurs, the Mayor shall resume the exercise of his or her powers and duties. If both the Mayor and the Mayor pro tempore are absent from a

meeting, the Council may elect from among its members a temporary chair to preside at the meeting.

2.13 Action by the Council

Action by the Council shall be by motions made and voted upon. A motion shall require a second. The Mayor and any other Councilmember may make or second a motion. A substantive motion is out of order while another substantive motion is pending.

2.14 Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of California. Resolutions, orders for the payment of money, and all ordinances require at least three votes for passage.

2.15 Discussion

The City Council shall address an agenda item as follow:

- (a) Staff shall introduce the agenda item and present the Staff report.
- (b) City Council shall ask questions of Staff.
- (c) The Mayor will invite public comment on the item.
- (d) Having received all public testimony, the Council will deliberate on the matter.
- (e) If appropriate, the Mayor will entertain a motion, including any motion proposed by the Mayor.
- (f) If a motion has received a second, the Mayor shall state the motion and if any Council Member wishes for the discussion, open for additional Council discussion.
- (g) The Mayor shall preside over the discussion according to the following general principles:
 - 1. The maker of the motion is entitled to speak first;
 - 2. A person who has not spoken on the issue shall be recognized before someone who has already spoken;
 - 3. To the extent possible, the discussion shall alternate between opponents and proponents of the measure.

2.16 Ratification of Actions

To the extent permitted by law, the Council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

2.17 Procedural Motions

- (a) In addition to substantive proposals, the following procedural motions, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption.
- (b) To Adjourn. The motion may be made only at the conclusion of action of a pending substantive matter; it cannot interrupt deliberation of a pending matter.
- (c) To Take a Brief Recess.
- (d) Call to Follow the Agenda. The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.
- (e) To Suspend the Rules. The motion requires for adoption a vote of a majority of the quorum of the Council. The Council may not suspend provisions of the rules that are state requirements imposed by law on the Council.
- (f) To Divide a Complex Motion and Consider It by Paragraph.
- (g) To Call the Previous Question. The motion is not in order until every member has had an opportunity to speak once.
- (h) To Continue an Item to a Future Meeting Certain.
- (i) To Refer to Staff for Action.
- (j) To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if the amended motion has the same effect as rejection of the original motion. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last amendment is disposed of by a vote.
- (k) To Reconsider. The motion must be made by a member who voted with the prevailing side, and only at the meeting during which the original vote was taken, including any continuation of that meeting through adjournment to a time and place certain, or at the next Regular Meeting unless intervening actions taken based on the original action make such reconsideration impracticable. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.
- (l) To Rescind or Repeal a Previous Action. A motion to rescind or repeal a previous action is not in order if the rescission or repeal is

forbidden by law or made inappropriate by virtue of actions taken in accordance with the previous action.

- (m) To call for a Straw Vote. The Mayor, at the Mayor's discretion, may call for a Straw Vote among members on any item prior to inviting public testimony or Council comment.

2.18 Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before a vote, with or without the consent of any "seconder" of the motion. However, any other Councilmember may ask to be considered the introducer of the motion and, if again seconded, debate may continue without further interruption.

2.19 Duty to Vote

Every member must vote on every item unless prevented from doing so by virtue of an actual or potential conflict of interest under applicable State Law. Any member who believes he or she has a conflict or potential conflict of interest must announce such at the initiation of discussion or when such conflict or potential conflict becomes apparent, and shall refrain from any part in the debate, deliberations, or voting on that issue, except as allowed by State Law.

2.20 Introduction and Passage of Ordinance

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the Council. The Mayor shall read the title of the ordinance, after which a roll call vote shall be taken to introduce the ordinance. The City Clerk shall then read the ordinance in its entirety unless such reading is waived by a separate motion adopted by unanimous vote of the Councilmembers present. An ordinance, other than an urgency, may not be passed within five days of its introduction or alteration. Corrections of typographical or clerical errors are not alterations.

2.21 Closed Sessions

- (a) The Council may hold closed sessions only as provided for by law and according to the provisions herein.
- (b) As part of any regular or special City Council meeting as appropriate, the City Council, the City Attorney, and relevant Staff may discuss and agree upon the need for any future closed sessions, including the legal authority for the closed session and the nature of the matter to be discussed, in adequate detail to meaningfully inform the public while maintaining required confidentiality and any applicable attorney-client privilege. Where the City Manager and City Attorney agree that the

nature of a matter requires consideration in closed session, the requirement for prior open session discussion shall not apply.

