



ANNOTATED AGENDA

Antioch City Council REGULAR MEETING

Date: Tuesday, September 14, 2021

Time: 5:30 P.M. – Closed Session

7:00 P.M. – Regular Meeting

Place: The City of Antioch, in response to the Executive Order of the Governor and the Order of the Health Officer of Contra Costa County concerning the Novel Coronavirus Disease, is making Antioch City Council meetings available via Comcast channel 24, AT&T U-verse channel 99, or live stream (at www.antiochca.gov).

If you wish to provide a written public comment, you may do so any of the following ways **by 3:00 p.m. the day of the Council Meeting**: (1) Fill out an online speaker card, located at https://www.antiochca.gov/speaker_card, or (2) Email the City Clerk's Department at cityclerk@ci.antioch.ca.us.

To provide oral public comments during the meeting, click the following link to register in advance to access the meeting via Zoom Webinar: <https://www.antiochca.gov/speakers>. You may also provide an oral public comment by dialing **(925) 776-3057**. Please see inside cover for detailed Speaker Rules.

*The City cannot guarantee that its network and/or the site will be uninterrupted. To ensure that the City Council receives your comments, you must submit your comments in writing **by 3:00 p.m. the day of the City Council Meeting**.*

Lamar Thorpe, Mayor

Monica E. Wilson, Mayor Pro Tem (Council Member District 4)

Tamisha Torres-Walker, Council Member District 1

Michael Barbanica, Council Member District 2

Lori Ogorchock, Council Member District 3

Ellie Householder, City Clerk

Lauren Posada, City Treasurer

Ron Bernal, City Manager

Thomas Lloyd Smith, City Attorney

Online Viewing: <https://www.antiochca.gov/government/city-council-meetings/>

Electronic Agenda Packet: <https://www.antiochca.gov/government/agendas-and-minutes/city-council/>

Project Plans: <https://www.antiochca.gov/fc/community-development/planning/Project-Pipeline.pdf>

Notice of Availability of Reports

This agenda is a summary of the actions proposed to be taken by the City Council. For almost every agenda item, materials have been prepared by the City staff for the Council's consideration. These materials include staff reports which explain in detail the item before the Council and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. City Council Agendas, including Staff Reports are posted onto our City's Website 72 hours before each Council Meeting. To be notified when the agenda packets are posted onto our City's Website, simply click on this link: <https://www.antiochca.gov/notifications/> and enter your e-mail address to subscribe. To view the agenda information, click on the following link: <https://www.antiochca.gov/government/agendas-and-minutes/city-council/>. Questions may be directed to the staff member who prepared the staff report, or to the City Clerk's Office, who will refer you to the appropriate person.

Notice of Opportunity to Address Council

The public has the opportunity to address the Council on each agenda item. To address the Council, fill out a Speaker Request form online **by 3:00 p.m. the day of the Council Meeting** at https://www.antiochca.gov/speaker_card. See the Speakers' Rules on the inside cover of this Agenda. The Council can only take action on items that are listed on the agenda. Comments regarding matters not on this Agenda, may be addressed during the "Public Comments" section.

5:30 P.M. ROLL CALL – CLOSED SESSION – for Council Members – *All Present*

PUBLIC COMMENTS for Closed Session – *None*

CLOSED SESSION:

- 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** pursuant to Government Code section 54956.9: Mariyana Bryant v. City of Antioch, United States District Court, Northern District of California, Case No. 21-cv-00590-TSH.

No reportable action

- 2) CONFERENCE WITH REAL PROPERTY NEGOTIATORS** pursuant to Government Code section 54956.8: Property: 301 W. 10th Street Antioch, CA; Agency Negotiation: City of Antioch and Contra Costa County Fire Protection District; Negotiating Parties: Ron Bernal, City Manager, City of Antioch and Mike Quesada, Assistant Fire Chief, Support Services, Contra Costa County Fire Protection District; Under Negotiation: Price and Terms of Payment.

No reportable action

- 3) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** pursuant to Government Code section 54956.9(d)(2): One case.

No reportable action

CLOSED SESSION – Continued

- 4) **PUBLIC EMPLOYMENT – Recruitment of City Manager.** This closed session is authorized pursuant to Government Code section 54957.

No reportable action

MOTION TO ADJOURN CLOSED SESSION

Motioned to adjourn Closed Session at 6:30 p.m., 5/0

7:00 P.M. ROLL CALL – REGULAR MEETING – for Council Members – *Council Members District 2 Barbanica, District 3 Ogorchock, Mayor Pro Tem (District 4) Wilson, and Mayor Thorpe (Council Member District 1 Torres-Walker absent)*

PLEDGE OF ALLEGIANCE

1. PROCLAMATION

- California Coastal Clean Up Day, September 18, 2021

Approved, 4/0/1 (Torres-Walker Absent)

Recommended Action: It is recommended that the City Council approve the proclamation.

COUNCIL MEMBER DISTRICT 1 TORRES-WALKER ARRIVED RIGHT AFTER THE VOTE AND DURING THE READING OF THE PROCLAMATION AT 7:04 P.M.

2. ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

- Contra Costa Health Services – Free COVID-19 Vaccine

3. ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

- POLICE CRIME PREVENTION COMMISSION

PUBLIC COMMENTS – *Members of the public may comment only on unagendized items. The public may comment on agendized items when they come up on this Agenda.*

CITY COUNCIL COMMITTEE REPORTS/COMMUNICATIONS

MAYOR’S COMMENTS

4. CONSENT CALENDAR

A. CITY COUNCIL MEETING MINUTES FOR AUGUST 10, 2021

Continued, 5/0

Recommended Action: It is recommended that the City Council continue the Meeting Minutes of August 10, 2021.

B. CITY COUNCIL MEETING MINUTES FOR AUGUST 24, 2021

Continued, 5/0

Recommended Action: It is recommended that the City Council continue the Meeting Minutes of August 24, 2021.

C. RESOLUTION APPROVING A FOUR-YEAR EXTENSION OF CONTRACT FOR PROFESSIONAL AUDITING SERVICES FOR THE FISCAL YEARS ENDED JUNE 30, 2022 THROUGH JUNE 30, 2025 WITH BADAWI & ASSOCIATES, CPA'S

Reso No. 2021/144 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution approving a four-year extension of the contract for professional auditing services with Badawi & Associates, CPA's for the audits of fiscal years ended June 30, 2022 through June 30, 2025.

D. PURCHASE OF UNINTERRUPTIBLE POWER SUPPLY AND MAINTENANCE BYPASS CABINET WITH SOLE SOURCE JUSTIFICATION REQUEST

Reso No. 2021/145 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution approving the following actions:

- 1) Approve the sole source request for the purchase and installation of an Uninterruptible Power Supply (UPS) and Maintenance Bypass Cabinet from the Camali Corporation; and
- 2) Authorize the City Manager to negotiate and execute a purchase agreement with the Camali Corporation for a UPS (to include supporting equipment and installation) in an amount not to exceed \$80,000.

CONSENT CALENDAR – Continued

E. OFFICE OF TRAFFIC SAFETY (OTS) 2022 STEP GRANT – APPROVAL AND ALLOCATION OF GRANT FUNDS

Reso No. 2021/146 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution to approve the allocated Office of Traffic Safety (OTS) 2022 STEP Grant funds to pay for police officer training and enforcement operations focused on reducing the number of persons killed and injured in crashes involving alcohol and other primary crash factors.

F. RESOLUTION NAMING PARCEL G PARK (APN: 053-060-035) OF THE PARK RIDGE SUBDIVISION 8846 “SIERRA TRAIL PARK”

Reso No. 2021/147 adopted naming park “Julpun Park”, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution naming Parcel G Park (APN: 053-060-035) of the Park Ridge Subdivision 8846 “Sierra Trail Park.”

G. FIFTH AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH WOODARD & CURRAN FOR THE BRACKISH WATER DESALINATION PROJECT (P.W. 694)

Reso No. 2021/148 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution approving the Fifth Amendment to the Consultant Services Agreement with Woodard & Curran for continued professional services, consultant coordination and permit assistance for the Brackish Water Desalination Project in the amount of \$90,407 for a total contract amount of \$282,907 and authorizing the City Manager to execute the amendment.

H. RESOLUTION APPROVING AMENDMENT TO LEASE AGREEMENT FOR 415 O STREET BUILDING

Reso No. 2021/149 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving the Amendment to the Lease Agreement with Scotto Family Trust for 415 O Street Building, and
- 2) Authorizing the City Manager or his designee to execute the Amendment.

CONSENT CALENDAR – Continued

I. AMENDMENTS TO MEMORANDA OF AGREEMENT WITH CONTRA COSTA HEALTH SERVICES FOR MUTUAL AID RESPONSE TO COVID-19 PANDEMIC – USE OF CITY ANTIOCH FACILITIES

Reso No. 2021/150 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution:

- 1) Ratifying and approving amendments to the Memoranda of Agreement between the City of Antioch and Contra Costa Health Services for mutual aid and assistance in response to the COVID-19 pandemic, and
- 2) Authorizing the City Manager to enter into subsequent Amendments to Memoranda of Agreement for Antioch Community Center and Nick Rodriguez Community Center for the purpose of extending the date of the agreements until April 30, 2022.

J. CONSIDERATION OF BIDS FOR VARIOUS ASPHALT REPAIRS – SERVICE CUTS BID NO. 968-0526-21A AWARD

Reso No. 2021/151 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Awarding the Maintenance Services Agreement (“Agreement”) for Various Asphalt Repairs – Service Cuts, to the responsive, and responsible bidder G&S Paving,
- 2) Approving an Agreement with G&S Paving for a term of two (2) years with the option to extend an additional two (2) years in an amount of \$241,950 for the first year and \$243,450 for the second year, with an additional \$100,000 in contingency work, for a total amount not to exceed \$585,400; and
- 3) Authorizing the City Manager to execute the Agreement with G&S Paving for the total amount not to exceed \$585,400.

CONSENT CALENDAR – Continued

- K. RESOLUTION APPROVING A FIRST AMENDMENT AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR WITH THE LOCAL GOVERNMENT COMMISSION (LGC) AND THE COMMUNITY DEVELOPMENT DEPARTMENT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO THE AGREEMENT

Reso No. 2021/152 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution:

- 1) Approving an amended agreement with LGC to provide a second CivicSpark Fellow in the increased amount not to exceed \$57,000, and
- 2) Authorizing the City Manager to execute the Amended Agreement.

PUBLIC HEARING

5. ORDINANCE GRANTING A FRANCHISE AGREEMENT EXTENSION TO CALIFORNIA RESOURCES PRODUCTION CORPORATION (CRC), TO TRANSPORT NATURAL GAS AND OTHER HYDROCARBON PRODUCTS WITHIN CERTAIN PUBLIC STREETS IN THE CITY OF ANTIOCH

Continued to the 09/28/21 Council Meeting, 3/2 (Thorpe, Torres-Walker)

Recommended Action: Staff recommends that the City Council continue the item to the September 28, 2021 City Council Meeting.

COUNCIL REGULAR AGENDA

6. BOARD OF ADMINISTRATIVE APPEALS APPOINTMENTS FOR TWO FULL-TERM VACANCIES EXPIRING MARCH 2024 AND ONE VACANCY EXPIRING MARCH 2022

Reso No. 2021/153 adopted

Appointing Marie Livingston to the full-term vacancy expiring March 2024, 5/0

Appointing Ademuyiwa “Ade” Adeyemi to the full-term vacancy expiring March 2024, 5/0

AND Appointing Antwon Webster for the vacancy expiring March 2022, 5/0

Recommended Action: It is recommended that the Mayor nominate and Council appoint by resolution:

- 1) Two Members to the Board of Administrative Appeals for two full-term vacancies expiring March 2024, and
- 2) One Member to the Board of Administrative Appeals for the vacancy expiring March 2022.

COUNCIL REGULAR AGENDA – Continued

7. POLICY FOR ENSURING EQUITABLE ACCESS TO INCLUSIVE PLAY ENVIRONMENTS IN PARKS AND PUBLIC SPACES

Reso No. 2021/154 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution approving a Policy for Ensuring Equitable Access to Inclusive Play Environments in Parks and Public Spaces.

8. POLICY FOR INCLUSION IN PARKS AND RECREATION PROGRAMS FOR PEOPLE OF ALL ABILITIES

Reso No. 2021/155 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution approving a Policy for Inclusion in Parks and Recreation Programs for people of all abilities.

9. REDISTRICTING PROCESS AND COMMUNITY OUTREACH FOR CITY COUNCIL MEMBER DISTRICT BOUNDARIES

Direction to staff to schedule the following dates listed below, with Hybrid Meetings, if applicable, to be held uptown and downtown

Recommended Action: It is recommended that the City Council provide direction to staff regarding the proposed dates and times for the 2021-2022 redistricting meetings:

1) **Tuesday, Oct. 12, 2021**

(Special meeting prior to City Council meeting. At least one public hearing shall be held before maps are drawn.)

2) **Saturday, October 16, 2021**

(Special meeting time to be determined. At least one public hearing or public workshop shall be held on a Saturday, or Sunday or after 6 p.m. on a weekday.)

3) **Tuesday, November 9, 2021 and Tuesday, December 14, 2021**

(Special meetings prior to City Council meetings. At least two public hearings shall be held after maps are drawn.)

4) **Tuesday, January 11, 2022**

(Regular City Council meeting. Introduction of Ordinance: First Reading)

5) **Tuesday, January 25, 2022**

(Regular City Council meeting. Second Reading: Adoption of Ordinance).

COUNCIL REGULAR AGENDA – Continued

10. RESOLUTION APPROVING A NEW CLASS SPECIFICATION FOR ASSISTANT CITY ATTORNEY, ASSIGNING A SALARY RANGE, AND ASSIGNING THE CLASSIFICATION TO THE MANAGEMENT (SENIOR) BARGAINING UNIT

Reso No. 2021/156 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution approving the New Class Specification for Assistant City Attorney, assigning a salary range, and assigning the classification to the Management (Senior) Bargaining Unit.

11. RESOLUTION ASSIGNING THE CLASS SPECIFICATION OF DEPUTY CITY ATTORNEY TO THE MANAGEMENT (MID/PROFESSIONAL) BARGAINING UNIT

Reso No. 2021/157 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution assigning Class Specification of Deputy City Attorney to the Management (Mid/professional) Bargaining Unit.

12. DISCUSSION ITEM: PROPOSED ORDINANCE AMENDING §9-5.2507 OF THE ANTIOCH MUNICIPAL CODE REGARDING RULES OF PROCEDURE FOR THE TIMING OF RECOMMENDATIONS BY THE PLANNING COMMISSION

Council consensus for staff to bring back ordinance amendment

Recommended Action: It is recommended that the City Council provide direction concerning whether staff should return with an ordinance limiting the time the Planning Commission has to deliver recommendations to the City Council.

13. RESOLUTION ADOPTING THE OPTIONS OF THE COVID-19 MANDATORY TESTING AND VACCINATION POLICY

Reso No. 2021/158 adopted to include paid time off and religious/medical exemptions, 3/1/1 (Barbanica-NO / Torres-Walker-Abstained)

Recommended Action: It is recommended that the City Council adopt a resolution for the Options of the COVID-19 Mandatory Testing and Vaccination Policy.

14. LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE RESOLUTIONS PACKET

Direction provided to the Voting Delegate

Recommended Action: It is recommended that the City Council review and discuss the League of California Cities Annual Conference Resolutions Packet and provide direction to the voting delegate (Councilmember Barbanica).

PUBLIC COMMENT

STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS AND FUTURE AGENDA ITEMS – *Council Members report out various activities and any Council Member may place an item for discussion and direction on a future agenda. Timing determined by Mayor and City Manager – no longer than 6 months.*

MOTION TO ADJOURN – *After Council Communications and Future Agenda Items, the Mayor will make a motion to adjourn the meeting. A second of the motion is required, and then a majority vote is required to adjourn the meeting.*
Motioned to adjourn meeting at 8:41 p.m., 5/0



***CALIFORNIA COASTAL CLEAN UP DAY
SEPTEMBER 18, 2021***

WHEREAS, the State of California has more than 2,000 miles of varied coastline from sand beaches to rocky shores, and from productive estuaries, marshes, tidal flats and rivers to urban areas and harbors;

WHEREAS, the natural resources of the coastal zone are among California's most important environmental, recreational and economic resources;

WHEREAS, the City of Antioch has many creeks and a thriving river environment that connect to the coast, the ocean, and the vast amount of open space that all residents value and enjoy;

WHEREAS, the City of Antioch is committed to managing the creeks and the river shoreline in our community to ensure that the environmental and economic value of these aquatic habitats are sustained;

WHEREAS, protecting the coast and network of waterways is a responsibility shared by individual citizens, the business community and public institutions and requires year-around public awareness;

WHEREAS, the California Coastal Commission has sponsored the State's largest annual volunteer event for thirty-seven years and this year, will sponsor the statewide Annual Coastal Cleanup Day on September 18, 2021; and

WHEREAS, the City of Antioch will host one kayak cleanup on Friday, September 17 and two land or shoreline cleanup locations on Saturday, September 18.

NOW, THEREFORE, I, LAMAR A. THORPE, Mayor of the City of Antioch, do hereby proclaim September 18, 2021 as "Coastal Cleanup Day" in the City of Antioch and encourage all citizens, businesses, and groups to help with cleaning up our coastal and water environments for the benefit of all residents.

SEPTEMBER 14, 2021

LAMAR A. THORPE, Mayor



FREE COVID-19 VACCINE

GET IMMUNIZED TO PROTECT YOURSELF FROM COVID!

(Minors should be accompanied by a parent or guardian)

ANTIOCH COMMUNITY CENTER – 4701 Lone Tree Way Antioch

Seven days per week: 7:00 A.M. – 7:00 P.M.

Appointments for Testing Only

NICK RODRIGUEZ COMMUNITY CENTER – 213 F St. Antioch

Tuesday – Saturday: 8:00 A.M. – 11:30 A.M. and 12:30 P.M. – 3:00 P.M.

Walk-ins and Appointments (Vaccine Offered: One-dose and two-dose)

CCHS vaccine screening and consent forms for minors

ANTIOCH HEALTH CENTER – 1335 Country Hills Dr. Antioch

Monday – Friday: 8:00 A.M. – 4:30 P.M.