- (c) The City Council agenda for any regular or special Council meeting shall include general information about closed sessions as follows:

The City Council will convene in open session at the stated time, but will then adjourn to address any closed sessions items listed on the agenda. The public is invited to address the Council with comment on any listed closed session item immediately prior to Council's adjournment into closed session or consistent with any other provisions permitting public comment. The Council will reconvene in Public Session at 6:00 p.m. or at the first Council meeting following any closed session. At that time, if appropriate and as required under the Brown Act, any actions taken during the preceding closed session will be announced by the City Attorney or Mayor. If necessary, the Council may reconvene in closed session to continue discussion of listed items following the completion of open session business.

- (d) The City Council agenda for any regular or special Council meeting at which the Council will adjourn to closed session shall provide notice of that closed session as provided for under the Brown Act and shall include a narrative description of the legal authority for the closed session and the nature of the matter to be discussed in adequate detail to inform the public while maintaining required confidentiality or any applicable attorney-client privilege. Reporting out of closed session shall be consistent with the requirements of Brown Act, and may be of greater detail than required when the disclosure of such detail is not inconsistent with maintaining required confidentiality and any applicable attorney-client privilege.

2.22 Quorum

A majority of the actual membership of the Council, including the Mayor but excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

2.23 Telephonic Attendance Of Council Members At Council Meetings

- (a) The City Council Procedures provisions concerning Telephonic Attendance shall apply to all Boards and Commissions as well as the City Council. Requests by Council Members to attend a Council meeting via telephonic appearance are actively discouraged.

Telephonic attendance shall only be permitted in the event of extraordinary events such as a medical, family or similar emergency requiring a Council Member's absence. In addition, at least a quorum of the Council must participate from a location within the City (Government Code Section 54953(b)(3)).

(b) If these two threshold requirements are met, the Council Member who will be appearing telephonically must ensure that:

1. The meeting agenda identifies the teleconference location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to the meeting.

2. The teleconference location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.

3. The teleconference technology used is open and fully accessible to all members of the public, including those with disabilities.

4. Members of the public who attend the meeting at the teleconference location have the same opportunity to address the Council from the remote location that they would if they were present in Council Chambers.

5. The teleconference location must not require an admission fee or any payment for attendance.

6. If the Council Member determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting via teleconference.

(c) Approved Teleconference Guidelines for Council Members:

1. One-week advance written notice must be given by the Council Member to the City Clerk's office; the notice must include the address at which the teleconferenced meeting will occur, the address the Council packet should be mailed to, who is to initiate the phone call to establish the teleconference connection, and the phone number of the teleconference location. Cellular telephones shall not be used to participate in teleconferenced meetings.

2. The Council Member is responsible for posting the Council agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The City Clerk will assist, if necessary, by faxing or mailing the agenda to whatever address or fax number the Council Member requests; however, it is the Council Member's responsibility to

ensure that the agenda arrives and is posted. If the Council Member will need the assistance of the City Clerk in delivery of the agenda, the fax number or address must be included in the one-week advance written notice above.

3. The Council Member must ensure that the location will be publicly accessible while the meeting is in progress.

4. The Council Member must state at the beginning of the Council meeting that the 72-hour posting requirement was met at the location and that the location is publicly accessible. The Council Member also must describe the location. Furthermore, the City Clerk will provide Council with a quarterly report detailing the telephone charges associated with teleconferenced meetings.

2.24 Public Hearings

Public Hearings shall be scheduled and notice published without any action required by the City Council, excepting that the Council may, if it so desires, scheduled a Public Hearing on an item of interest for a date certain. In order to accommodate members of the public responding to a noticed Public Hearing, such Hearings will, to the extent practicable, begin at 6:00 p.m. At the time designated for the Public Hearing, or soon after as is practicable, the Mayor shall direct the attention of the Council Members to the Staff report and Staff may respond to questions from Council members, after which the Mayor shall formally open the Public Hearing and members of the public shall be allowed to speak in accordance with the rules set forth elsewhere in these Rules of Procedure. When the allotted time expires, or when no one wishes to speak who has not done so, the Mayor shall declare the hearing closed.

Following the close of the Public Hearing, the Council may discuss or take action on the matter in accordance with these rules. The Mayor may in his or her discretion allow questions and/or comments from the public after close of Public Hearing.

2.25 Appointments to Committees and Boards

The City Clerk posts a Notice of Vacancy in the City designated posting locations, the City's website and sends a Media Release to the St. Helena Star advertising vacancies to Commissions, Committees and Boards.

Applicants must submit a completed application to the City Clerk and shall be interviewed by the Council at a special meeting prior to a regular meeting. Applicants are requested to list references on their applications and individual Council Members may contact those references as part of the interview process. Council Members contacting references should disclose this information during the appointment process.

Council reviews applicants for appointments to Commissions, Committees and Boards based on interviews and qualifications. Council shall rank all applicants from highest to lowest and appoint by ballot process. Mayor shall nominate applicants and appointments are subject to approval by the majority of Council.

Depending on the qualifications of the applicants and the needs of the City, there may be times when the City Council does not appoint an applicant who has applied. If an applicant is not appointed, the City Clerk will automatically readvertise for the vacant position(s) to seek additional applicants.

2.26 Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

All procedural matters not otherwise provided for in or controlled by state law or by any ordinance, resolution, rule or regulation of the City shall be governed by Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century (attached as Exhibit). However, no ordinance, resolution, or other action of the Council shall be invalidated or the legality thereof otherwise affected by the failure or omission of the Council to observe or follow such rules. Certain procedures relating to motions, agenda item discussion, debate, and courtesies contained in *Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century* are incorporated into this document, except to the extent they are modified by this Protocol document.

3. CITY COUNCIL STANDARDS OF CONDUCT

3.1 Policy Purpose

The St. Helena City Council adopts this Code of Ethics and Conduct to assure that all elected and appointed officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of St. Helena's City government.

3.2 Ethics

The citizens and businesses of St. Helena are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government;
- Are independent, impartial and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, City Treasurer, and City Clerk and of all Boards, Committees and Commissions shall conduct themselves in accordance with the following ethical standards:

- (a) **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of St. Helena and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.
- (b) **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of California and the City of St. Helena in the performance of their public duties.
- (c) **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Boards, Committees and Commissions, the Staff or public.
- (d) **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.
- (e) **Conduct at Public Meetings.** Members shall prepare themselves for public issues, listen courteously and attentively to all public discussions before the body, and focus on the business at hand.
- (f) **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts peculiar to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.
- (g) **Communication.** Members shall publicly disclose substantive information that is relevant to a matter under consideration by the body which they may have received from sources outside of the public decision-making process.

(h) **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good and compliance with conflict of interest laws, members shall use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Members shall not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or (c) a strong personal bias.

A member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the City Attorney and reasonably cooperate with the City Attorney to analyze the potential conflict. If advised by the City Attorney to seek advice from the Fair Political Practices Commission (FPPC) or other appropriate state agency, a member shall not participate in a decision unless and until he or she has requested and received advice allowing the member to participate. A member shall diligently pursue obtaining such advice. The member shall provide the Mayor and the City Attorney a copy of any written request or advice, and conform his or her participation to the advice given. In providing assistance to members, the City Attorney represents the City and not individual members.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including other members unless otherwise permitted by law.

(i) **Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

(j) **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

(k) **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City Staff time,

equipment, supplies or facilities) for private gain or for personal purposes not otherwise authorized by law.

(l) **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Board, Committee, Commission or proceeding of the City, nor shall members of Boards, Committees and Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

(m) **Advocacy.** Members shall represent the official policies or positions of the City Council, Board, Committee or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of St. Helena, nor will they allow the inference that they do. Councilmembers and Board, Committee and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, or Board, Committee and Commission meetings, or other official City meetings.

(n) **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of St. Helena City government as outlined in the St. Helena City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City Staff, Boards, Committees and Commissions, and the public. Except as provided by the City Code, members shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of Staff to implement Council policy decisions.

(o) **Independence of Boards, Committees and Commissions.** Because of the value of the independent advice of Boards, Committees and Commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings.

(p) **Positive Work Place Environment.** Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to Staff.