Walk-ins only (Vaccine Offered: Two-dose only)

CCHS vaccine screening and consent forms for minors

Getting Tested at County and State Sites

- **Scheduled Appointment Testing**: Call (833) 829-2626 to schedule an appointment at any County or State site or [schedule online](#).
- **No Appointment Testing**: Walk-ins without appointment are accepted at these additional locations in Contra Costa County [county testing locations](#) (until 11:30 a.m.). People without an appointment may have long wait times.
- **Testing for Work and School**: If you need regularly testing for work or school, please make an appointment or get tested through your healthcare provider. [Click here for information about getting a free COVID-19 vaccine.](#)

RESPONSE
Coronavirus (COVID-19)

CONTRA COSTA
HEALTH SERVICES



For more information, go online and visit
coronavirus.cchealth.org

BOARDS / COMMISSION / COMMITTEE VACANCY ANNOUNCEMENTS

The City of Antioch encourages residents to become involved in their local community. One way to do so is to serve on various commissions, boards and committees. Any interested resident is encouraged to apply for the vacancy listed below. To be considered for these volunteer positions, a completed application must be received in the Office of the City Clerk **by 5:00 p.m., on Friday, October 1, 2021**. Applications are available at <https://www.antiochca.gov/#>.

➤ POLICE CRIME PREVENTION COMMISSION

Your interest and desire to serve our community is appreciated.

POLICE CRIME PREVENTION COMMISSION

(Deadline date: 10/01/2021)

One (1) Commissioner partial-term vacancy, expiring October 2024

- The Police Crime Prevention Commission makes recommendations to the City Council relative to crime prevention and makes reports on programs, which might be initiated to help the Police Department and the citizens create a safer community.
- Commissioners are involved in public presentations, coordination of Neighborhood Watch groups and programs, and special community events.
- The commission consists of seven members who serve a 4-year term. Applicants cannot be a full-time police officer.
- The Police Crime Prevention Commission meets on the 3rd Monday of each month at 7:00 p.m. in the Police Department Community Room at 300 L Street.
- Commissioners are required to submit a FPPC Form 700 (Statement of Economic Interests) upon assuming office, and every year thereafter no later than April 1st.
- Newly appointed Commissioners are also required to complete the AB 1234 Ethics training within 1-year of their appointment. All Commissioners must then take the AB 1234 Ethics training every two years thereafter. The Ethics training is available online.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Meeting Minutes of August 10, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Meeting Minutes of August 10, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Meeting Minutes of August 24, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Meeting Minutes of August 24, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Dawn Merchant, Finance Director *DM*

APPROVED BY: Ron Bernal, City Manager

SUBJECT: Resolution Approving a Four-Year Extension of Contract for Professional Auditing Services for the Fiscal Years Ended June 30, 2022 through June 30, 2025 with Badawi & Associates, CPA's

RECOMMENDED ACTION

It is recommended that the City Council adopt the resolution approving a four-year extension of the contract for professional auditing services with Badawi & Associates, CPA's for the audits of fiscal years ended June 30, 2022 through June 30, 2025.

FISCAL IMPACT

The fiscal year 2021/22 audit cost is included in the adopted General Fund budget. Future contract years will be included in the 2023/25 budget when brought to City Council.

DISCUSSION

State law requires that all general-purpose local governments have financial statements prepared at the close of each fiscal year by a firm of licensed certified public accountants. The City currently has a contract for professional auditing services with Badawi & Associates, CPA's that ends with the audit of the June 30, 2021 financial statements. Due to the on-going COVID-19 pandemic as well as significant upcoming accounting pronouncements the City is required to implement in the next few fiscal years, Finance is requesting that the contract be extended four additional fiscal years. Multi-year audit contracts are standard practice among cities and considered a "best practice" in the Finance community. Badawi & Associates, CPA's have agreed to extend the contract four additional years at a total cost of \$260,400 broken down by fiscal year as follows (increasing at 3% per year over the 2020/21 audit contract cost):

- Fiscal year 2021/22 = \$62,245
- Fiscal year 2022/23 = \$64,110
- Fiscal year 2023/24 = \$66,035
- Fiscal year 2024/25 = \$68,010

The Request for Proposal process for a new audit firm is quite extensive. Once a new firm is selected, there is a tremendous amount of work and on-site meeting and documentation review that are required as the City still has a lot on unscanned historical records which would also result in a higher audit contract cost for a new firm. City Hall is only open for limited access to the public and Finance believes it is in the best health and safety interest of our employees to avoid public interaction as best we can. The thorough knowledge of the City that our current auditors' have has allowed them to conduct this year's audit entirely on-line thus far. This extensive knowledge will also aid them in helping the Finance Department implement new accounting pronouncements during these upcoming fiscal years as they understand how we operate and have extensive knowledge of implementation of the new standards. The Finance Department has been very pleased with our current audit firm's professionalism, expertise, and ability to aid in implementation of new accounting standards. The City has also received The Government Finance Officers Association of United States and Canada's (GFOA) Certificate of Achievement for Excellence in Financial Reporting with the assistance of our audit firm, as most recently recognized by this City Council via proclamation on July 27, 2021.

ATTACHMENTS

- A. Resolution Approving a Four-Year Extension to the Contract for Professional Auditing Services with Badawi & Associates, CPA's**
- B. Cost Proposal**

ATTACHMENT A

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING A
FOUR-YEAR EXTENSION OF THE CONTRACT FOR PROFESSIONAL AUDITING
SERVICES WITH BADAWI & ASSOCIATES, CPA'S FOR AUDITS OF THE FISCAL
YEARS ENDED JUNE 30, 2022 THROUGH JUNE 30, 2025**

WHEREAS, the City of Antioch currently has a contract with Badawi & Associated, CPA's for professional auditing services that ends with the audit of the fiscal year ended June 30, 2021; and

WHEREAS, City Council has considered extending the contract for four additional fiscal years.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Antioch hereby:

1. Approves a four-year extension of the contract for professional auditing services with Badawi & Associates, CPA's in the total amount of \$260,400, as outlined in the attached cost proposal incorporated herein by reference, for the audits of the fiscal years ended June 30, 2022 through June 30, 2025 and
2. Authorizes the City Manager or designee to execute the agreement in a form approved by the City Attorney.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT B



September 8, 2021

Mrs. Dawn Merchant
Finance Director
City of Antioch
Third and H Streets
Antioch, CA 94509-0504

Dear Mrs. Merchant,

I would like to take this opportunity to thank you and your staff for the confidence and support you have provided to us over the past several years. I would also like to take this opportunity to present this letter for your consideration regarding extending the Badawi & Associates audit contract with the City of Antioch.

Over the past years, we have developed an understanding of the City's operation that has aided us in providing quality audit services. With that knowledge, we've been able to expand our audit efforts and provide observations that, hopefully, have assisted City staff. We have also demonstrated our ability to respond to requests of the City and our ability to deliver a quality product. We trust the City has been satisfied with our efforts.

Per your request, we are pleased to present this proposal to provide audit services to the City for the years ended June 30, 2022 through 2025. The objective of our audit is to issue an opinion regarding the fairness of presentation of the City's financial position for the fiscal year in accordance with generally accepted accounting principles. The audit to be performed will follow generally accepted auditing standards, U.S. General Accounting Office's Government Auditing Standards, Single Audit Act and the Federal Uniform Guidance.

Our fees for the years 2022 through 2025 will be as follows:

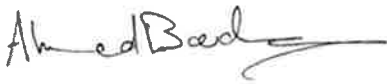
Service	FY 2022	FY 2023	FY 2024	FY 2025
Annual Comprehensive Financial Report and Related Reports	\$ 49,090	\$ 50,560	\$ 52,080	\$ 53,640
City of Antioch Public Financing Authority	3,765	3,880	3,995	4,115
City of Antioch Single Audit	5,845	6,020	6,200	6,385
Appropriation Limit Letter	700	720	745	765
Transportation Development Act	2,845	2,930	3,015	3,105
Total	\$ 62,245	\$ 64,110	\$ 66,035	\$ 68,010

Mrs. Dawn Merchant
Finance Director
City of Antioch

The service we will provide will follow the guideline as outline in the original proposal to the City. We would very much like to continue our relationship with the City and stand ready to provide the level of service and commitment for which the City has become accustomed.

If you have any questions, please feel free to call me at (510)-768-8244.

Sincerely,



Ahmed Badawi
Partner
Badawi & Associates, CPAs

RESPONSE:

This letter correctly sets forth the understanding of the City of Antioch.

By: _____

Title: _____

Date: _____




STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Trevor Schnitzius, Police Captain

APPROVED BY: Tammany Brooks, Chief of Police 

SUBJECT: Purchase of Uninterruptible Power Supply and Maintenance Bypass Cabinet with Sole Source Justification Request

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving the following actions:

1. Approve the sole source request for the purchase and installation of an Uninterruptible Power Supply (UPS) and Maintenance Bypass Cabinet from the Camali Corporation; and
2. Authorize the City Manager to negotiate and execute a purchase agreement with the Camali Corporation for a UPS (to include supporting equipment and installation) in an amount not to exceed \$80,000.

FISCAL IMPACT

The fiscal impact for the purchase of an Uninterruptible Power Supply, supporting equipment and installation is \$73,474 (minus shipping cost). With the estimated shipping cost, the fiscal impact is not to exceed \$80,000. The proposed expenditure is part of the approved Fiscal Year 2021/22 Police Department General Fund Budget.

The attached resolution includes actions to approve the sole source request for Camali Corporation, and to authorize the City Manager, or his designee, to negotiate and execute a purchase and installation agreement with Camali Corporation in an amount not to exceed \$80,000.

DISCUSSION

Background

An uninterruptible power supply (UPS) is an electrical system that provides emergency power when the main power source (or backup power source) fails. A UPS differs from an auxiliary or emergency power system or standby generator and will provide near-instantaneous protection from main power interruptions, by supplying energy stored in batteries. The on-battery run-time of most uninterruptible power sources is relatively short (only a few minutes) but sufficient to start a standby power source. It is a type of continual power system.

A UPS, like the one currently in use at the City's public safety facility, is used to protect hardware such as computers, data centers, telecommunication/radio equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss. The UPS unit at the public safety facility is designed to protect and power the entire data and communications center. The data and communications center provides a critical function (public safety) to the community of Antioch 24-hours a day.

Analysis

Currently, the technological and electronic critical functions at the public safety facility are supported by the original equipment installed when the building was first opened in 1992-1993. The original UPS (an EPE Technologies EPS-2000 15kVA, supported by a BPA-2000 32-battery subsystem) is out-of-date and obsolete. Parts are no longer manufactured for the current UPS, and once the unit fails or parts break it will no longer be serviceable or in use. UPS systems typically have a lifespan of approximately 15-20 years, at which time it is recommended they are completely replaced. The UPS currently in service was manufactured and has been in use more than 28 years.

In 1997-1998, the Camali Corporation assumed the service and maintenance contract for the facility's UPS system. The Camali Corporation is a premier, full service, one-point contact provider offering design/build and maintenance of state-of-the-art data centers and supporting equipment. Since taking over our contract they have provided quality maintenance of Antioch Police Department equipment, while offering tailored solutions meeting our special needs and requirements.

Having more than two decades of unique experience, service and qualifications with the City of Antioch's emergency data and communication center's needs, Camali Corporation recommends replacing the standing equipment with an up-to-date system, capable of sustaining our critical operation with the adaptability to expand and grow with future demands. The Camali Corporation recommends the purchase of a Liebert EXM UPS, with a supporting Maintenance Bypass Cabinet. Camali Corporation is a partner and direct distributor for Vertiv/Liebert data center, communications, and IT infrastructure solutions.

Conclusion

The Antioch Police Department recommends the purchase and installation of a new Liebert EXM UPS, with supporting Maintenance Bypass Cabinet, to replace the current out-of-date equipment from Camali Corporation as a sole source consideration.

ATTACHMENTS

A. Resolution

Exhibit #1 – Camali Corporation Quotation Packet

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE SOLE SOURCE REQUEST FOR THE PURCHASE OF A
UNINTERRUPTIBLE POWER SUPPLY (UPS) AND MAINTENANCE BYPASS
CABINET FROM THE CAMALI CORPORATION, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE A PURCHASING AGREEMENT**

WHEREAS, an Uninterruptible Power Supply (“UPS”) with Maintenance Bypass Cabinet is an emergency backup UPS for the data and communications center at the Police Department;

WHEREAS, the UPS and supporting equipment is specifically engineered to meet the unique needs of the Police Department’s data center in the event of a power failure, and it would replace the existing obsolete unit;

WHEREAS, Camali Corporation is a direct partner and distributor for Liebert UPS systems for government data and telecommunication centers, has over 20 years of unique and specialized maintenance experience with Antioch’s public safety facility’s current UPS and emergency backup systems, and is therefore considered a sole source provider;

WHEREAS, the Police Department seeks to purchase an Uninterruptible Power Supply and Maintenance Bypass Cabinet, which includes installation, startup services, warranty, preventative maintenance, and training for a purchase price not to exceed \$80,000; and

WHEREAS, the City Manager seeks City Council authorization to negotiate and execute an Agreement between the City of Antioch, and the Camali Corporation, to purchase an Uninterruptible Power Supply and Maintenance Bypass Cabinet for the Antioch Police Department.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby authorizes the City Manager, or his designee, to negotiate and execute a sole source purchase agreement with the Camali Corporation, for an Uninterruptible Power Supply and Maintenance Bypass Cabinet, in an amount not to exceed \$80,000.

* * * * *

RESOLUTION NO. 2021/**

September 14, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



August 18, 2021

Proposed Statement of Work
SOW# COA-041814-01R3

Mr. John Fortner
CITY OF ANTIOCH P.D
300 L Street
Antioch, CA 94509

Dear Mr. Fortner:

Thank you for your interest in Camali Corp and our Design Build services. We are pleased to present this Statement of Work (SOW) for your review and approval. For your convenience, we have provided a checklist of items we require to execute this proposed Statement of Work (SOW).

- ☐ Statement of Work (to be signed and returned)
- ☐ Customer Purchase Order (customer provided)
- ☐ Customer Agreement (to be signed and returned)

Please complete and return the above identified documents to:

Attention: Hadi Fakouri
Office: 949/580.0250
Fax: 949/580.0260
E-mail: hadif@camalicorp.com

Camali Corp appreciates the opportunity to submit this proposal and looks forward to helping you with any future data center needs. Thank you for your consideration.

Sincerely,

Hadi Fakouri
CEO
Camali Corp



PROPRIETARY NOTICE

Restriction in Use and Disclosure of Presentation and Quotation Information Data

The information (data) contained in sheets of this proposal or Statement of Work constitutes a trade secret and/or information that are commercial or financial and confidential or privileged. It is furnished to customer in confidence with the understanding that it will not, without the permission of Camali Corp, be used or disclosed for other than evaluation purposes. In the event a contract is awarded to Camali Corp on the basis of this proposal or Statement of Work, customer shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the customer's right to use or disclose this information (data) if obtained from another source without restriction.



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1. PROPOSAL INTRODUCTION

Statement of Work Number:	COA-041814-01R3
Date:	August 18, 2021
Service Provider:	Camali Corp
Chief Executive Officer:	Hadi Fakouri
Customer Name:	City of Antioch
Project Name:	15kVA UPS Replacement

2. COMPANY PROFILE

Camali Corp provides full-service Consulting, Design and Construction to critical facilities and specialized infrastructure projects. Our focus is to provide tailored solutions to your specific business needs and requirements. Camali Corp will help the customer achieve these desired results by taking project management responsibility and providing a “turnkey” solution. Upon request, Camali Corp will offer supplemental ongoing maintenance services that extend and enhance the manufacturer’s warranty provided to the customer for installed components.

3. REFERENCES

Available upon request.



4. STATEMENT OF WORK

~~4.1. ENGINEERING DESIGN – N/A~~

- ~~a) Engineer shall visit the site one (1) time to verify field conditions.~~
- ~~b) Engineer shall review existing building plans (provided by the Client).~~
- ~~c) Engineer shall provide a design indicating layout of the new equipment.~~
- ~~d) Engineer shall provide engineering drawings which shall include:~~
 - ~~• Architectural~~
 - ~~• Electrical~~
 - ~~• Mechanical~~
 - ~~• Structural~~
- ~~e) Significant changes to the drawings because of client changes will be charged separately.~~

~~4.2. PERMITTING SERVICES – N/A~~

- ~~a) Provide submittals, pick-ups from reviewing agencies, coordinate plan check comments, responses and make re-submittals to the point plans are approved and project is 'permit ready' or "Ready to Issue".~~
- ~~b) Obtain permits and licenses in compliance with federal, state, county and local laws, ordinances and regulations unless otherwise stated.~~

4.3. PROJECT MANAGEMENT

- a) Develop project schedule using MS Project.
- b) Meet with customer on a regular basis to review progress.
- c) Supervise day-to-day construction.
- d) Schedule and coordinate delivery with subs and suppliers.
- e) Ensure that the area is kept clean.
- f) Ensure that workers maintain the highest safety standards.



4.4. PROPOSED EQUIPMENT

4.4.1. UNINTERRUPTIBLE POWER SUPPLY (UPS)

a) One (1) 15kVA UPS

- System Input Voltage of 480V, 60Hz, 3 Phase, 3 wire plus ground.
- System Output Voltage of 208/120V, 3 Phase, 4 wire plus ground.
- Seismic anchor kits included for Liebert EXM Main Unit.
- One (1) Network card.
- System comes with one internal string of batteries providing approximately 27 minutes of backup time at 12kW or approximately 20 minutes at 15kW.

b) One (1) Maintenance Bypass Cabinet

- 3 Switching Devices (BIB, MBB, MIB).
- 70 Amp Breaker Trip Rating.
- Key Interlock (SKRU).
- Cabinet Mounted Right Attached to Module with connecting cables factory supplied.
- 600 MM - 23.6 inches Frame Size.
- 480V/ 208V Input Transformer Included.
- Seismic Anchor Kits Included for Maintenance Bypass.
- Front Access service design.
- Input Voltage of 480V, 60Hz, 3 Phase, 3 wire plus ground.
- Output Voltage of 208/120V, 3 Phase, 4 wire plus ground.



4.5. INSTALLATION SERVICES

4.5.1. UNINTERRUPTIBLE POWER SUPPLY

a) Scope of Work

- Disconnect existing UPS and battery cabinet.
- Install and connect new UPS and Maintenance Bypass Cabinet.
- Remove old equipment from site and dispose of properly.

b) System Startup Services

Startup includes one site trip by a certified engineer after the UPS has been installed. The site trip includes the following services for one UPS module: non-powered inspection, UPS electrical and operational checkout, full parts and labor for any remedial work required on the UPS or battery cabinets, and customer operation training. Startup also includes remedial onsite labor, parts, and travel for the full one-year warranty period. Startup 24x7 is scheduled at the customers designated time.

5. ADDITIONAL ITEMS

a) Preventative Maintenance

- Scheduled maintenance shall be performed quarterly.
- Inspections shall take place during regular business hours, Monday – Friday (8 am – 5 pm).
- Emergency service labor and travel coverage subject to “Terms and Conditions” attached hereto as Exhibit A.
- 4 - hour on site response window 24 hours/day, 7 days/week.
- Parts coverage subject to “Terms and Conditions” attached hereto as Exhibit A.