3.3 Code of Ethics and Conduct

The Code of Ethics and Conduct are designed to describe the manner in which elected and appointed officials should treat one another, City Staff, constituents, and others they come into contact with while representing the City of St. Helena.

(a) Elected and Appointed Officials' Conduct with Each Other in Public Meetings

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

1. *Honor the role of the chair in maintaining order*

It is the responsibility of the chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

2. *Practice civility and decorum in discussions and debate*

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.

3. *Avoid personal comments that could offend other members*

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.

4. *Demonstrate effective problem-solving approaches*

Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(b) Elected and Appointed Officials' Conduct with the Public in Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

1. *Be welcoming to speakers and treat them with care and gentleness.*
 - a. While questions of clarification may be asked, the official's primary role during public testimony is to listen.
2. *Be fair and equitable in allocating public hearing time to individual speakers.*
 - a. The chair will determine and announce limits on speakers at the start of the public hearing process.
3. *Practice active listening*
 - a. It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room gives the appearance of disinterest. Members shall try to be conscious of facial expressions, and avoid those that could be interpreted as "smirking," disbelief, anger or boredom.
4. *Maintain an open mind*
 - a. Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.
5. *Ask for clarification, but avoid debate and argument with the public*
 - a. Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

(c) Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City Staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

1. *Treat all Staff as professionals*
 - a. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards Staff is not acceptable.
2. *Do not disrupt City Staff from their jobs*
 - a. Elected and appointed officials should not disrupt City Staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City Staff meetings unless requested by Staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate Staff, and hampers Staff's ability to do their job objectively.
3. *Never publicly criticize an individual employee*
 - a. Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about Staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding Staff to the City Manager or the Mayor.
4. *Do not get involved in administrative functions*
 - a. Elected and appointed officials acting in their individual capacity must not attempt to influence City Staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.
5. *Do not solicit political support from Staff*
 - a. Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City Staff. City Staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.
6. *No Attorney-Client Relationship*
 - a. Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her Staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual

members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

(d) Council Conduct with Boards, Committees and Commissions

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

1. *Respect Role of Liaison to City's Boards, Committees and Commissions*

Several of the City's Boards, Committees and Commissions have a Council Member who serves as its Council liaison. The City Council will collectively review and approve liaison appointments annually. Council Members serving as liaisons should act as an advisor and resource to committee/board/commission members and the committee/board/commission's Staff liaison when issues regarding process, procedure, attendance, interpersonal or public relations arise.

2. *Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers*

The City Council appoints individuals to serve on Boards, Committees and Commissions, and it is the responsibility of Boards, Committees and Commissions to follow policy established by the Council. But Board, Committee and Commission members do not report to individual Councilmembers (whether or not they are serving as liaisons), nor should Councilmembers feel they have the power or right to threaten Board, Committee and Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Board, Committee or Commission should be based on such criteria as expertise, ability to work with Staff and the public, and commitment to fulfilling official duties. A Board, Committee or Commission appointment should not be used as a political "reward."

3. *Be respectful of diverse opinions*

A primary role of Boards, Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards, Committees and Commissions, but must

be fair and respectful of all citizens serving on Boards, Committees and Commissions.

4. *Keep political support away from public forums*

Board, Committee and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board, Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

(e) Elected and Appointed Officials' Conduct With Each Other and the Public in Private Encounters

1. *Continue Respectful Behavior in Private*

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions, and set forth above in subsections (a) through (d), should be maintained in private conversations, including telephone calls, texts, e-mails or other forms of communication. Council Members and appointed officials shall refrain from abusive conduct, intimidation, bullying tactics, personal charges, or verbal attacks upon the character or motives of other members or the public.

2. *Be Aware of the Insecurity (Non-Confidentiality) of Written Notes, Texts, Voicemail and E-mail*

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speakerphone in a full office? What would happen if this E-mail or text message were forwarded to others? Written notes, voicemail messages, texts and E-mail should be treated as potentially "public" communication.

3. *Understand that Even Private Conversations can have Public Presence*

Elected and appointed officials are always on display — their actions, demeanor, fitness, mannerisms, language and timing and form of communication are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, late-night e-mails will be questioned and casual comments between individuals before and after public meetings noticed.

3.4 Enforcement and Sanctions

(a) *Acknowledgement of Code of Ethics and Conduct*

Upon assuming office each Councilmember, and each Board, Committee and Commission Member ("Member"), shall sign a statement affirming that he or she has been provided with and has read the Code of Ethics and

Conduct. Each Councilmember, Board, Committee and Commission Member, shall adhere to the Code of Ethics and Conduct as well as the Council's Rules of Procedure. Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall be ineligible for intergovernmental assignments or Council subcommittees. Board, Committee and Commission members who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold office.

(b) Ethics Training for Local Officials

Councilmembers, City Treasurer, City Clerk, Board, Committee and Commission Members shall report annually to the City Clerk with respect to his or her compliance with State or City mandated requirements for ethics training. Councilmembers, City Treasurer, City Clerk, Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training shall not represent the City on intergovernmental assignments or Council subcommittees and may be subject to sanctions.

(c) Behavior and Conduct

The St. Helena Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the St. Helena City Council, Boards, Committees and Commissions. Each Member him or herself has the primary responsibility to assure that he or she understands and satisfies the ethical standards, so that the public can continue to have full confidence in the integrity of government. The chairs of Boards, Committees and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention. Without violating Brown Act serial meeting requirements, individual Members should point out to the offending Member perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the process under 3.4(e) 1-10 shall govern.

(d) Council Authority

Under California law, the Council does not have the legal authority to remove Members elected or appointed to the City Council or to otherwise deprive them of their office. However, as provided in Section 3.4(e) 9., a majority of the Councilmembers may remove a Councilmember from any or all Council honorary and/or ceremonial positions and ad-hoc and standing committees, as well as from positions with other governmental agencies or other organizations they hold by virtue of appointment by the City Council.

(e) Process to Address Alleged Violation of Code of Ethics and Conduct

1. *Complaint.* Where any person has substantial evidence that a Member has materially violated the Code of Ethics and Conduct, he or she may file a written statement with the City Clerk who will then provide it to the City Council, and the affected Member. The name of the complainant shall initially be redacted and kept confidential and not disclosed until it has been determined as provided in Section 3.4(e) 2 that there is substantial evidence that the Member has materially violated the Code of Ethics and Conduct.

"*Substantial evidence*" means evidence that reasonably supports a conclusion. It does not mean simply any evidence, nor does it include mere opinions. It must be reasonable in nature, credible, and of solid value.

2. *Hearing Officer.* Upon receipt of a Complaint as provided in Section 3.4(e) 1., or upon the direction of the City Council, the Mayor, in consultation with the City Manager, shall make a preliminary determination whether there is substantial evidence to support a conclusion that a Member has materially violated the Code of Ethics and Conduct, thereby warranting the further proceedings below. If the Mayor either submitted the Complaint or is the subject of the Complaint, the Vice Mayor (and who is not the subject of the complaint) shall make the preliminary determination as provided above.

If the Mayor (or, where the Mayor is disqualified as set forth above, the Vice Mayor) makes the initial determination that there is substantial evidence to support a conclusion that a Member has materially violated the Code of Ethics and Conduct, thereby warranting the further proceedings, he or she, in consultation with the City Manager, shall appoint an independent Hearing Officer to review and investigate the Complaint. If the Mayor either submitted the Complaint or is the subject of the Complaint, the Vice Mayor (and who is not the subject of the complaint) shall appoint the Hearing Officer as provided above.

In the event both the Mayor and Vice Mayor are disqualified as set forth above or otherwise unable to carry out the duties under this Section, the Council member with the longest tenure shall do so. If two or more Council members have equal tenure, the Council member (who is not the subject of the Complaint) shall be selected by a process of drawing straws supervised by the City Clerk.

3. *Investigation.* To the extent reasonably practicable, the Hearing Officer shall investigate and report, within not more than thirty (30) days, as to whether there is substantial evidence in support of an allegation that a Member has materially violated the Code of Ethics and Conduct. If the Hearing Officer concludes that there is not substantial evidence to support an alleged violation, or that the violation was not material, he or she shall so report to the Council and the matter shall be deemed dismissed unless the Council directs that a public hearing be held pursuant to Section 3.4(e) 5. If the Hearing Officer concludes that there is substantial evidence to support an alleged material violation of the Code of Ethics and Conduct, he or she shall issue a report ("Report") to the City Council and the Member. The Hearing Officer shall allow the affected Member a reasonable

opportunity to provide any written comments, evidence and/or arguments which the Hearing Officer shall consider in the investigation and Report.