6. POST INSTALLATION

- a) Records, manufacturer documents, equipment warranties, installation warranties, reports, and test data will be properly recorded and turned over to the customer for historical purposes.
- b) Provide as-built drawings as part of project closeout package.
- c) Camali Corp will conduct a job closure and review to validate and ensure completion, acceptance, and placement of equipment into service.
- d) Camali Corp will conduct server room familiarization and training for the customer's IT and Facilities staff after completion and prior to final signoff of the project.



7. PRICING

Estimated price excluding shipping	\$68,383.00
Sales tax estimated at 10%	\$5,091.00
Estimated price excluding shipping	\$73,474.00

8. ADDERS

<input type="checkbox"/>	One Year Preventative Maintenance Contract	\$4,347.00
<input type="checkbox"/>	Power Distribution Cables (each)	\$350.00

9. GENERAL EXCLUSIONS

- a) Prevailing wage, Davis Bacon, union labor, and overtime.
- b) Existing conditions, code violations, unforeseen.
- c) Electrical wiring for remote alarms to a security or building fire alarm panel.
- d) Existing floor load weight capacities.
- e) Demo of any existing Halon exhaust system.
- f) Upgrades to the existing Halon system "tie ins" of any nature (AC, EPO etc.).
- g) Excludes receptacles until quantity and type is determined by client.
- h) Additional work not listed in the SOW above.



10.DELAYS

Contractor agrees to start and diligently pursue work through to completion, but shall not be responsible for delays for any of the following reasons:

- a) Failure of the issuance of necessary building permits within a reasonable length of time.
- b) Acts of neglect or omission of Customer or Customers employees or Customer's agent.
- c) Acts of God, stormy or inclement weather.
- d) Strikes, lockouts, boycotts, or other labor union activities.
- e) Extra work ordered by Customer.
- f) Acts of public enemy, riots or civil commotion.
- g) Inability to secure material through regular recognized channels.
- h) Imposition of Government priority or allocation of materials.
- i) Failure of Customer to make payments when due.
- j) Delays caused by inspection or changes ordered by the inspectors of authorized governmental bodies.
- k) Acts of independent contractors, or holidays, or other causes beyond Contractor's reasonable control.



11.CLIENT RESPONSIBILITIES

- a) Provide Camali Corp with a list of customer and third-party contacts and designate an internal customer project focal point to facilitate tasks and to make decisions regarding scope and changes to tasks contained within this Statement of Work.
- b) Provide workspace for Camali Corp project personnel during the "on site" portion of the project.
- c) Communicate any issues with or change requests to the original project plan or scope of work to the assigned Camali Corp Project Manager in a timely manner.
- d) Ensure the work environment is free of hazardous materials and free from asbestos.
- e) Supply to Camali Corp any information concerning safety issues and/or hazardous material for the disclosure to Camali Corp and Third-Party employees working on the project.
- f) Ensure that Camali Corp is given required access to necessary facilities to successfully complete this project.
- g) Ensure that appropriate backup procedures are performed in advance of any electrical work or other activities that interrupt or pose risk to data and information system availability.



12. GENERAL PROJECT ASSUMPTIONS

- a) The work to be performed "on site" at customer location may be performed contiguously at each site during the regular workday. Customer agrees to compensate Camali Corp for additional actual travel or labor cost increases, which result from customer requested schedule changes or work stoppages.
- b) Communications, which affect the technical aspects of the project, must be directed through the Camali Corp Project Manager.
- c) Review meetings will be held at milestone points in the project. These meetings will facilitate discussion regarding project tasks and timelines. Availability of your management and support personnel is critical to this project and your representation at these meetings is important to the success of the project.
- d) Changes made to the project plan once started requiring approval by both parties via the Change Control Process.
- e) Any work beyond that stated in this Statement of Work must be mutually agreed to by you and Camali Corp; and unless otherwise agreed will be performed at Camali Corp's standard hourly rates.
- f) Camali Corp personnel will comply with OSHA safety requirements while on customer project site.
- g) On site, work must be scheduled 10 business days prior to the expected date of arrival unless otherwise agreed by the parties.
- h) Unless otherwise agreed by the parties, project work shall be performed will be completed during regular business hours (M-F, 8 a.m. to 5:00 p.m.) excluding Camali Corp observed holidays, unless otherwise provided in the Statement of Work, or agreed to in writing by Camali Corp.

13. CHANGE ORDER PROCESS

A Change Order Request and Approval form will be the vehicle for communicating substantive changes to the project plan. If changes to the Statement of Work (SOW) and/or hardware and software quotation are required, a Change Order Request and Approval form will be initiated by Camali Corp and presented to customers designated project focal point or other authorized representative for review and approval.

A written Change Order Request and Approval form must be signed by customer to authorize implementation of the change(s).



14. GENERAL TERMS AND CONDITIONS

- a) **Fifty percent (50%) payment for listed products is due and payable upon acceptance by Camali Corp of Customer's order. Payment must be received before work shall begin.**
 - I. Final payment of fifty percent (50%) is due upon completion of the project.
 - II. Invoices are due and payable upon receipt.
- b) Camali Corp uses its best efforts to anticipate and satisfy regulatory requirements. However, should unforeseen requirements be imposed by regulatory agencies, property managers, or other parties, Customer may be responsible for additional charges. In any such case, the parties shall utilize the Change Order Process detailed herein to ensure proper approvals of any such change.
- c) Prices are valid for 10 days from the date of this Statement of Work.
- d) The Camali Corp Customer Agreement shall apply to this Statement of Work.
- e) Customer must sign a Camali Corp Customer Agreement before or at the time customer places an order. Customer does not have to sign another Camali Corp Customer Agreement if one has been previously signed, which is still in force. Signing a Camali Corp Customer Agreement does not alone obligate customer to place any orders with Camali Corp. To place an Order, you must also sign this SOW and submit a valid Purchase Order to Camali Corp referencing this SOW. Orders are subject to acceptance by Camali Corp.
- f) Customer by signing below agrees that the terms of this Statement of Work shall apply to orders customer places for part numbers referenced in this Statement of Work.



15.STATEMENT OF WORK ACCEPTANCE

City of Antioch

Signature: _____, Representative for City of Antioch

Name (Please print): _____ Date: _____

Camali Corp

Signature: _____, Representative for Camali Corp

Name (Please print): _____ Date: _____



16. ATTACHMENTS

16.1. CUSTOMER AGREEMENT

This contract for the sale of goods and services (the "Customer Agreement") is entered into on [] ("Effective Date"), by and between Camali Corp ("Camali Corp") with offices at 20845 Canada Road, Lake Forest, CA 92630, and [] with offices at [].

1. Definitions

Expenses are incidental costs associated with delivery of Products and Services (for example, shipping or travel). **Order** is a purchase order accepted by Camali Corp.

Product(s) are hardware, Software, documentation, accessories, supplies and parts. **Services** are services provided by Camali Corp and Service Provider(s). **Service Provider(s)** are third parties that perform Services. Service Providers include manufacturers and non-manufacturers. **Software** is a computer program(s) provided to Customer under a license agreement. Unless otherwise provided in this Customer Agreement, Camali Corp is not the licensor and Customer acquires the Software license directly from the Software manufacturer or the manufacturer's authorized licensor.

Support Services are Services directly performed by Camali Corp.

Work is a set of Products and Services and can include expenses.

2. Structure

- a) This Customer Agreement sets out general terms and conditions, which govern the relationship between Camali Corp and Customer. Some Products and Services may require additional and/or unique terms which are set out in Attachments, Exhibits, Statements of Work, and other various documents (collectively "Other Documents").
- b) Third-Party terms and conditions, such as a manufacturer's warranty or shrink wrapped Software license, or a Service Provider's Statement of Work or terms and conditions, govern the relationship between the third party and Customer for a Product or Service (collectively "Third Party Terms"). Some Third-Party Terms do not require Customer's signature, others do. Customer agrees to Third Party Terms and will, at Camali Corp's request, sign applicable Third-Party Terms.
- c) Following are Other Documents and Third-Party Terms attached to this Customer Agreement on its Effective Date:

Document Name

Form No.

Date

3. Prices

- a) Taxes are not included in prices and will be invoiced, if applicable, as separate items. Customer agrees to pay applicable taxes, except those based on Camali Corp's net income.
- b) With the exception of any travel charges noted as "included" in the pricing section of a mutually executed services Statement of Work, transportation charges are not included in prices and will be invoiced if applicable, as separate items. FOB point shall be the point of shipment. Customer agrees to pay applicable transportation charges.

4. Commodity Waiver

"If during the performance of this contract the price of commodities significantly increases, through no fault of contractor, the price shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. Such price increases shall be documented through quotes, invoices, or receipts. Where the delivery of/ is delayed, through no fault of contractor, as a result of the shortage or unavailability of , contractor shall not be liable for any additional costs or damages associated with such delay(s)."

5. Orders

- a) Customer shall place an order by signing the contract. Orders are subject to Contractor's acceptance and credit requirements. Once accepted by Contractor, Customer's order shall become an Order.
- b) Fifty percent (50%) payment for listed products is due and payable upon acceptance by Camali Corp of Customer's order. Payment must be received before work shall begin.
 - I. Final payment of fifty percent (50%) is due upon completion of the project.
 - II. Invoices are due and payable upon receipt.
- c) Camali Corp will try to meet Customer's delivery requirements and will keep Customer informed of delivery status.



- d) Camali Corp will not be liable for delays in meeting delivery requirements.
- e) Due to Customer's configuration requirements, certain Products may be non-franchised or special, and are, therefore, non-cancelable, non-returnable and non-re-schedulable ("Non-Standard Products"). Camali Corp will notify Customer of Non-Standard Products prior to acceptance of Customer's purchase order.
- f) Except for Non-Standard Products, and unless otherwise provided in the Order, Customer may cancel or reschedule an Order of Product without penalty on thirty (30) days written notice prior to the scheduled shipment date.

6. Changes in Work

Should the Customer or any public body or inspector direct any modification or addition to the work covered by this contract, the contract price shall be adjusted accordingly. Modification or addition to the work shall be executed only when both Customer and the Contractor have signed a contract Change Order.

7. Risk of Loss/Title

Risk of loss/ title shall pass to the Customer at delivery of products. Products invoiced and held by Camali Corp (Customer owned inventory) for any reason shall be held at Customer's risk and expense.

8. Payment

- a) Payment of the net amount of an invoice, without offset or deduction, is due 30 days from the date of Camali Corp's invoice. Additional payment terms may be set forth in Other Documents.
- b) Checks are accepted subject to collection and the date of collection is deemed the date of payment. On any past due invoice, Customer shall pay interest from the payment due date to the date of payment at the annual percentage rate of 18% (or such lower rate as may be the maximum allowable by law), together with Camali Corp's costs of collection (including reasonable attorneys' fees).

9. Use of Products in Life Support or Nuclear Applications

Products or Services sold by Camali Corp are not designed for use in life support or nuclear applications. Camali Corp's Customers use of Products and Services acquired hereunder in life support or nuclear applications do so at their own risk, agree that Camali Corp and the manufacturer of Products or Service Provider are not liable, in whole or in part, for any claim or damage arising from such use, and agree to fully indemnify Camali Corp, the Product manufacturer and any Service Provider from and against any and damages, loss, cost, expense or liability arising out of or in connection with the use or performance of Products or Services in life support or nuclear applications.

10. Camali Corp's Limited Warranty

- a) Support Services. Camali Corp warrants Support Services shall conform to the Statement of Work for thirty (30) days from delivery. Camali Corp's liability for those Support Services performed by it that are determined by Camali Corp not to satisfy this warranty shall be limited to correcting such Services at no charge to the Customer or at Camali Corp's election, refunding the Customer's Purchase Price which is in Camali Corp's sole discretion, appropriately apportioned for Services.
- b) Resale of Services. Camali Corp hereby transfers any transferable warranties from the applicable Service Providers.
- c) Camali Corp makes no independent warranty with respect to Services performed by a third party.
- d) Products and Value-Added Services. Camali Corp warrants to Customer that Products purchased hereunder will conform to the applicable manufacturer's specifications for such Products and that any value-added work performed by Camali Corp on such Products to assemble or integrate the Product will conform to applicable Customer's specifications relating to such work.
- e) Camali Corp makes no other warranty, express or implied with respect to the Products. However, in addition to any warranty and indemnification provided to Customer directly by the manufacturer of the Products acquired hereunder, Camali Corp will transfer any transferable warranties and indemnities. With respect to Products which do not meet applicable manufacturer's specifications and with respect to value-added work by Camali Corp which does not meet applicable Customer's specifications, Camali Corp's liability is limited (at Camali Corp's election) to (1) refund of Customer's purchase price for such Products (without interest), (2) repair of such Products, or (3) replacement of such Products; provided, however, that such Products must be returned to Camali Corp, along with acceptable evidence of purchase, within thirty (30) days from date of delivery. Customer shall obtain a Return Material Authorization Number from Camali Corp prior to returning a Product.
- f) The warranties set forth in this section are the only warranties made by Camali Corp, and Camali Corp makes no other warranties, express or implied, with respect to the Products acquired and Services sold hereunder.

IN PARTICULAR, CAMALI CORP MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR SERVICES SOLD OR ACQUIRED HEREUNDER, OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING PROPRIETARY RIGHT INFRINGEMENT. CAMALI CORP DOES NOT AUTHORIZE ANY PERSON TO ASSUME FOR IT THE OBLIGATIONS CONTAINED HEREIN.



11. Limitation of Liability

- a) Except for the remedies provided hereunder with respect to warranties provided by Camali Corp, Customer agrees that it will look solely to the manufacturers of the Products acquired pursuant hereto, or to the Service Providers, for relief with respect to any and claims, actions, suits, proceedings, demands, liabilities, losses, damages and expenses (including attorneys' fees) resulting from any claim by Customer or any third party (including Customer's employees) arising out of or related in any way to the Products or Services or the use or operation thereof, whether such claim is brought in contract, warranty, tort or otherwise (collectively "Liabilities"). Customer will defend, indemnify and hold Camali Corp harmless from and against such Liabilities.

IN NO EVENT SHALL CAMALI CORP BE LIABLE FOR, AND CUSTOMER SHALL NOT BE ENTITLED TO, ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF DATA, LOSS OF USE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS. IN NO EVENT SHALL CUSTOMER'S RECOVERY FROM CAMALI CORP FOR ANY CLAIM EXCEED THE CHARGES FOR THE SERVICES RENDERED, OR THE PURCHASE PRICE OF ANY PRODUCTS ACQUIRED, PURSUANT HERETO, THAT ARE THE SUBJECT OF THE CLAIM WHETHER SUCH CLAIM IS BROUGHT IN CONTRACT, WARRANTY, TORT OR OTHERWISE.

- b) No action arising out of the performance of any Services or the sale and acquisition of any Products, pursuant to this Customer Agreement may be brought by either party more than two (2) years after such cause of action accrues, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

12. Termination

Upon written notice, Customer may terminate this Customer Agreement following the expiration or termination of Customers' obligations under this Agreement and any Other Documents.

13. Confidential Information

Customer and Camali Corp agree that to the extent Confidential Information is to be exchanged, they will enter into the Camali Corp Non-Disclosure Attachment.

14. Non-Solicitation

Customer agrees that the personnel of Camali Corp as well as the personnel of any Service Provider are critical to Camali Corp and the Service Provider's ability to provide services. Therefore, Customer agrees not to hire or otherwise solicit the employment of any Camali Corp or other Service Provider personnel associated with performing the services or supplying the Products acquired hereunder during the term of this Customer Agreement or for two (2) years thereafter (or longer, in the case of a specific Service Provider requirement identified on Exhibit C). If Customer violates this prohibition, Customer shall immediately pay to Camali Corp an amount equal to the annual compensation of the Camali Corp personnel solicited or hired or the amount Camali Corp would then be liable to the Service Provider pursuant to any agreement with them.

15. Independent Contractors

Camali Corp and each of the Service Provider shall act as independent contractors. Neither party hereto, nor the Service Providers providing Services pursuant to Exhibit C, shall represent that it has the authority, express or implied, to assume or create any obligation on behalf of the other party as agent or employee in any capacity. The parties agree that this Customer Agreement does not establish a joint venture or partnership.

16. Notices

Any notice required or permitted to be sent to either party under the terms of this Customer Agreement or any agreement entered into pursuant hereto shall be deemed to have been given when in writing and delivered personally or mailed postage prepaid by registered or certified mail, return receipt requested, to the party to be notified at the address set forth below or such other address as the party may from time to time designate in writing:

City of Antioch P.D
300 L Street
Antioch, CA 94509
Attn: Mr. John Fortner

Camali Corp
20845 Cañada Road
Lake Forest, CA 92630
Attn: Mr. Hadi Fakouri




STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Joe Donleavy, Police Lieutenant

APPROVED BY: Tammany Brooks, Police Chief 

SUBJECT: Office of Traffic Safety (OTS) 2022 STEP Grant – Approval and Allocation of Grant Funds

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution to approve the allocated Office of Traffic Safety (OTS) 2022 STEP Grant funds to pay for police officer training and enforcement operations focused on reducing the number of persons killed and injured in crashes involving alcohol and other primary crash factors.

FISCAL IMPACT

If approved, the City of Antioch will receive an allocation of \$60,000 for FY 2022.

DISCUSSION

Background

The City of Antioch has been awarded funds from the California Office of Traffic Safety (OTS) 2022 STEP Grant. The OTS Selective Traffic Enforcement Program (STEP) was designed to assist State and local agencies with police officer training and enforcement operations focused on reducing the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to garner media attention, thus enhancing the overall deterrent effect.

Analysis

The grant will provide \$60,000 towards police officer training, targeted enforcement operations and education campaigns.

The grant funded training includes; Standardized Field Sobriety Training (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) classes.

The grant will also fund a number of targeted enforcement operations. These include DUI saturation patrols, DUI warrant service that targets multiple DUI offenders who fail to appear in court, speed enforcement operations, distracted driver enforcement operations, motorcycle safety enforcement operations, seat belt enforcement operations, and bicycle and pedestrian safety enforcement operations.

In addition to training and enforcement operations, the grant will allow officers from the Antioch Police Department to participate in a number of traffic related education campaigns, such as National Walk to School Day, National Teen Driver Safety Week, National Bicycle Safety Month, National Child Passenger Safety Week, and California's Pedestrian Safety Month.

ATTACHMENTS

- A. Resolution
- B. Draft Grant Agreement #PT22139

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE OFFICE OF TRAFFIC SAFETY (OTS) 2022 STEP GRANT –
APPROVAL AND ALLOCATION OF GRANT FUNDS**

WHEREAS, the City of Antioch has been awarded to receive funds from the Office of Traffic Safety 2022 STEP Grant; and

WHEREAS, the OTS grant fund amount awarded to the City of Antioch for the upcoming federal fiscal year is \$60,000; and

WHEREAS, the grant will fund police officer training in the areas of Standardized Field Sobriety Training, Advanced Roadside Impaired Driving Enforcement and Drug Recognition Expert. In addition, the grant will fund police officer salaries related to enforcement operations focused on reducing the number of persons killed and injured in crashes involving alcohol and other primary crash factors and police officer participation in a number of traffic related education campaigns.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby approves the Office of Traffic Safety 2022 STEP Grant and approves allocation of the grant to fund training costs and salary of officers participating in grant training and grant enforcement operations. The City Manager, or his designee, is authorized to execute any documents or agreements and to take any actions necessary for receipt of the grant funds.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

1. GRANT TITLE Selective Traffic Enforcement Program (STEP)			
2. NAME OF AGENCY Antioch Police Department		3. Grant Period From: 10/01/2021 To: 09/30/2022	
4. AGENCY UNIT TO ADMINISTER GRANT Antioch Police Department			
5. GRANT DESCRIPTION Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.			
6. Federal Funds Allocated Under This Agreement Shall Not Exceed: \$60,000.00			
7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement: <ul style="list-style-type: none"> Schedule A – Problem Statement, Goals and Objectives and Method of Procedure Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable) Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable) Exhibit A – Certifications and Assurances Exhibit B* – OTS Grant Program Manual Exhibit C – Grant Electronic Management System (GEMS) Access <p>*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.</p> <p>These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.</p> <p>We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.</p> <p>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.</p>			
8. Approval Signatures			
A. GRANT DIRECTOR NAME: Joesph Donleavy TITLE: Lieutenant EMAIL: jdonleavy@antiochca.gov PHONE: (925) 779-6972 ADDRESS: 300 L Street Antioch, CA 94509 _____ (Signature) (Date)		B. AUTHORIZING OFFICIAL NAME: Ron Bernal TITLE: City Manager EMAIL: rbernal@antiochca.gov PHONE: (925) 779-6820 ADDRESS: 200 H Street Antioch, CA 94509 _____ (Signature) (Date)	
C. FISCAL OFFICIAL NAME: Dawn Merchant TITLE: Finance Director EMAIL: dmerchant@antiochca.gov PHONE: (925) 779-6135 ADDRESS: 200 H Street Antioch, CA 94509 _____ (Signature) (Date)		D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY NAME: Barbara Rooney TITLE: Director EMAIL: barbara.rooney@ots.ca.gov PHONE: (916) 509-3030 ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758 _____ (Signature) (Date)	

E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758	9. SAM INFORMATION SAM #: VJ1LM7QMGE3 REGISTERED ADDRESS: 200 H Street CITY: Antioch ZIP+4: 94509-1285
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10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
				AGREEMENT TOTAL		\$60,000.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT		
				\$60,000.00		
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT		
				\$ 0.00		
OTS ACCOUNTING OFFICER'S SIGNATURE			DATE SIGNED		TOTAL AMOUNT ENCUMBERED TO DATE	
					\$60,000.00	

1. PROBLEM STATEMENT

As part of defining a comprehensive traffic plan, the Antioch Police Department has identified two major traffic issues; fatal and injury traffic crashes involving excessive speed and DUI's involving drivers under the age of 21. For the three-year period from 2017 through 2019, the city of Antioch had 802 fatal and injury traffic crashes. Of those, excessive speed was identified as the primary crash factor in 184 of those incidents, or 23% of all fatal and injury traffic crashes. During the same three-year time span, DUI was the primary crash factor in 10% of all fatal and injury traffic crashes. Additionally, 458 people were arrested for DUI from 2017 through 2019, and of those, 113 of the arrestees (25%) were under the age of 21.

The City of Antioch is the second largest city in Contra Costa County, with a population in excess of 113,000 residents. Antioch also serves as a link from the eastern part of the county and San Joaquin County to the greater Bay Area via State Route 4. Even with recent freeway improvements to SR 4 and the expansion of BART to Antioch, many commuters use the eight major arterial roadways in Antioch that feed into SR 4 as a bypass to the freeway. In addition to on-going residential development projects east of the city, this has placed ever increasing strains on the local roadways. As indicated in the most recent rankings from the Office of Traffic Safety, of the 58 cities of comparable size, The City of Antioch has a significant problem with alcohol related crashes, particularly among drivers under the age of 21 and crashes between the hours of 9:00 PM to 2:59 AM. Antioch is ranked 28/58 for alcohol involved crashes and 7/58 for alcohol involved crashes with drivers under the age of 21. Antioch is ranked 21/58 for crashes between the hours of 9:00 PM to 2:59 AM, when patrol staffing is at its lowest.

During the Great Recession of 2008, the City of Antioch had to make drastic cuts in services, which included staffing cuts to the police department. Along with the staffing cuts, the police department had to disband several specialized units. This included the traffic unit and meant that with most police officers handling an overwhelming number of calls for service, there was almost no regular traffic enforcement occurring. It wasn't until 2016 that the police department was able to reinstate a traffic unit, and that consisted of only two officers. In late 2019, the police department increased the staffing of the traffic unit from two to four officers.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Reduce the number of pedestrians killed in traffic crashes.
4. Reduce the number of pedestrians injured in traffic crashes.
5. Reduce the number of bicyclists killed in traffic crashes.
6. Reduce the number of bicyclists injured in traffic crashes.
7. Reduce the number of persons killed in alcohol-involved crashes.
8. Reduce the number of persons injured in alcohol-involved crashes.
9. Reduce the number of persons killed in drug-involved crashes.
10. Reduce the number of persons injured in drug-involved crashes.
11. Reduce the number of persons killed in alcohol/drug combo-involved crashes.
12. Reduce the number of persons injured in alcohol/drug combo-involved crashes.
13. Reduce the number of motorcyclists killed in traffic crashes.
14. Reduce the number of motorcyclists injured in traffic crashes.
15. Reduce hit & run fatal crashes.
16. Reduce hit & run injury crashes.
17. Reduce nighttime (2100 - 0259 hours) fatal crashes.
18. Reduce nighttime (2100 - 0259 hours) injury crashes.

B. Objectives:

1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to

Target Number

1

your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	
2. Participate and report data (as required) in the following campaigns, National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization, National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization, NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	10
3. Develop (by December 31) and/or maintain a "HOT Sheet" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated HOT sheets should be distributed to patrol and traffic officers monthly.	12
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	4
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	4
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	4
7. Send law enforcement personnel to the DRE Recertification training.	2
8. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	1
9. Conduct DUI Saturation Patrol operation(s).	8
10. Conduct Traffic Enforcement operation(s), including but not limited to, primary crash factor violations.	5
11. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	1
12. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or crashes resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary crash factor violations by motorcyclists and other drivers.	1
13. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle crashes resulting from violations made by pedestrians, bicyclists, and drivers.	1
14. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	1
15. Conduct highly visible collaborative DUI Enforcement operations	2
16. Conduct highly visible collaborative Traffic Enforcement operations	2
3. METHOD OF PROCEDURE	
A. <u>Phase 1 – Program Preparation</u> (1st Quarter of Grant Year)	
<ul style="list-style-type: none"> The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section. All training needed to implement the program should be conducted this quarter. All grant related purchases needed to implement the program should be made this quarter. In order to develop/maintain the "Hot Sheets," research will be conducted to identify the "worst of the worst" repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver's name, last known address, DOB, 	

description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly.

- Implementation of the STEP grant activities will be accomplished by deploying personnel at high crash locations.
- Media Requirements
- Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS coordinator and OTS PIO.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.

Media Requirements

- The following requirements are for all grant-related activities
- Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the Coordinator.
- Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at pio@ots.ca.gov and your OTS coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases are an exception to this policy and require prior approval before distribution to the media and public.
- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at pio@ots.ca.gov for approval and copy to your OTS Coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your Coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).
- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at pio@ots.ca.gov and your Coordinator with embargoed date and time or with "INTERNAL ONLY: DO NOT RELEASE" message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a sub-grantee, requires prior approval. Please send to the OTS PIO at pio@ots.ca.gov for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.
- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.

- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS Coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event. If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.
- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- Contact the OTS PIO or your OTS Coordinator for consultation when changes from any of the above requirements might be warranted.

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit invoice claims (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
 - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
 - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
 - Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
164AL-22	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$35,000.00
402PT-22	20.600	State and Community Highway Safety	\$25,000.00

COST CATEGORY	FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS				
Positions and Salaries				
<u>Straight Time</u>				\$0.00
<u>Overtime</u>				
DUI/DL Checkpoints	164AL-22	\$12,600.00	1	\$12,600.00
DUI Saturation Patrols	164AL-22	\$2,240.00	8	\$17,920.00
Collaborative DUI Enforcement	164AL-22	\$2,240.00	2	\$4,480.00
Traffic Enforcement	402PT-22	\$2,240.00	5	\$11,200.00
Distracted Driving	402PT-22	\$2,240.00	1	\$2,240.00
Motorcycle Safety	402PT-22	\$2,240.00	1	\$2,240.00
Pedestrian and Bicycle Enforcement	402PT-22	\$2,340.00	1	\$2,340.00
Traffic Safety Education	402PT-22	\$500.00	1	\$500.00
Collaborative Traffic Enforcement	402PT-22	\$2,240.00	2	\$4,480.00
Category Sub-Total				\$58,000.00
B. TRAVEL EXPENSES				
In State Travel	402PT-22	\$2,000.00	1	\$2,000.00
				\$0.00
Category Sub-Total				\$2,000.00
C. CONTRACTUAL SERVICES				
				\$0.00
Category Sub-Total				\$0.00
D. EQUIPMENT				
				\$0.00
Category Sub-Total				\$0.00
E. OTHER DIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
F. INDIRECT COSTS				
				\$0.00
Category Sub-Total				\$0.00
GRANT TOTAL				\$60,000.00

BUDGET NARRATIVE

PERSONNEL COSTS

DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

Collaborative DUI Enforcement - Overtime for grant funded Collaborative DUI Enforcement operations conducted by appropriate department personnel

Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.

Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.

Collaborative Traffic Enforcement - Overtime for grant funded Collaborative Traffic Enforcement operations conducted by appropriate department personnel

TRAVEL EXPENSES

In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.

CONTRACTUAL SERVICES

-

EQUIPMENT

-

OTHER DIRECT COSTS

-

INDIRECT COSTS

-

STATEMENTS/DISCLAIMERS

Program Income default statement:

There will be no program income generated from this grant.

Enforcement Grant Quota Disclaimer:

Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.

CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS
(23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

GENERAL REQUIREMENTS

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The Subgrantee-

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of,

or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;

- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

"During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of

any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person

who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered in to. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the

department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal

funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING


In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Brad Helfenberger, Parks and Recreation Director 

SUBJECT: Resolution Naming Parcel G Park (APN: 053-060-035) of The Park Ridge Subdivision 8846 "Sierra Trail Park."

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached resolution naming Parcel G Park (APN: 053-060-035) of the Park Ridge Subdivision 8846 "Sierra Trail Park."

BACKGROUND

On March 9, 2010, the City Council adopted Resolution No. 2010/21 approving a vesting tentative map and providing conditions of approval for the Park Ridge Subdivision 8846 project. The conditions call for the design and construction of an 8.22-acre park, referred to as Parcel 'G' park before the issuance of the 271st Building Permit. Parcel G Park (APN: 053-060-035) of the Park Ridge Subdivision 8846 is located adjacent to the Valeriano and Giuseppina Jacuzzi Knolls Open Space, alongside Sierra Trail Way, in the center of the Park Ridge subdivision. The Park Ridge subdivision is located west of State Route 4 Bypass, east of Canada Valley Road and south of Laurel Road. Parcel 'G' Park is to be a public park dedicated to the City of Antioch. Parcel G Park Master Plan and design has been approved by City Council on November 10th, 2020 through the adoption of Resolution 2020/167.

On August 27, 2019, the City Council approved a Policy for Naming and Renaming of Parks, Recreation Features, or Public Spaces (attached). The policy states, in part, that "first priority in naming shall be given to geographical location. New names must be noticeably different than all existing names to avoid duplication or confusion." Additionally, "park/recreation features/public spaces could fall into one of the following categories: geographic, historic or indigenous, natural features, person or community group." There are additional requirements for naming a park after an individual or community group that can be found in the attached policy.

The developer, Davidon Homes, and City staff worked together to propose the following list of names to be considered for recommendation to City Council for approval. These names were presented to the Parks and Recreation Commission at the August 19, 2021 Regular Meeting:

- Diablo Commons: This name was suggested by the developer. The name was suggested based on the distinguishing characteristics, location, and natural geologic features.
- Jacuzzi Park: The park is located on land once owned by Valeriano and Giuseppina Jacuzzi. Valeriano was one of the Jacuzzi Brothers who manufactured the bath and spa that bears their name. The open space adjacent to the park has been named Valeriano and Giuseppina Jacuzzi Knolls Open Space. This name was suggested by City Staff.
- Julpun Park: The Julpun (pronounced “Hool-poon”) are a Bay Miwok Native American Tribe who inhabited the Antioch and Oakley areas. This name was suggested by City Staff.
- Sierra Trail Park: The park is primarily adjacent to Sierra Trail Way. This name was suggested by City Staff.

COMMISSION RECOMMENDATION

After considering these suggestions, the Parks and Recreation Commission voted to recommend to the City Council that the park be named “Sierra Trail Park.”

ATTACHMENTS

- A. Resolution
- B. Vicinity Map
- C. Park Naming Policy

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
NAMING PARCEL G PARK (APN: 053-060-035) OF THE PARK RIDGE
SUBDIVISION 8846 "SIERRA TRAIL PARK"**

WHEREAS, the City Council adopted resolution 2010/21 approving a vesting tentative map and providing conditions of approval for the Park Ridge Subdivision 8846 project, which call for the design of an 8.22 acre park, referred to as Parcel G park;

WHEREAS, at the City Council Regular Meeting of August 27, 2019, the City Council approved a Policy for Naming and Renaming of Parks, Recreation Features, or Public Spaces, which states that suggestions that meet the criteria are to be brought to the Parks and Recreation Commission for Recommendation for Approval by City Council;

WHEREAS, the policy states that first priority in naming shall be given to geographical location;

WHEREAS, the park is primarily located adjacent to Sierra Trail Way; and

WHEREAS, at the Parks and Recreation Commission Regular Meeting of August 19, 2021, the Parks and Recreation Commission were presented with suggestions and recommended the park be named "Sierra Trail Park;"

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby names Parcel G Park (APN: 053-060-035) of the Park Ridge Subdivision 8846 "Sierra Trail Park."

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September, 2021 by the following vote:

AYES:

NOES:

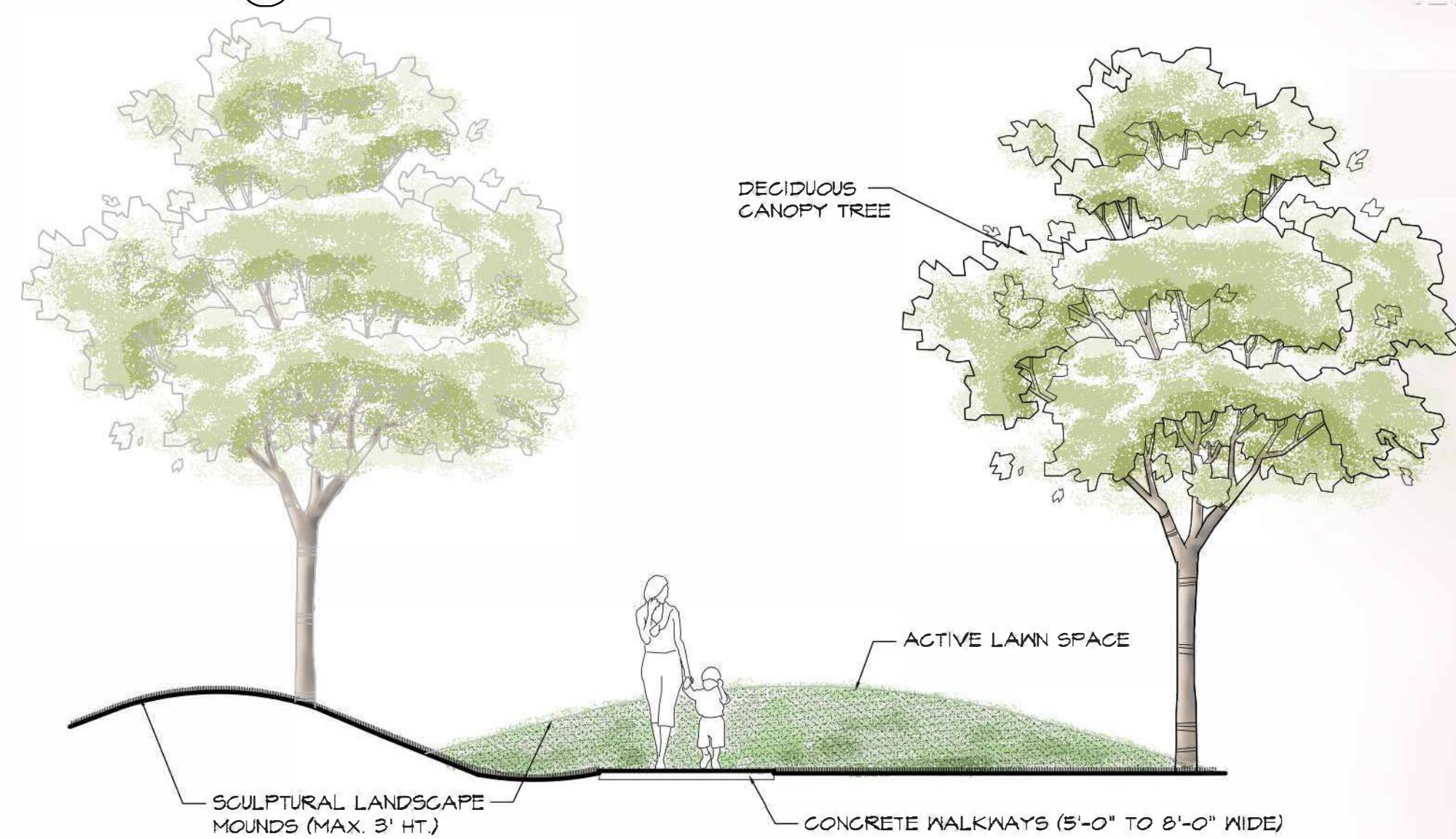
ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