4. *Enforcement.* The City Council, in its sole discretion, shall enforce the Code of Ethics and Conduct against Members depending upon the extent and severity of the violation by means of either (i) a warning (ii) a written reprimand; (iii) censure; (iv) removal from assignments; or (v) other action as deemed appropriate to the City Council, including without limitation disavowal and/or disapproval of the Member's violation and/or other action and/or statement. The following procedure shall be utilized:
5. *Receipt of Report.* As reasonably practicable, within 30 days after receipt of the Report, the Council will hold a public hearing after which it will determine, among any other determination the Council may deem appropriate, whether the Complaint should be dismissed, a warning should be issued, a written reprimand should be issued, censure issued, or the Member should be removed from his or her office (only for Members other than Council members) or assignments. The City shall provide written notice of the public hearing and opportunity to be heard to the affected Member. The City Council determination shall be set forth in written findings that the Council may direct staff to prepare for subsequent Council approval.
6. *Dismissal.* Where the Council, based on the Report and any statement from the affected Member, determines that it is clear that no violation occurred or that only a trivial or de minimus violation occurred, or that the Complaint was motivated by revenge or other improper motive, the Council may dismiss the Complaint.
7. *Warning.* Where the Council, based on the Report and any statement from the affected Member, determines that there is some evidence that only a minor violation or a questionable practice has occurred, the Council may issue a written warning to the affected Member specifying the violation(s) and requesting corrective action.
8. *Reprimand.* Where the Council, based on the Report, any statement from the affected Member, and other evidence accepted, determines that there is substantial evidence that the Member has materially violated one or more provisions of the Code of Ethics and Conduct, the Council may adopt a resolution reprimanding the affected Member for their conduct, stating that any violations shall cease, and requesting corrective action. The affected Member may file a rebuttal to the Reprimand with the City Clerk which will become a matter of public record.
9. *Censure.* Where the Council, based on the Report, any statement from the affected Member, and other evidence accepted at a public hearing of the matter, determines that there is substantial evidence that the Member has materially violated one or more provisions of the Code of Ethics and Conduct, and that such violation(s) impugn the integrity or dignity of the City or that such violations are egregious or chronic in nature, then the Council may adopt a resolution censuring

the affected Member by condemning his or her actions, removing the Member from all appointive positions representing the City in front of other governments and agencies, demoting the affected Commissioner, Committee or Board member appointed by the City Council who holds a position of chairperson or vice chairperson, stating that the violations shall cease, and demanding corrective actions. The affected Member may file a rebuttal to the Censure with the City Clerk which will become a matter of public record.

10. *Removal from Office.* Notwithstanding any of the provisions in this Section 3.4, the City Council may remove any Commissioner, Committee or Board member appointed by the City Council at its pleasure, and nothing in the Code of Ethics and Conduct or these rules effects or diminishes such power nor vests such Commissioners or Board members with any additional rights.

3.5 Implementation

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, City Treasurer, City Clerk, applicants to Board, Committee and Commissions, and newly elected and appointed officials. Members entering office shall sign a statement (example below) acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council, Boards, Committees and Commissions, and updated it as necessary.

Example:

I affirm that I have read and understand the City of St. Helena Code of Ethics and Conduct for Elected and Appointed Officials.

Signature

Date

Exhibit

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century



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Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. **Rules should establish order.** The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.
3. **Rules should be user-friendly.** That is, the rules must be simple enough that citizens feel they have been able to participate in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

Rosenberg's Rules of Order: Simple Parliamentary Procedure for the 21st Century

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately; and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then the "nays" is normally sufficient. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member's desired approach with the words: "I move ..." A typical motion might be: "I move that we give 10 days' notice in the future for all our meetings."

The chair usually initiates the motion by:

1. Inviting the members to make a motion: "A motion at this time would be in order."

2. Suggesting a motion to the members: "A motion would be in order that we give 10-days' notice in the future for all our meetings."
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

3. The substitute motion. If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would "move a substitute motion." A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

Rosenberg's Rules of Order: Simple Parliamentary Procedure for the 21st Century

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

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