PROGRAM AMENITY LEGEND

- 1 PARKING LOT W/ EVERGREEN SHRUBS AND SHADE TREES (±45 PARKING SPACES TOTAL)
 - 40 VISITOR PARKING SPACES
 - 2 ADA PARKING SPACES
 - 3 SERVICE VEHICLE PARKING SPACES
 - 2 LOADING/UNLOADING SPACES
- 2 PROPERTY LINE, TYPICAL
- 3 VEHICULAR SWING GATE WITH INFORMATIONAL SIGNAGE (OPERATION HOURS TBD BY CITY)
- 4 VISITOR ENTRY & PASSENGER DROP-OFF AREA
- 5 PARK ENTRY SIGNAGE
- 6 RESTROOM FACILITY PER CITY STANDARD W/
 - ADA ACCESSIBLE PATH OF TRAVEL FROM/TO ADA PARKING
 - ADA DRINKING FOUNTAIN
 - BICYCLE RACKS
 - TRASH RECEPTACLES
 - VEGETATIVE BUFFER
- 7 SCULPTURAL LANDSCAPE MOUNDS, TYPICAL
- 8 ADA ACCESSIBLE CONCRETE PARK PATHWAYS, TYPICAL (5'-0" - 8'-0" WIDE)
- 9 BASKETBALL COURTS (84' X 50' NCAA MEN)
 - ADA BENCH SEATING & TRASH RECEPTACLE, TYPICAL
 - VEGETATIVE PLANTINGS
 - ASPHALT PAVING
- 10 2-5 PLAYGROUND AREA W/
 - 2-5 PLAY EQUIPMENT BY MIRACLE PLAY, INC.
 - ADA ACCESSIBLE PATH AND LANDING
 - CONCRETE PICNIC TABLE IN DECOMPOSED GRANITE W/ SHADE TREE
 - POURED IN PLACE RESILIENT SURFACING
- 11 5-12 PLAYGROUND AREA W/
 - 5-12 PLAY EQUIPMENT BY MIRACLE PLAY, INC.
 - ADA ACCESSIBLE PATH AND LANDING
 - CONCRETE PICNIC TABLE IN DECOMPOSED GRANITE W/ SHADE TREE
 - POURED IN PLACE RESILIENT SURFACING
- 12 PICNIC DINING AREA
 - CONCRETE PICNIC TABLES, TRASH RECEPTACLES & COMMUNAL BBQS
 - SHADE SAIL STRUCTURE BY U.S.A. SHADE, INC.
 - OPEN SPACE FOR EVENTS/GATHERING ON CONCRETE PAVING
 - (5) QTY. 24" BOX SHADE TREES (2 QTY. TREE GRATES @ PAVING)
- 13 TRAIL NODE W/ CONCRETE PICNIC TABLES AND BBQ GRILLS BY KAY PARK, INC., TYPICAL
- 14 OPEN LAWN AREA, INFORMAL PLAY
- 15 EXISTING C.S. BASIN TO REMAIN
- 16 INFORMAL LAWN SOCCER FIELD (360' X 225' NCAA SOCCER)
- 17 LITTLE LEAGUE BASEBALL FIELD
 - DUG-OUTS
 - BLEACHERS
 - BACKSTOP & FENCING AT FOUL LINES
 - ADA DRINKING FOUNTAIN
 - BICYCLE RACK
 - TRASH RECEPTACLES
 - BENCH SEATING
- 18 BUFFER PLANTINGS W/ EVERGREEN SCREEN TREES
- 19 PEDESTRIAN CONNECTION @ PARKING LOT
- 20 DOG PARK (±12,950 S.F.) W/
 - TURF & DECOMPOSED GRANITE SURFACING W/ SHADE TREES
 - PERIMETER GALVANIZED FENCING PER CITY STANDARD W/ ENTRY CORRAL AND SEPARATE LARGE & SMALL SIZED DOG AREAS
 - PET WASTE STATIONS
 - OUTDOOR BENCH SEATING BY KAY PARKS, INC.
 - ADA DRINKING FOUNTAINS W/ DOG BOWLS
 - ACCENT PLANTINGS AROUND PERIMETER
- 21 EVERGREEN SCREEN TREES, TYPICAL
- 22 DECIDUOUS CANOPY PARK TREES, TYPICAL
- 23 FLOWERING ACCENT TREES, TYPICAL
- 24 STREET TREES PER CITY OF ANTIOCH DESIGN GUIDELINE, TYPICAL
- 25 CONCRETE SEAT WALL W/ SHADE TREE

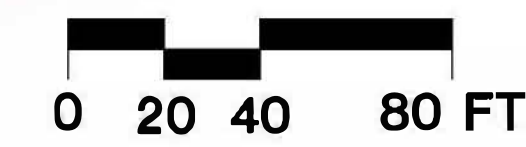


1 SCULPTURAL LANDSCAPE MOUND SECTION (SEE PLAN FOR LOCATION) SCALE: 1/4" = 1'-0" 1/48 01-Section-PRP.dwg



PARK RIDGE PARK

City of Antioch, Contra Costa County, California



ENVIRONMENTAL FORESIGHT, INC. Landscape Architecture 1700 N. Broadway, Suite 401 Walnut Creek, CA 94596 T (925) 945-0300 www.environmentalforesight.com DATE: 08/20/20 JOB# 19008.01 L-1 1 of 4

ATTACHMENT 'B'

CONCEPTUAL LANDSCAPE PLAN

NOT FOR CONSTRUCTION

P:\2019\19008.01\Antioch\PRP.dwg, 8/12/2020 11:53:47 AM

POLICY FOR NAMING AND RENAMING OF PARKS, RECREATION FEATURES, OR PUBLIC SPACES (NAMING POLICY)



City of Antioch
Adopted August 2019

POLICY FOR NAMING AND RENAMING OF PARKS, RECREATION FEATURES, OR PUBLIC SPACES (NAMING POLICY)**Overview**

The purpose of a Policy for naming parks, recreation features and public spaces is to establish a guideline for the naming of community assets and to provide the guideline for members of the public interested in participating in naming. The use of names based upon distinguishing characteristics, location, history or historical usage is a long-standing practice for the official naming of public sites and facilities. The U.S. Board on Geographic Names oversees the naming of federal sites and many agencies adopt policies that are generally similar to those of the Board on Geographic Names.

It is the policy of the City to name park, recreation features, or public spaces in a manner that will provide an easy and recognizable reference for the City's customers. Therefore, first priority in naming shall be given to geographical location. New names must be noticeably different than all existing names to avoid duplication or confusion.

Although first priority in naming shall be given to geographical location, park/recreation features/public spaces could fall into one of the following categories: geographic, historic or indigenous, natural features, person or community group. Features of parks may be named separately from the entire park as long as the name complies with the general naming requirements. For example, Antioch Community Park includes the Worth Shaw Sports Complex.

Requirements for naming a park/recreation features/public space after an individual or community group shall include the following requirements.

- Must have made a significant contribution to the park(s), recreation department, or community as a whole; improving the quality of life in Antioch.
- May not be named after an individual while still alive.
- Should have had a direct and long-term association with the park/recreation feature or public space.
- May result as a stipulation of a donation of land or significant monetary contribution.

Names for parks/recreation features/public spaces shall not be overly long or difficult to pronounce, and names that are derogatory or highly offensive shall not be used regardless of how long the name has been informally established.

Public participation in naming parks/recreation features/public spaces is encouraged. Recommendations should be submitted to the Recreation Department in writing. Nominations that are found to be in compliance with the Policy will be forwarded to the Parks and Recreation Commission for review and recommendation. The Parks and Recreation Commission will make a recommendation to the City Council based upon their review of the nominations.

City of Antioch

Polices & Procedures

General Policy

- It is the policy of the City to name park, recreation facilities or public spaces in a manner that will provide an easy and recognizable reference for the City's customers. Therefore, first priority in naming facilities shall be given to geographical location.
- The geographic location may be based on the identification of the facility with a specific place, neighborhood, major street, or regional area of the City.
- Facilities may also be named based on distinguishing, prominent, natural or geological features.
- Names in common or historical usage have a secondary priority.
- Names that honor a person or community that has made a distinct and significant contribution to the City of Antioch will be considered in accordance with the documentation of contributions of the person or group being honored. Individuals will not be recognized while still living. For example, Worth Shaw Sports Complex is named after the first Recreation Director – Worth Shaw.
- Persons, families, and organizations that are considered early or long-time Antioch settlers (more than 50 years) should have had a direct and long-term association with the land, feature or facility. For example, Prewett Community Park is named after the ranching family that owned the land; they were instrumental in educational efforts within the community and region.
- Naming that is done in exchange for contributions and partnerships will be considered in accordance with the agreement approved by City Council. For example, Chichibu Park recognizes the historical relationship with Antioch's Sister City – Chichibu, Japan.
- Names that are derogatory or offensive to a particular racial or ethnic group, gender or religious group may not be used.
- Conditions of property donation or deed shall be honored regarding name of facility, although a geographic or characteristic name is preferred.
- Recreation Features in parks and public spaces may be named separately from the whole as long as the name complies with the general policy.
- Names that are similar to existing park or recreation facilities or properties in the Antioch area should be avoided in order to minimize confusion.
- Residents are encouraged to participate in the naming process; all recommendations will be submitted to the Parks and Recreation Director in writing with documentation and demonstration of the outstanding achievements, contributions to the community, and enrichment for all residents.
- Recommendations for naming will be reviewed by the Parks and Recreation Commission and if approved, submitted to City Council for final consideration.
- All decisions with respect to the naming of parks, recreation features and public spaces will be at the final discretion of the City Council, which may choose not to grant any naming or recognition.

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: John Samuelson, Public Works Director/City Engineer *JS*

SUBJECT: Fifth Amendment to the Consultant Services Agreement with Woodard & Curran for the Brackish Water Desalination Project (P.W. 694)

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving the Fifth Amendment to the Consultant Services Agreement with Woodard & Curran for continued professional services, consultant coordination and permit assistance for the Brackish Water Desalination Project in the amount of \$90,407 for a total contract amount of \$282,907 and authorizing the City Manager to execute the amendment.

FISCAL IMPACT

The fiscal year 2021/2022 Capital Improvement Budget includes adequate funding for this work through the Water Enterprise Fund.

DISCUSSION

In October 2017, the City entered into a Consulting Services Agreement with Woodard & Curran ("W&C") to provide support related to the Brackish Water Desalination Project ("Project") and water rights related issues. This work included assisting the City with consultant coordination, project scheduling and securing funding for the Project. In addition, W&C provided technical reviews of delta modeling results and informed the City of possible effects on the City's water supply.

In March 2018, W&C's agreement was amended to include continued support to the City pertaining to the Project. This scope included ongoing consultant coordination, project scheduling and securing funding for the Project. W&C assisted the City in the development of the project's Environmental Impact Report, including the evaluation of modeling analyses for incorporation into the environmental document.

On October 23, 2018, W&C's agreement was amended to include continued consultant coordination, project scheduling and securing funding for the Project, as well as securing permits necessary for project implementation, including USACE, 404, RWQCB 401, fishery consultations, Biological Opinions, Incidental Take, and others.

On November 26, 2019, W&C's agreement was amended to continue providing support with ongoing project coordination during permitting and design, interagency cooperation with Delta Diablo and securing funding.

On January 1, 2021, W&C's agreement was amended to extend their contract to December 31, 2023 to continue to assist the City related to agreements with Delta Diablo for the Project.

Staff is recommending an amendment to W&C's Consulting Service Agreement to continue providing support with ongoing project coordination during permitting and design, interagency cooperation with Delta Diablo and securing funding. The approval of this agreement amendment will increase the contract by \$90,407 for a total contract amount of \$282,907.

ATTACHMENTS

- A. Resolution
- B. Agreement with Woodard and Curran dated October 23, 2017
- C. Fifth Amendment to the Consultant Services Agreement with Woodard & Curran

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE FIFTH AMENDMENT TO THE AGREEMENT WITH WOODARD &
CURRAN FOR THE BRACKISH WATER DESALINATION PROJECT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIFTH AMENDMENT
P.W. 694**

WHEREAS, on October 23, 2017, the City entered into a Consultant Services Agreement with Woodard & Curran to provide professional services related to the Brackish Water Desalination Project and Bay-Delta technical support in the amount of \$30,000;

WHEREAS, on March 28, 2018, City increased the compensation for Woodard & Curran in the amount of \$32,500 bringing the total compensation to an amount not to exceed \$62,500;

WHEREAS, on October 23, 2018, City increased the compensation for Woodard & Curran in the amount of \$65,000 bringing the total compensation to an amount not to exceed \$127,500;

WHEREAS, on November 26, 2019, City increased the compensation for Woodard & Curran in the amount of \$65,000 bringing the total compensation to an amount not to exceed \$192,500;

WHEREAS, on January 1, 2021 City extended the term of the Consultant Services Agreement with Woodard & Curran to December 31, 2023; and

WHEREAS, the City has considered authorizing the City Manager to execute the Fifth Amendment to the Consultant Services Agreement with Woodard & Curran for continued professional services, consultant coordination and permit assistance for this project in the amount of \$90,407 for a total contract amount of \$282,907.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves the Fifth Amendment to the Consultant Services Agreement with Woodard & Curran for continued professional services, consultant coordination and permit assistance in substantially the form attached in the amount of \$90,407 for a total contract amount of \$282,907 and
2. Authorizes the City Manager to execute the Fifth Amendment in a form approved by the City Attorney.

A1

RESOLUTION NO. 2021/**

September 14, 2021

Page 2 of 2

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

ABSENT:

ABSTAIN:

NOES:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

A2

ATTACHMENT "B"

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ANTIOCH AND WOODARD & CURRAN FOR THE BRACKISH WATER DESALINATION PROJECT P.W. 694

THIS AGREEMENT for consulting services is made by and between the City of Antioch ("City") and Woodard & Curran ("Consultant") as of October 23, 2017.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2018, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant represents that it is experienced in providing these services to public clients and is familiar with the plans and needs of City. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agree to pay Consultant a sum not to exceed Thirty thousand dollars (\$30,000.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services.
- The Consultant's signature.

2.2 Payment Schedule.

2.2.1 City shall make incremental payments, based on invoices received, according to the payment schedule attached as Exhibit B, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Consultant.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule: See Exhibit B.

2.6 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Insurers shall have an A.M. Best's rating of no less than A:VII unless otherwise accepted by the City in writing:

4.1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Consultant's services include work within 50 feet of a railroad right of way, the Contractor shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of the City. Limits for such coverage shall be no less than \$5,000,000.

4.2. **Automobile Liability Insurance.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

4.3. **Workers' Compensation Insurance.** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

4.4. Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

4.5. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

4.5.1 *Additional Insured Status*. The City, its officers, officials, employees, and volunteers are to be covered as additional Insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

4.5.2 *Primary Coverage*. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the 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 the Contractor's insurance and shall not contribute with it.

4.5.3 *Notice of Cancellation*. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

4.5.4 *Waiver of Subrogation*. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

4.5.5 *Deductibles and Self-Insured Retentions*. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

4.5.6 *Claims made policies*. If any of the required policies provide claims-made coverage:

4.5.6.1 The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

4.5.6.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

4.5.6.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4.6. Certificate of Insurance and Endorsements. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

4.7. Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

4.8. Higher limits. If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

4.9. Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

4.10 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES

5.1. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability arising out of any personal injury, loss of life, damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of or resulting from the performance of this Agreement by CONSULTANT, and caused by CONSULTANT's negligence, recklessness or willful misconduct, and that of its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY.

5.2. In the event that Consultant or any employee, agent, sub-consultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, sub-consultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.3. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5.4. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors

shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation or any other legally protected status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

7.6 **Prevailing Wages.** Should the scope of work fall under the requirements of the California Labor Code and implementing regulations for the payment of prevailing wages, then Consultant shall comply and pay prevailing wages.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in their sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a

written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City' remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement; and/or

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant in which case the City may charge Consultant the difference between the cost to have a different consultant complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and

agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

9.2 **Confidentiality.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be kept confidential by Consultant. Such materials shall not, without the prior written permission of City, be used by Consultant for any purpose other than the performance of this Agreement nor shall such materials be disclosed publicly. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, shall be deemed confidential. Consultant shall not use the City's name or logo or photographs pertaining to the services under this Agreement in any publication without the prior written consent of the City.

9.3 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.4 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

9.5 **Intellectual Property.** The City shall have and retain all right, title and interest, including copyright, patent, trade secret or other proprietary rights in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents and any other works of authorship fixed in any tangible medium or expression, including but not limited to physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement. Consultant further grants to City a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional or supplemental work created under this Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the

state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

- 10.2 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.3 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.4 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.5 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.6 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any official of City in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Inconsistent Terms.** If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any attachment or Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Ron Bernal ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Samantha Salvia, P.E.
Woodard & Curran
2175 North California Blvd., Suite 315
Walnut Creek, CA 94596

Any written notice to City shall be sent to:

City Manager
City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007

10.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and all other attachments, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY:

CITY OF ANTIOCH

Ron Bernal
Ron Bernal, City Manager

Attest:

Arne Simonsen
Arne Simonsen, CMC, City Clerk

Approved as to Form:

Derek P. Cole
Derek P. Cole, Interim City Attorney

CONSULTANT:

WOODARD & CURRAN

By: Lyndell W. Melfor

Name: Lyndell W. Melfor

Title: Sr. Vice President

By: _____

Name: _____

Title: _____

B11

EXHIBIT "A"



National Experience. Local Focus.

October 11, 2017

Mr. Ron Bernal
City Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

RE: Proposal for Water Resources Technical Support

Dear Mr. Bernal:

At your request, I have developed this proposal for providing ongoing support related to the City of Antioch's Brackish Water Project and water rights. Based on our discussion, I've prepared the following Scope of Work:

Scope of Work

This is a proposal to provide water resources related technical support to the City of Antioch (City) as follows:

Task 1: Project Coordination for Brackish Water Desalination Project

The City is currently planning and conducting environmental review of a project to construct, operate, and maintain a desalination facility utilizing the City's intake and water treatment infrastructure. The goals of the project are to improve water supply reliability and water quality for the City's customers, especially during droughts and future changes in Delta water management, and to provide operational flexibility to the City.

The project is in the planning phase with consulting teams working on different aspects of the project (environmental, water resources, technical design, permitting, etc.). Under this task, Woodard & Curran project manager, Samantha Salvia, will assist the City in project coordination, including coordination meetings with consulting teams and the City's engineer, Scott Buenting, overseeing overall project schedule, identifying critical path items, and engaging the City manager at key decision points.

Task 2: Bay-Delta Technical Support

The City has a pre-1914 water right and a 1968 agreement with DWR intended to protect the City's water supply from the impacts of the State Water Project. Under this task, project manager Samantha Salvia will provide technical review of modeling developed by the City's consultant, Exponent, and will advise the City Manager on developments in the Bay-Delta that could affect the City's water supply.

Complex Challenges | Innovative Solutions



Task 3: Additional Water Resources Project Support

This task could include assistance in grant-writing and securing funding for the Brackish Water Project, drafting or review of briefing materials for City Council members, and attending meetings with project stakeholders as requested by the City manager.

Scope Assumptions

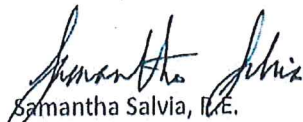
- Samantha Salvia will be the primary Woodard & Curran staff member on this project. She may enlist assistance from other staff at Woodard & Curran if needed.
- The estimated level of effort is 40 hrs. in the first month and then approximately 25 hrs./month of the project manager's time ongoing.


Fee Estimate

Woodard & Curran proposed to provide support to the City of Antioch as described in the scope of work above for a not-to-exceed amount of \$30,000. The cost for the proposed work will be on a time-and-materials basis in accordance with the attached rate schedule.

Please let me know if you have any questions regarding this proposal. Thanks for the opportunity to work with you.

Sincerely,


Samantha Salvia, P.E.
Senior Project Manager


Lyndel Melton, P.E., D. WRE
Vice-President

Attachments:

S. Salvia One-Page Resume
Woodard & Curran Rate Sheet

B13

Samantha Salvia, P.E.

Senior Project Manager

Experience	Education	Registration
13 years	M.S., Civil and Environmental Engineering, Stanford University, 1999 B.A., Philosophy, Politics and Economics, Oxford University, 1998 B.S., Civil Engineering, Old Dominion University, 1996	Professional Civil Engineer, CA #62425

Samantha Salvia is a civil engineer with more than 13 years' experience in water resources project management, planning, and environmental compliance. Samantha combines a technical background in surface water and operations modeling with practical experience in northern California water resource management issues. Her experience working in the public sector provides her an understanding of water agency and client perspectives. While a principal engineer at the Contra Costa Water District, Samantha led the District's \$100M capital project to build a new Delta intake from project planning through design. As a consultant, she has managed several water resources technical studies, permitting efforts, and environmental impact reports for complex, multi-benefit and multi-agency projects in Northern California.

Relevant Experience

Contra Costa Water District, Alternative Intake Project

Project Manager. While a Principal Engineer at the Contra Costa Water District, Samantha managed CCWD's largest capital project, a \$100M water quality project to add a new drinking water intake in Sacramento- San Joaquin Delta. She was responsible for managing all elements of planning, design, permitting, public outreach, and land acquisition. The project included a 250 cfs intake and pump station, a large diameter pipeline, and tunnel. She directed a consultant team of over ten firms in addition to supervising CCWD staff. She formulated strategy and directed a legal team in land acquisition for the project. Samantha completed the two-year planning phase including project EIR/EIS and biological opinions in coordination with the U.S. Bureau of Reclamation while keeping the project on schedule and under budget. She managed the project through 50% design. The project began operation in July 2010.

North Valley Regional Recycling Program, City of Modesto, City of Turlock, Del Puerto Water District - *Project Manager*

Lodi 2010 Urban Water Management Plan, City of Lodi - *Project Manager*

Garden Bar Water Supply Project, South Sutter Water District, Palmdale Water District, San Bernardino Valley Municipal Water District, and City of Napa, - *Project Coordinator*

Pittsburg 2010 Urban Water Management Plan, City of Pittsburg - *Project Manager*

Hollister Urban Area Water and Wastewater Master Plan Program EIR, San Benito County - *Project Manager*

Department of Water Resources, Franks Tract Project EIR/EIS, Contra Costa and Sacramento Counties - *Water Resources Task Leader*

California Urban Water Agencies, Central Valley Drinking Water Policy Workgroup - *Author and CUWA representative*

EXHIBIT "B"



National Experience. Local Focus.

Labor Category	Rate
Engineer 1 (E1) Scientist 1 (S1) Geologist 1 (G1) Planner 1 (P1) Technical Specialist 1 (TS1)	\$152
Engineer 2 (E2) Scientist 2 (S2) Geologist 2 (G2) Planner 2 (P2) Technical Specialist 2 (TS2)	\$178
Engineer 3 (E3) Scientist 3 (S3) Geologist 3 (G3) Planner 3 (P3) Technical Specialist 3 (TS3)	\$201
Project Engineer 1 (PE1) Project Scientist 1 (PS1) Project Geologist 1 (PG1) Project Planner 1 (PP1) Project Technical Specialist 1 (PTS1)	\$205
Project Engineer 2 (PE2) Project Scientist 2 (PS2) Project Geologist 2 (PG2) Project Planner 2 (PP2) Project Technical Specialist 2 (PTS2)	\$222
Project Manager 1 (PM1) Technical Manager 1 (TM1)	\$237
Project Manager 2 (PM2) Technical Manager 2 (TM2)	\$249
Senior Project Manager (SPM) Senior Technical Manager (STM)	\$260
Senior Technical Practice Leader (STPL) Service Line Leader (SLL)	\$295
National Practice Leader (NPL) Strategic Business Unit Leader (SBUL)	\$310
Software Engineer 1 (SE1)	\$136
Designer 1 (D1)	\$140
Designer 2 (D2)	\$150
Designer 3 (D3)	\$153
Senior Software Developer (SSD)	
Senior Designer (SD)	\$165
Project Assistant (PA)	\$105
Marketing Assistant (MA) Graphic Artist (GA)	\$113
Senior Accountant (SA) Billing Manager (BM)	\$125
Marketing Manager (MM) Graphics Manager (GM)	\$145

Note: The individual hourly rates include salary, overhead and profit. Other direct costs (ODCs) such as reproduction, delivery, mileage (as allowed by IRS guidelines), and travel expenses will be billed at actual cost plus 10%. Subconsultants will be billed as actual cost plus 10%. RMC, a Woodard and Curran Company, reserves the right to adjust its hourly rate structure at the beginning of each year for all ongoing contracts.

B15

ATTACHMENT "C"

**AMENDMENT NO. 5 TO AGREEMENT
FOR CONSULTANT SERVICES FOR THE
BRACKISH WATER DESALINATION PROJECT
P.W. 694**

THIS FIFTH AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES is entered into this 14th day of September 2021, by and between the CITY OF ANTIOCH, a municipal corporation ("CITY") and WOODARD AND CURRAN, their address is 2175 N. California Boulevard, Suite 315, Walnut Creek, California 94596 ("Consultant").

R E C I T A L S

WHEREAS, on October 23, 2017, City and Woodard and Curran, entered into an Agreement for Professional Consultant Services for the Brackish Water Desalination Project ("Agreement") in the amount of \$30,000;

WHEREAS, on March 28, 2018, City increased the compensation for Woodard and Curran in the amount of \$32,500 bringing the total compensation to an amount not to exceed \$62,500;

WHEREAS, on October 23, 2018, City increased the compensation for Woodard and Curran in the amount of \$65,000 bringing the total compensation to an amount not to exceed \$127,500 and extended the term of the contract to December 31, 2019;

WHEREAS, on November 26, 2019, City increased the compensation for Woodard and Curran in the amount of \$65,000 bringing the total compensation to an amount not to exceed \$192,500 and extended the term of the contract to December 31, 2020;

WHEREAS, on January 1, 2021, City extended the Agreement with Woodard and Curran to December 31, 2023; and

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1 "SERVICES" the first paragraph shall be amended to read as follows:

"Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish all technical and professional services including labor, materials, equipment, transportation, supervision, and expertise to provide to City the services described in the Scope of Work attached as Exhibit A to the Agreement, Exhibit A to Amendment No. 1, Exhibit A to Amendment No. 2, Exhibit A to Amendment No. 3, Exhibit A to Amendment No. 4, and Exhibit A to Amendment No. 5 of the Agreement at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and the Exhibits, the Agreement shall prevail."

CI

2. Section 2 "COMPENSATION" the first sentence shall be amended to read as follows:

"CITY hereby agrees to pay Consultant a sum not to exceed **\$282,907**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

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

CITY OF ANTIOCH:

WOODARD AND CURRAN

By: _____
Rowland E. Bernal, Jr., City Manager

By: _____

Print Name of Signor

ATTEST:

Elizabeth Householder, City Clerk

APPROVED AS TO FORM:

Thomas Lloyd Smith, City Attorney

EXHIBIT "A"

Via Electronic Mail

August 26, 2021



Mr. John Samuelson
Public Works Director
City of Antioch
Antioch, CA 94531-5007

Re: Proposal for Additional Water Resources Technical Support – P.W. 694

Dear Mr. Samuelson:

At your request, we are providing this proposal for additional services to continue providing support to the City related to the City of Antioch's Brackish Water Desalination Project and various water supply/resources related matters. These additional services will be an amendment to our existing consulting services agreement, P.W. 694 first executed in October 2017 and mostly recently amended in February 2021. This amendment would include additional work described in the scope below including an optional task related to conducting a water loss audit to support compliance with the state's new water efficiency standards and provide additional budget as proposed below in the fee estimate. The expiration date of the agreement would remain December 31, 2023.

Scope of Work

The City of Antioch's Brackish Water Desalination Project is being implemented to improve the City's water supply reliability and provide operational flexibility while reducing costs, especially during droughts. I have provided support to the City since 2017 as the project has completed environmental review, conducted planning and design, obtained permits, and executed funding agreements. The project began construction in February 2021. To continue providing support to the City, I propose amending the scope for Task 1 as follows:

Task 1: Project Coordination for Brackish Water Desalination Project

- Delta Diablo Coordination: Continue, as-needed, coordination with Delta Diablo on fulfilling requirements of operations agreement to ensure the Project can discharge concentrate through the Delta Diablo outfall. This will likely include additional coordination with Delta Diablo on establishment of monitoring requirements in the operating budget, reaching agreement on the shutdown protocol as required by the operations agreement with the City, and other areas of coordination that may arise as the project proceeds from construction to operation.
- Project Operations Support: In Spring 2021 I developed draft recommendations and operational guidelines for plant operators based on simulations of brackish desalination and an analysis of water quality and CCWD contract requirements. This task would include finalizing operations guidelines, working with City staff to refine, and briefing new water treatment supervisor (when hired).

C3



- Permitting Support: Work with ESA and City staff to ensure permitting requirements, particularly those related to key permits such as fisheries permits and biological opinions, are appropriately followed. Provide review and input to adaptive management plan and other permitting related requirements that will be developed as Project prepares to commence operations. Support CM team in interpreting permitting compliance requirements as needed.
- Other Support: As needed and directed by the Public Works Director or City Manager.

Task 2: Bay-Delta Technical Support

Provide support as requested by the Public Works Director. This could include:

- Provide input and draft materials to support water rights team in ensuring State Board drought response does not adversely affect the City's future ability to divert water for desalination
- Evaluate CCWD supply reliability and implications for the City's water supply operations.
- Review water resources related documents (e.g. UWMPs, water supply master plans, EIRs for Delta Projects with potential to impact City of Antioch water resources, etc.)

Task 3: Water Loss Audit (Optional)

The state is implementing water use objectives that will serve as a replacement for "20% by 2020" (SBX7-7) conservation legislation. A water agency's water use objective will be the aggregate volume of water an urban retail water supplier would have delivered in the previous year if all that water had been used in compliance with adopted efficiency standards. Reporting starts in November 2023. Compliance is in aggregate except for water loss.

The City's reported water losses are low but appear to be based on poor quality data and may trigger compliance problems later. Under this optional task, Woodard & Curran would meet with City staff and prepare a technical memorandum that evaluates the water system from a water loss audit perspective (inputs/outputs), describes the existing data limitations, and provides recommendations for targeted improvements. Woodard & Curran's technical memorandum would also describe the potential implications to audit results of improvements to data quality.

Scope Assumptions

- Samantha Salvia will be the primary Woodard & Curran staff member on Tasks 1 and 2. She will enlist assistance from other staff at Woodard & Curran as needed, including utilizing Woodard & Curran's water loss expert in assisting in Task 3.
- The estimated level of effort is shown in the attached table and includes approximately 10 hours/month of the project manager's time over two years. Actual effort will depend on project needs and City requests.

Fee Estimate

Attached is an estimated level of effort and associated fee. Woodard & Curran proposed to provide support to the City of Antioch as described in the scope of work above for a not-to-exceed amount of \$90,407. The cost for the proposed work will be on a time-and-materials basis in accordance with the attached rate schedule.



Please let me know if you have any questions regarding this proposal. Thanks for the opportunity to continue to work with you.

Sincerely,

WOODARD & CURRAN

Samantha Salvia, P.E.
Senior Project Manager

Dave L. Richardson, P.E.
Principal in Charge

Attachments: Fee Estimate
Woodard & Curran 2021 Rate Schedule



Fee Estimate

City of Antioch Water Resources Technical Support

Tasks	Labor			ODCs		Total
	Samantha Salvia	Chris Hewes		Total Hours	Total ODCs	Total Fee
	Senior Project Manager	Water Resources Planner 1	Graphics/Admin Support			
Task 1: Project Coordination for Brackish Water Project						
	140	0	12	152	\$825	\$44,045
Subtotal Task 1:	140	0	12	152	\$825	\$44,045
Task 2: Bay Delta Technical Support						
	100	0	6	106	\$550	\$31,100
Subtotal Task 2:	100	0	6	106	\$550	\$31,100
Base Services Tasks TOTAL	240	0	18	258	\$1,375	\$75,145
Task 3: Water Loss Audit - Optional						
	10	48	4	62	\$550	\$15,262
Subtotal Task 4:	10	48	4	62	\$550	\$15,262
TOTAL	250	48	22	320	\$1,925	\$90,407

8/25/2021

CE



2021 Standard Rates	
Labor Category	2021 Rate
Engineer 1 (E1) Scientist 1 (S1) Geologist 1 (G1) Planner 1 (P1) Technical Specialist 1 (TS1)	171
Engineer 2 (E2) Scientist 2 (S2) Geologist 2 (G2) Planner 2 (P2) Technical Specialist 2 (TS2)	198
Engineer 3 (E3) Scientist 3 (S3) Geologist 3 (G3) Planner 3 (P3) Technical Specialist 3 (TS3)	224
Project Engineer 1 (PE1) Project Scientist 1 / Project Specialist 1 (PS1) Project Geologist 1 (PG1) Project Planner 1 (PP1) Project Technical Specialist 1 (PTS1)	234
Project Engineer 2 (PE2) Project Scientist 2 / Project Specialist 2 (PS2) Project Geologist 2 (PG2) Project Planner 2 (PP2) Project Technical Specialist 2 (TS2)	249
Project Manager 1 (PM1) Technical Manager 1 (TM1)	265
Project Manager 2 (PM2) Technical Manager 2 (TM2)	281
Senior Project Manager (SPM) Senior Technical Manager (STM)	298
Senior Technical Practice Leader (STPL) Service Line Leader (SLL)	324
National Practice Leader (NPL) Strategic Business Unit Leader (SBUL)	330
Software Engineer 1 (SE1)	156
Software Engineer 2 (SE2)	175
Software Engineer 3 (SE3)	191
Designer 1 (D1)	132
Designer 2 (D2)	164
Designer 3 (D3) Senior Software Developer (SSD)	169
Senior Designer (SD)	174
Project Assistant (PA)	116
Marketing Assistant (MA) Graphic Artist (GA)	125
Senior Accountant (SA) Senior Project Assistant Billing Manager (BM)	136
Marketing Manager (MM) Graphics Manager (GM)	158

Note: The individual hourly rates include salary, overhead and profit. Other direct costs (ODCs) such as reproduction, delivery, mileage (as allowed by IRS guidelines), and travel expenses will be billed at actual cost plus 10%. Subconsultants will be billed as actual cost plus 10%. Woodard & Curran, Inc., reserves the right to adjust its hourly rate structure at the beginning of each year for all ongoing contracts.

C7

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Jeff Cook, Collections Superintendent

APPROVED BY: John Samuelson, Public Works Director/City Engineer *CZ For JS*

SUBJECT: Resolution Approving Amendment to Lease Agreement for 415 O Street Building

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving the Amendment to the Lease Agreement with Scotto Family Trust for 415 O Street Building
2. Authorizing the City Manager or his designee to execute the Amendment

FISCAL IMPACT

This expenditure is included in the Fiscal Year 21-23 Sewer-Wastewater Enterprise Fund Budget.

DISCUSSION

The Public Works Department entered into a lease agreement for 415 O Street on October 1, 2014. The roof of this building is in need of repair and the property owner is responsible for roof repairs under the term of this agreement. City staff and the property owner agreed to share the cost of the repair as a result of negotiations.

This amendment memorializes the reduced rent the City will pay over a four-month period to cover the property owner's contribution for the roof repair. This amendment also memorializes the first five-year extension of the lease agreement and acknowledges approval of the modification made to the building by the City.

ATTACHMENTS

- A. Resolution
- B. Amendment to Lease Agreement
- C. Original Executed Lease

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE AMENDMENT TO LEASE AGREEMENT FOR 415 O STREET
BUILDING WITH SCOTTO FAMILY TRUST**

WHEREAS, The City of Antioch Public Works Department entered into an original agreement with the Scotto Family Trust in October, 2014 for the rental of a building located at 415 O Street; and

WHEREAS, the Lease Amendment No. 1 (the "Amendment") extends the term of the original lease for an additional term, which expires on September 30, 2024; and

WHEREAS, the Amendment agrees to provide reduced rent as consideration for the City making certain repairs to the Premises and confirms repairs to be made by the City upon expiration or other termination of the Lease, and in the event the City does not exercise its option to purchase the building; and

WHEREAS, the Amendment contains an acknowledgement that the Landlord approves of the installation of air conditioning unit, lighting, and related equipment (i.e., conduit, brackets, electrical shut off box attached to paint booth, freon hose and PVC condensation drainage pipe which exits the building) installed by City prior to the date of this Amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves the Amendment to Lease Agreement for 415 O Street Building with Scotto Family Trust; and
2. Authorizes the City Manager to execute the agreement

* * * * *

RESOLUTION NO. 2021/**

September 14, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT "B"

LEASE AMENDMENT NO. 1

PREMISES: 415 O Street
Antioch, California

LANDLORD: Charles W. Scotto and Donna F. Scotto, as trustees of
the Scotto Family Trust dated February 13, 2002

TENANT: City of Antioch, a general law city

LEASE DATE: October 1, 2014

This Lease Amendment No. 1 ("**Amendment**"), is dated, for reference purposes only, as of February 25, 2021, and is entered into by and between Charles W. Scotto and Donna F. Scotto, as trustees of the Scotto Family Trust dated February 13, 2002 ("**Landlord**") and the City of Antioch, a general law city ("**Tenant**"). Landlord and Tenant may be referred to herein as a "**Party**" and collectively as "**Parties**."

NOW, THEREFORE, in consideration of the foregoing and of their mutual covenants contained herein, the Parties hereby agree as follows:

1. Background. Landlord and Tenant entered into that certain Lease Agreement dated October 1, 2014 (the "**Lease**"), for certain premises described therein and referred to as 415 O Street in Antioch, CA commonly known as APN 066-121-004 (the "**Premises**"). Landlord and Tenant desire to acknowledge the extension of the Lease term and to amend the Lease to provide reduced rent as consideration for Tenant making certain repairs to the Premises and to confirm repairs to be made by Tenant upon expiration or other termination of the Lease, and in the event Tenant does not exercise its option to purchase pursuant to the following Lease sections: **5. Option to Purchase; 2. Term** (e) Surrender and (g) Damage or Destruction; **3. Use; Compliance with Laws** (a) Purpose of Use; and **6. Maintenance and Operations** (a) Regular Maintenance.

2. Term. Landlord and Tenant acknowledge the Lease has been extended for the first of two (2) additional and consecutive five (5) year terms set forth in Lease Section 2(b) (each an "**Extension Term**"). Accordingly, the Expiration Date for the current Extension Term shall be September 30, 2024.

3. Tenant's Repairs.

a. Tenant shall repair the coating on the roof of the Premises, which was damaged during Tenant's installation of an air condition unit and lighting, ("**Tenant's Repairs**") and shall assume responsibility to maintain the roof coating for the duration of the Lease Term ("**Tenant's Maintenance**"). Roof repair will have 10-year warranty that will extend past the end of the lease. As consideration for Tenant's Repairs and Tenant's Maintenance, Landlord shall provide a \$6,000.00 Rent credit payable over four (4) months, in an amount equal to \$1,500.00 per month ("**Rent Credit**").

ATTACHMENT "B"

b. In the event Tenant does not exercise its option to purchase, upon expiration or other termination of the Lease Agreement Tenant will make the repairs shown in Exhibits 1 through 20 which are attached hereto and fully incorporated herein.

4. Acknowledgement. Landlord hereby approves of the installation of air conditioning unit, lighting, and related equipment (i.e., conduit, brackets, electrical shut off box attached to paint booth, freon hose and PVC condensation drainage pipe which exits the building) installed by Tenant prior to the date of this Amendment. Further, Landlord acknowledges Tenant's Repairs and Tenant's Maintenance represent full compensation for any and all damages sustained by Tenant's installation of its air conditioning unit and lighting, and hereby waives any and all claims hereunder, and any claims or causes of action at law and at equity, arising from or relating only to the installation of tenant's air conditioning, lighting and related equipment on the roof.

5. Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises

Initials: _____

Tenant hereby waives its right to have a CASp inspection of the Premises

Initials: _____

6. Entire Agreement. This Amendment and the Lease, represent the final and entire agreement between Landlord and Tenant regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent, or contemporaneous communications or agreements of the Parties. In the event of a conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall control and prevail.

7. Ratification; Miscellaneous. Except as modified by this Amendment, in all other respects the Lease, including, without limitation, Tenant's option to purchase, is hereby ratified

ATTACHMENT "B"

and affirmed and remains in full force and effect. This Amendment may be executed in one or more counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the last date written below ("**Effective Date**").

LANDLORD Charles W. Scotto and Donna F. Scotto, as trustees of the Scotto Family Trust dated February 13, 2002 By: _____ Name: Charles W. Scotto, Trustee Dated: _____ By: _____ Name: Donna F. Scotto, Trustee Dated: _____	TENANT City of Antioch, a general law city By: _____ Rowland E. Bernal, Jr., City Manager Dated: _____ ATTEST By: _____ Elizabeth Householder, City Clerk APPROVED AS TO FORM By: _____ Thomas Lloyd Smith, City Attorney
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ATTACHMENT "C"

LEASE AGREEMENT

This Lease Agreement (the "Lease") is entered into as of October 1, 2014, by and between the CITY OF ANTIOCH, a general law city ("Tenant" or "City"), and Charles W. Scotto and Donna F. Scotto as Trustees of the Scotto Family Trust Dated February 13, 2002 ("Landlord"), who agree as follows:

1. **Lease.** Landlord leases to Tenant and Tenant leases from Landlord the real property located at 415 O Street in Antioch, California (APN 066-121-004) generally depicted and described on attached Exhibit "A" (the "Premises") for use by Tenant as municipal corporation yard for sewer and/or water utilities.

2. **Term.**

(a) **Period of Lease.** The term (the "Term") of this Lease shall be for a period of five (5) years, commencing at 12:01 A.M. October 1, 2014 (the "Commencement Date"), and ending at 12:01 A.M. September 30, 2019 (the "Expiration Date"), or on such earlier date upon which the Term may expire or be cancelled or terminated pursuant to any of the provisions of this Lease.

(b) **Optional Lease Periods.** Upon the expiration of the first Term, the Lease may be extended for two (2) additional and consecutive five (5) year Terms at the option of the City. If Tenant desires an extension of the Term, Tenant shall provide written notice to Landlord no later than sixty (60) days prior to the Expiration Date for the then current Lease Term. Such extension shall be on the same terms of this Lease Agreement (but with no further option periods than those provided in this Lease Agreement) with the rent modifications indicated in Section 4 of this Agreement.

(c) **Termination.** Tenant has no right to terminate the Lease during the first five (5) year Term, except if the Premises are sold to Tenant. If Tenant does not exercise its option to extend for the second five (5) year Term, then the Lease Term will automatically be extended at the end of the first five (5) year term for an additional twelve (12) months (i.e. from October 1, 2019 to September 30, 2020). If Tenant exercises the first five (5) year option but does not exercise the second five (5) year option, then the Lease Term shall automatically be extended at the end of the second five (5) year term for an additional twelve (12) months (i.e. from October 1, 2024 to September 30, 2025). Landlord shall have the right to terminate this Lease only to sell the Premises pursuant to Section 5, upon 12 months advance notice to Tenant, which notice may be waived by Tenant in its sole discretion.

(d) **Abandonment.** If Tenant shall abandon or vacate Premises for more than thirty (30) days, all personal property left upon the Premises shall be deemed to be abandoned.

(e) **Surrender.** Upon the expiration or other termination of the Term, Tenant agrees to surrender possession of the Premises to Landlord in the same condition in which Tenant received the Premises, ordinary wear and tear and damage by casualty or the elements excepted.

(f) **Holding Over.** Tenant agrees to surrender the Premises to Landlord in accordance with the terms of this Lease upon expiration. If Tenant remains in possession of the Premises after the expiration of the Term with Landlord's consent, then possession shall be on a month-to-month

basis and otherwise in accordance with the terms of this Lease and the most recent rental payment amounts.

(g) Damage or Destruction. Tenant is responsible for repairing damage to Premises it causes or is due to its failure to fulfill its maintenance obligations under Section 6 of the Lease. Landlord is responsible for repairing damage to Premises that it causes or is due to its failure to fulfill its maintenance obligations under Section 6. In the case the Premises is damaged by fire or other casualty and Landlord is unable or unwilling to repair damage caused by fire or other casualty, Tenant may elect to terminate the Lease provided such fire or other casualty is not caused by Tenant or Tenants employees, agents or invitees.

(h) No Assignment or Sublet. Neither party may assign or sublet this Lease or any part of the Premises without the prior written consent of the other party. Except as provided in subparagraph (i) below, neither party shall place a lien or encumbrance on the Premises, without the prior written consent of the other party.

3. Use; Compliance with Laws.

(a) Purpose of Use. The Premises are to be used by Tenant for the purpose of municipal utility operations. Subject to Landlord's prior written consent, Tenant may make minor modifications to the Premises in order to accommodate needs of the utility operations utilizing the Premises. Landlord's consent shall not unreasonably be withheld.

(b) Use in Compliance with All Laws. Tenant agrees that its use of the Premises will at all times be in compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the Premises.

(c) Warranties. Landlord represents and warrants that it owns the Premises; that there is no lien or mortgage on the Premises; that there is not notice or action to abate any condition on the Premises including but not limited to nuisance or environmental abatement or any notice of pending litigation regarding the Premises. Tenant agrees that it takes the Premises "AS-IS" and that:

(i) Tenant has had full access to the Premises and is relying solely on its own investigation and analysis of the Premises in entering into this Lease.

(ii) Except for any express representations and warranties made by Landlord in this Lease, Tenant acknowledges and confirms that Landlord has not made any representations, warranties, guaranties, promises, statements or assurances whatsoever, express or implied, directly or through any employee or agent, as to the Premises, or any other matter relating to the Premises, including, but not limited to: (a) the physical condition of the Premises and/or (b) the existence or nonexistence of any hazardous materials in, under or affecting the Premises.

(iii) Tenant acknowledges and agrees that to the fullest extent permitted by law, the Premises are being leased strictly in an "as-is", "where-is" condition. Tenant assumes all risks inherent in leasing the Premises in an "as-is", "where-is" condition and acknowledges that the Tenant is not relying on any statement or representation of Landlord, its agents, employees, representatives, whether express or implied, relating to the condition of the Premises, or any other matter whatsoever related to the Premises unless such representation is expressly made by Landlord in writing in this Lease.

(d) Landlord Access. Tenant shall permit Landlord or Landlord's agent to enter upon the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the same.

(e) Tenant's Property. All trade fixtures, equipment and personal property of Tenant, if any, located at the Premises will remain the property of Tenant during the Term and may be removed by Tenant at any time. Upon expiration or termination of the Lease, these trade fixtures, equipment and personal property shall be removed from the Premises. Tenant, at Tenant's cost and expense, must promptly repair all damage to the Premises occasioned by the removal of its trade fixtures, equipment and personal property.

4. Rent.

(a) Tenant shall pay an annual rent in monthly installments in advance for the use of the Premises during the entire Term. The rent for the first thirty (30) months of the Lease Term shall be \$4,500 per month. Rent for the subsequent thirty (30) months shall be \$4,750 per month. Should the Tenant choose to exercise the first five (5) year option, the rent for this period shall be \$5,000 per month. Should the Tenant choose to exercise the second five (5) year option, the rent for this period shall be \$5,350 per month.

(b) Taxes. Landlord will remain responsible for all taxes and assessments on the Premises except for the amount that exceeds the current annual tax and assessments of \$4,091.16 per year as evidenced by the latest property tax bill. Landlord is responsible for all other charges on the property tax bill. Any such excess shall be paid by Tenant to Landlord within thirty (30) days following written request to Tenant for payment.

5. Option to Purchase.

(a) If during the initial five (5) year Lease Term, Landlord desires to sell the Premises, Landlord shall only offer Premises for sale to Tenant for the appraised value as determined to be the average of three certified commercial real estate appraisers with at least two of the appraisers having offices outside Antioch but within Contra Costa County. Tenant shall have the option to conduct a Phase 1 and/or Phase 2 environmental assessment of Premises at Tenant's expense. Upon mutual execution of a final purchase agreement, Tenant shall close escrow within ninety (90) days. Tenant agrees to pay rent at the monthly rate established in Section 4 until the property transfers to the ownership of Tenant. If Tenant does not purchase the Premises, then Tenant shall continue to lease the Premises for the rest of the initial five-year term.

(b) If during the first option period and/or second option period, the Landlord elects to sell the Premises, Tenant shall have the option to purchase the Premises for the appraised value as determined to be the average of three certified commercial real estate appraisers with at least two of the appraisers having offices outside Antioch but within Contra Costa County. Costs of the appraisals and any other closing costs shall be shared equally by the parties, except for title insurance that Tenant shall pay if desired. Tenant shall have the option to conduct a Phase 1 and/or Phase 2 environmental assessment of Premises at Tenant's expense. Upon mutual execution of a final purchase agreement, Tenant shall close escrow within ninety (90) days. Tenant agrees to pay rent at the monthly rate established in Section 4 until the property transfers to the ownership of Tenant. If Tenant does not purchase the Premises, then Tenant shall continue to lease the Premises for the rest of the five-year term.

(c) If Tenant does not exercise the right to purchase within sixty (60) days following receipt of Landlord's election to sell and completion of the appraisals and environmental assessments, Landlord may sell the Premises to another party. However, Landlord shall provide Tenant 12-months notice following Tenant's written notice to Landlord that it does not intend to purchase Premises.

(d) Should Tenant not exercise the option to purchase the Premises during the 15-year lease term and Landlord has not sold the Premises to another party during that period, then upon the expiration of the Term, Landlord shall offer to sell Premises to Tenant for the appraised value and pursuant to the terms described above in subsection b.

(e) Tenant shall be under no obligation to purchase the Premises at any time.

6. **Maintenance and Operation.**

(a) **Regular Maintenance.** Except for the roof and structural portions of the walls and foundation (which the Landlord shall maintain), Tenant agrees that it will, at its sole cost and expense: (a) maintain the Premises, including without limitation, the non-structural portions of the walls and foundation, operational systems (cooling, heating, air conditioning ("HVAC")), plumbing equipment, fixtures, floors, doors, windows, toilets, light replacements, paving and landscaping) and all other improvements or systems on or serving the Premises, in a good condition and repair, , (b) maintain in good condition the existing and required landscaping located on the Premises, (c) maintain the surfacing on the Premises, fencing, signage and the lighting; (d), maintain the building including removing leaves and debris from the roof and gutters each October; and (e) promptly (within 48 hours of discovery or reporting) remove any graffiti from the Premises.

(b) **Tenant Improvements.** In addition to maintaining the Premises as provided in (a) above, Tenant shall construct and/or perform the Tenant Improvements described in Exhibit "B" attached hereto. Said improvements shall be completed on or before December 1, 2014. Except for the improvements described in Exhibit "B", Tenant shall not make any alterations or improvements to the Premises except with Landlord's prior written consent, except for those improvements set forth in Exhibit C which are approved by Landlord.

(c) **Utilities.** Tenant shall arrange for and pay for all water, telephone service, trash removal, gas and electricity at the Premises. Landlord shall be responsible for sewer charges on the property tax bill.

(d) **Paint Booth.** Landlord shall disconnect heater for paint booth and industrial hookups to the paint booth. Tenant shall utilize paint booth only for storage.

(e) **4" Gas Line.** Landlord shall close and lock the existing 4" gas line serving the Premises. Tenant shall not unlock, use or relocate the gas line during the Lease Term or any extension thereof.

7. **Insurance.**

(a) **Commercial General Liability Coverage.** Tenant shall carry \$1 million in general liability coverage through a joint risk pool (in effect "self insurance"). Landlord shall be named as additional insured on that general liability coverage as to Tenant's operations at Premises.

(b) **Property Insurance.** Landlord shall maintain property insurance for the Premises for all risks and at the full cost of replacement of the building, but is not required to cover property insurance for the Tenant's equipment or improvements. The Tenant shall maintain property insurance for any Tenant improvement and equipment.

8. **Indemnification.**

(a) Tenant agrees to indemnify, protect, defend and hold Landlord harmless from and against any and all claims, losses, liabilities, actions, judgments, costs and expenses (including attorneys' fees and costs) (collectively, "Claims") due to injury to or death of, or damage to the property arising out of Tenant's negligence and/or use of the Premises. Landlord agrees to indemnify, protect, defend and hold Tenant harmless from and against any and all Claims due to injury to or death of, or damage to the property arising out of Landlord's negligence and/or use of the Premises.

(b) Tenant agrees to indemnify, protect, defend and hold Landlord harmless from and against any and all pollution or hazardous materials claims, losses, liabilities, actions, judgments, costs and expenses (including attorneys' fees and costs) due to Tenant's operations of the Premises. Landlord agrees to indemnify, protect, defend and hold Tenant harmless from and against any and all pollution or hazardous materials claims, losses, liabilities, actions, judgments, costs and expenses (including attorneys' fees and costs) arising from Landlord's operations of the Premises or pollution or hazardous materials existing as of the Commencement Date of the Lease.

(c) Negligent or criminal acts by members of the public at the Premises shall not be deemed to be the liability or responsibility of Landlord or Tenant.

(d) The indemnity provision of this section shall survive the expiration or cancellation of this Lease.

9. **Default.**

(a) **Rights and Remedies.** Upon the occurrence of a default by either party under this Lease, the other party shall have the rights and remedies set forth in this Lease, in addition to any and all other rights and remedies available at law or in equity.

(b) **Default and Cure by Tenant.** Tenant will not be considered to be in default under this Lease unless (a) in the case of any obligation requiring the payment of money by Tenant to Landlord, Tenant fails to make such payment within the time specified in this Lease or otherwise within five (5) days following written notice from Landlord and (b) in the case of any other alleged default, Tenant fails to cure such default within thirty (30) days following written notice from Landlord, provided that if the nature of the alleged default is such that it cannot reasonably be cured within thirty (30) days, Tenant shall have a reasonable time in which to cure such alleged breach or default.

10. **Notices.** Except as otherwise provided, all notices required or permitted to be given under this Lease must be in writing and addressed to the parties at their respective notice addresses set forth below. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) business days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

If to Tenant: City of Antioch
 PO Box 5007
 Antioch, California 94531
 Attention: City Manager

With a copy to: City Attorney
 City of Antioch
 PO Box 5007
 Antioch, CA 94531

If to Landlord: Charles W. Scotto and Donna F. Scotto
 Trustees for the Scotto Family Trust, Dated
 February 13, 2002
 305 Blue Rock Drive
 Antioch, CA 94509

11. **General.**

(a) **Interpretation.** The titles to the sections of this Lease are for convenience of reference only and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. Any exhibits attached to this Lease are, however, a part of this Lease. In construing this Lease, none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

(b) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California, without regard to any otherwise governing principles of conflicts of law. Any litigation concerning this Lease shall be subject to jurisdiction in Contra Costa County or the Northern District of California for federal court.

(c) **Severance.** Any provision of this Lease that is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, diminishing or rendering unenforceable the rights and obligations of the parties under the remaining provisions of this Lease.

(d) **Written Amendment.** No term or provision of this Lease may be amended or modified, except by an instrument in writing signed by the parties to this Lease.

(e) **Entire Agreement.** This Lease and all exhibits attached to it constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements (whether written or oral) with respect to that subject matter.

(f) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) No Mechanic's Lien. Tenant shall at all times keep the Premises free from any liens arising out of any work performed or allegedly performed, materials furnished or allegedly furnished or obligations incurred, by or for Tenant. Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for mechanics', materialmen's or other liens in connection with any Improvements, repairs or any work performed or allegedly performed, materials furnished allegedly furnished or obligations incurred or allegedly incurred, by or for Tenant.

(h) No Personal Liability. No member, official or employee of Tenant shall be personally liable in the event of any default or breach of this Lease.

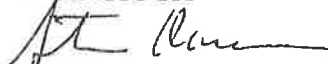
(i) Authority. The parties represent that the individuals signing this Lease Agreement have the authority to do so.


(j) No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Premises, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim

Executed as of the date first set forth above.

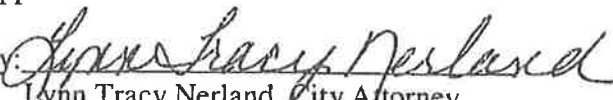
TENANT:

CITY OF ANTIOCH

By: 
Steven Duran
City Manager

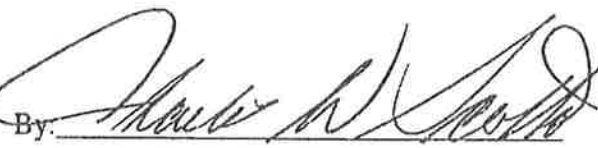
Attest: 
Arne Simonsen, City Clerk
City of Antioch


Approved as to Form:

By: 
Lynn Tracy Nerland, City Attorney

LANDLORD:

CHARLES W. SCOTTO AND DONNA F. SCOTTO, TRUSTEES FOR THE SCOTTO FAMILY TRUST, DATED FEBRUARY 13, 2002

By: 
Charles W. Scotto, Trustee

By: 
Donna F. Scotto, Trustee

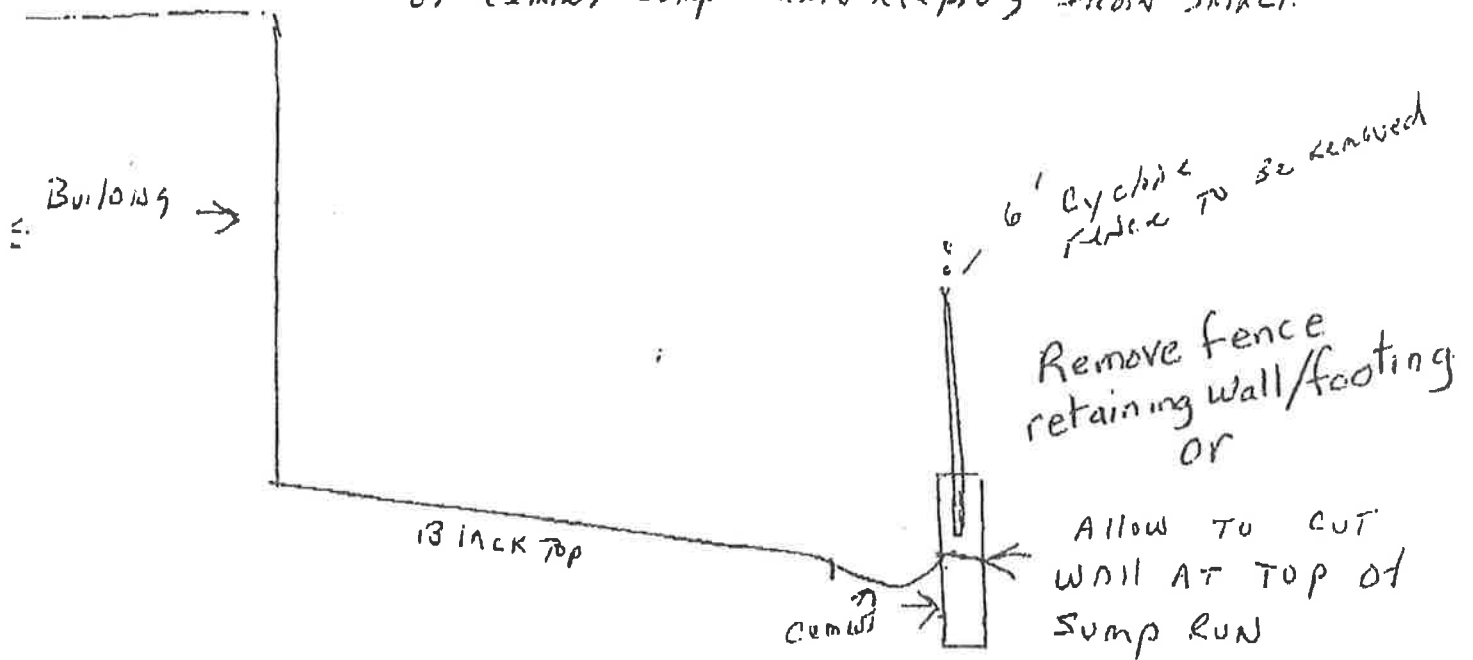
Attachments:

EXHIBIT "A" - Depiction of the Premises

EXHIBIT "B" AND "C" - Improvements to Premises

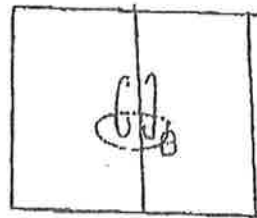
All other changes to be submitted to LAMARCO in writing;
with sketch double copy to be filed by
LAMARCO + one to retain by LAMARCO

Retaining wall to be cut at top
of cement sump drain keeping drain intact.



Fence Replace will have to be at out side of
wall, It was built into wall and take to meet
orig height.

Booth as vault



Booth Doors

Lock with chain + lock
around handles

No holes drilled



Exhibit "B"

1) PROPOSED IMPROVEMENTS BY CITY OF ANTIOCH


- a. Resurface the flooring with epoxy - as needed
- b. Install shelving
- c. Install secured portable shelving in the paint booth
- d. Re-key existing locks to City key system
- e. Provide security system to building and property to be integral with Corp Yard system
- f. Remove back fence and footing per Exhibit B
- g. Install conduit for computers and phone system (including fiber to computer stations)
- h. Remove Scotto's signage
- i. Add new exterior signage
- j. Reconfigure south fence to incorporate Corp Yard
- k. Remove front counter (to be replaced with a workstation in the front office)

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Brad Helfenberger, Parks and Recreation Director 

SUBJECT: Amendments to Memoranda of Agreement with Contra Costa Health Services for Mutual Aid Response to COVID-19 Pandemic – Use of City Antioch Facilities

RECOMMENDED ACTION

It is recommended the City Council adopt the resolution:

1. Ratifying and approving amendments to the Memoranda of Agreement between the City of Antioch and Contra Costa Health Services for mutual aid and assistance in response to the COVID-19 pandemic
2. Authorizing the City Manager to enter into subsequent Amendments to Memoranda of Agreement for Antioch Community Center and Nick Rodriguez Community Center for the purpose of extending the date of the agreements until April 30, 2022.

FISCAL IMPACT

Per the City's current Master Fee Schedule, use of the Nick Rodriguez Community Center is \$22,000 per month and the Antioch Community Center Parking Lot is \$2,650 per month. Given the public purpose of COVID-19 testing and vaccinations, facilities use is provided at no cost as part of the City Antioch's mutual aid response.

DISCUSSION

At the regular meeting of January 12, 2021, the City Council adopted a resolution ratifying action taken by the City Manager to enter into Memoranda of Agreements with Contra Costa Health Services as part of a mutual aid response to the COVID-19 Pandemic. The Resolution approved agreements for a period extending to July 31, 2021. The Nick Rodriguez Community Center located at 213 F Street has been utilized as a vaccine site and the Antioch Community Center parking lot located at 4703 Lone Tree Way has been utilized as a testing site. Contra Costa County Health Services contacted staff to continue to utilize City of Antioch properties as part of their ongoing emergency response in Eastern Contra Costa County to address pressing public health needs associated with the COVID-19 pandemic. Amendments were signed to continue use of facilities through

August 31, 2021, but it was later determined that Council Approval was also needed for the amendments. As the Pandemic continues, Contra Costa Health Services is requesting to continue to use these facilities through December 31. It is anticipated that the use of the facilities may need to be used through April 30, 2022.

ATTACHMENTS

- A.** Resolution
- B.** Memoranda of Agreement for Antioch Community Center dated February 4, 2021.
- C.** Memoranda of Agreement for Nick Rodriguez Center dated February 4, 2021.
- D.** Amendment to Memoranda of Agreement for Antioch Community Center dated July 1, 2021
- E.** Amendment to Memoranda of Agreement for Nick Rodriguez Community Center dated July 1, 2021
- F.** Amendment to Memoranda of Agreement for Antioch Community Center dated September 7, 2021
- G.** Amendment to Memoranda of Agreement for Nick Rodriguez Community Center dated September 7, 2021

RESOLUTION NO. 2021/***

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH RATIFYING AND APPROVING AMENDMENTS TO MEMORANDA OF AGREEMENT BETWEEN CONTRA COSTA COUNTY AND THE CITY OF ANTIOCH FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC BY LOCATING COVID-19 TESTING AND VACCINATIONS AT THE ANTIOCH COMMUNITY CENTER AND THE NICK RODRIGUEZ COMMUNITY CENTER

WHEREAS, a novel coronavirus that causes a respiratory illness referred to as coronavirus disease 2019 ("COVID-19") has resulted in a pandemic;

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of COVID-19;

WHEREAS, on March 10, 2020, the County Board of Supervisors declared the existence of a local emergency throughout Contra Costa County caused by the introduction of COVID-19;

WHEREAS, on March 24, 2020, the Antioch City Council adopted Resolution No. 2020-38 proclaiming a local emergency to exist in the City of Antioch due to the COVID-19 Pandemic;

WHEREAS, on January 12, 2021, the Antioch City Council adopted Resolution No. 2021-03 Ratifying action taken by the City Manager to enter into a Memoranda of Agreement between the City of Antioch and Contra Costa Health Services as part of a mutual aid response to the COVID-19 Pandemic,

WHEREAS, Contra Costa County Health Services seeks to continue to utilize City of Antioch properties as part of their ongoing emergency response in Eastern Contra Costa County to address pressing public health needs;

WHEREAS, the Nick Rodriguez Community Center located at 213 F Street has been utilized as a vaccine site and the Antioch Community Center parking lot located at 4703 Lone Tree Way has been identified as a testing site; and

WHEREAS, the City of Antioch shall approve use of said facilities at no cost to Contra Costa Health Services as part of the City's mutual aid response.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby ratifies and approves the following:

1. Amendment to Memoranda of Agreement for Antioch Community Center dated July 1, 2021 (Attachment D);

RESOLUTION NO. 2021/**

September 14, 2021

Page 2

2. Amendment to Memoranda of Agreement for Nick Rodriguez Community Center dated July 1, 2021 (Attachment E);
3. Amendment to Memoranda of Agreement for Antioch Community Center dated September 7, 2021 (Attachment F); and
4. Amendment to Memoranda of Agreement for Nick Rodriguez Community Center dated September 7, 2021 (Attachment G).

BE IT FURTHER RESOLVED that the City Council of the City of Antioch hereby authorizes the City Manager to enter into subsequent Amendments to Memoranda of Agreement for Antioch Community Center and Nick Rodriguez Community Center for the purpose of extending the date of the agreements until April 30, 2022.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH

28 - 949

**MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Memorandum of Agreement ("Agreement") is made and entered into on February 4, 2021, by and between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, a novel coronavirus that causes a respiratory illness referred to as coronavirus disease 2019 ("COVID-19") has resulted in a pandemic; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of COVID-19; and

WHEREAS, on March 10, 2020, the County Board of Supervisors declared the existence of a local emergency throughout Contra Costa County caused by the introduction of COVID-19; and

WHEREAS, on March 24, 2020, the City Council for the City of Antioch adopted Resolution No. 2020-38 proclaiming a local emergency to exist in the City of Antioch due to the COVID-19 Pandemic; and

WHEREAS, on March 22, 2020, President Donald J. Trump approved a Major Disaster Declaration for the State of California in connection to COVID-19 and ordered federal funding available to state, tribal and local governments for emergency protective measures, including direct federal assistance to bolster California's COVID-19 emergency response efforts; and

WHEREAS, the California Department of Public Health ("CDPH") has contracted with a Logistics Health, Inc., a subsidiary of OptumServe Health Services ("LHI"), to provide specimen collection and testing services ("COVID-19 Testing") and administer COVID-19 vaccinations ("COVID-19 Vaccinations") as part of the state's COVID-19 response effort under the Governor's emergency declaration; and

WHEREAS, CDPH has requested counties to identify collection sites for COVID-19 Testing and sites for the administration of COVID-19 Vaccinations; and

WHEREAS, County has identified the parking lot at the Antioch Community Center, located at 4703 Lone Tree Way, Antioch, California, as a suitable location for COVID-19 Testing and COVID-19 Vaccinations, and has requested City to make available the westerly portion of the parking lot (the "Premises") available for this purpose;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Parties agree as follows:

1. **Term.** The term of this Agreement shall commence on February 4, 2021, and continue through July 31, 2021 (the "Term"), unless terminated early in accordance with Section 18 or extended by mutual agreement of the Parties. The City Manager is delegated the authority to execute an agreement to extend the Term on behalf of City. On the last day of the Term or

sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

2. **Use of Premises.** City shall make the Premises available for use by County, CDPH, and LHI and any other service providers with whom CDPH may contract (collectively "Contractors"), or by any of them, to provide either COVID-19 Testing or COVID-19 Vaccinations, or both, and services related thereto, including but not limited to security and sanitation, and the storage of associated equipment and supplies, through the Term of this Agreement. County, CDPH and Contractors will have access to and exclusive use of the Premises from Thursday through Monday, 5 a.m. to 9 p.m., and at other times that may be approved in advance in writing by the City Manager or his designee. At all other times through the Term of this Agreement, County, CDPH and Contractors will have access to and non-exclusive use of the Premises for the purpose of storing two portable toilets, one handwashing station, and one storage container, provided that these items are placed and stored only in the most southwesterly corner of the Premises. No other use of the Premises is allowed. County acknowledges that the easterly portion of the parking lot is used for public parking and City programs and services, which will continue during the term of this Agreement.
3. **Hazardous Materials.** No storage of flammable liquids or products shall be allowed unless approved by City. At the end of each day of use, County or Contractors shall ensure that all biohazardous materials are removed from the Premises.
4. **Janitorial Services.** County or Contractors shall be responsible for providing all janitorial, disinfecting and sanitation services at the Premises each day of operation, during the hours of operation set forth above.
5. **Security; Damage; Loss.** County or Contractors shall be responsible for providing appropriate security services during the hours of operation set forth above. City shall not be responsible for any damage to or loss of County's personal property. County shall be self-insured or carry appropriate property insurance for such loss. County shall be responsible for all damage or loss to Premises or City's personal property in the Premises, normal wear and tear excepted, to the extent such damage or loss is caused by the actions of County under this Agreement.
6. **Improvements; Signs.** County may not make any improvements or alterations to Premises or construct or install any sign without the prior written consent of City. County shall have the right to place portable signs directing the public to the Premises.
7. **Nondiscrimination.** County shall comply with all laws, including but not limited to, federal and state nondiscrimination laws, related to employment and provision of services.
8. **Compliance with Public Health Orders.** County shall comply with all State and County public health orders, including all applicable social distancing and face covering requirements related to the COVID-19 pandemic.
9. **No Dedication.** Nothing in this Agreement shall be deemed a gift or dedication of any portion of the Premises to or for the general public. Use of the Premises shall not entitle anyone to any relocation benefits pursuant to federal, state or local law and County waives any such claim against City.
10. **Payment.** Given the public purpose of COVID-19 Testing and COVID-19 Vaccinations, City has agreed to the use of the Premises by County, CDPH and Contractors at no cost, through the Term of this Agreement. City calculates the deferred value of the use of the

Premises to be \$2,650 per month, consistent with the Premises rental fees as provided for in the City's current Master Fee Schedule.

11. Insurance. County shall maintain during the Term of this Agreement Insurance against claims or injuries to persons or damages to property arising from or in connection with County's operation and use of the Premises. The cost of such insurance shall be borne by the County. County shall maintain insurance at least as broad as the coverage described as follows:

a. Commercial General Liability Insurance Services Office (ISO) Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit.

b. The General Liability policy is to contain, or be endorsed to contain, the following provision:

The City of Antioch, its officers, officials, agents, employees and volunteers are to be covered as additional insureds by endorsement with respect to liability arising out of work or operations performed by or on behalf of County including materials, parts or equipment furnished in connection with such work or operations.

General liability coverage can be provided in the form of an endorsement of County's insurance at least as broad as ISO Form CG 20 10. ISO Form CG 20 11 01 96 is appropriate. Self-insurance and pool insurance is acceptable to satisfy the insurance requirement in this section. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, agents, employees or volunteers.

County's insurance coverage shall be primary insurance with regard to City, its officers, officials, agents, employees and volunteers. Any insurance maintained by City, its officers, officials, agents, employees and volunteers shall be in excess of County's insurance and shall not contribute to it.

12. Indemnification. Each Party shall defend, indemnify, and hold the other Party, its officials, officers, employees, agents, and volunteers, harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damage arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the indemnifying Party, its officials, officers, employees, agents, or volunteers.

13. Injuries. To the extent that County or City personnel provide services under this Agreement, such services will be considered to be disaster service activities under Government Code section 3100, and subject to applicable workers' compensation requirements.

14. Disclaimer of Condition of Premises. City makes no warranty or representation of any kind or nature regarding the Premises or the fitness of the Premises for the use intended by

County. County and its employees and contractors waive any claims against City regarding the Premises.

15. **Compliance with Laws.** The Parties will comply with all applicable local, state, and federal laws and regulations with respect to the terms and conditions of this Agreement.

16. **Amendments.** This Agreement may be amended by mutual consent of the Parties. Any amendment will be in writing, signed by both Parties.

17. **Waivers.** The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law.

18. **Termination.** Each Party may terminate this Agreement upon 30 days written notice to the other Party.

19. **Notices.** Any notices relating to this Agreement will be given in writing and will be deemed sufficiently given and served for all purposes when delivered personally, by email, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Antioch
P.O. Box 5007
Antioch, CA 94531
Phone No.: (925) 779-6863
Attn: Ron Bernal, City Manager
Email: rbernal@antiochca.gov

For County:

Contra Costa County Administrator's Office
1025 Escobar St., 4th Floor
Martinez, CA 94553
Phone No.: (925) 655-2043
Attn: Timothy Ewell, Chief Assistant County Administrator
Email: Doc.Logistics@cchealth.org

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

20. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and will supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original, but such counterparts together will constitute one and the same instrument. A copy of this Agreement will be as effective as an original.

22. **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though the unenforceable provision was not contained in this Agreement. However, if the invalid, illegal or unenforceable provision materially affects this Agreement, the Agreement may be terminated by either Party pursuant to Section 10 of this Agreement.

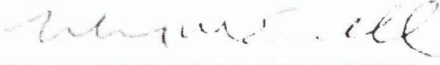
23. **Costs; Reimbursement.** Each Party will be responsible for its own mutual aid assistance costs and other costs arising from this Agreement, and for seeking any reimbursement from the State of California, Federal Emergency Management Agency or any

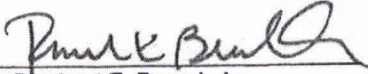
other source of funding. County shall not be responsible for making claims for funding or reimbursement on behalf of City.

24. Disputes. In the event of a dispute between the Parties as to the language of this Agreement or its construction or meaning of any term, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

COUNTY OF CONTRA COSTA

CITY OF ANTIOCH

By: 
Timothy Ewell
Chief Assistant County Administrator

By: 
Rowland E. Bernal, Jr.
City Manager

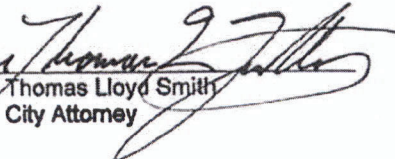
ATTEST:

By: 
Elizabeth Householder
City Clerk

Approved as to Form:

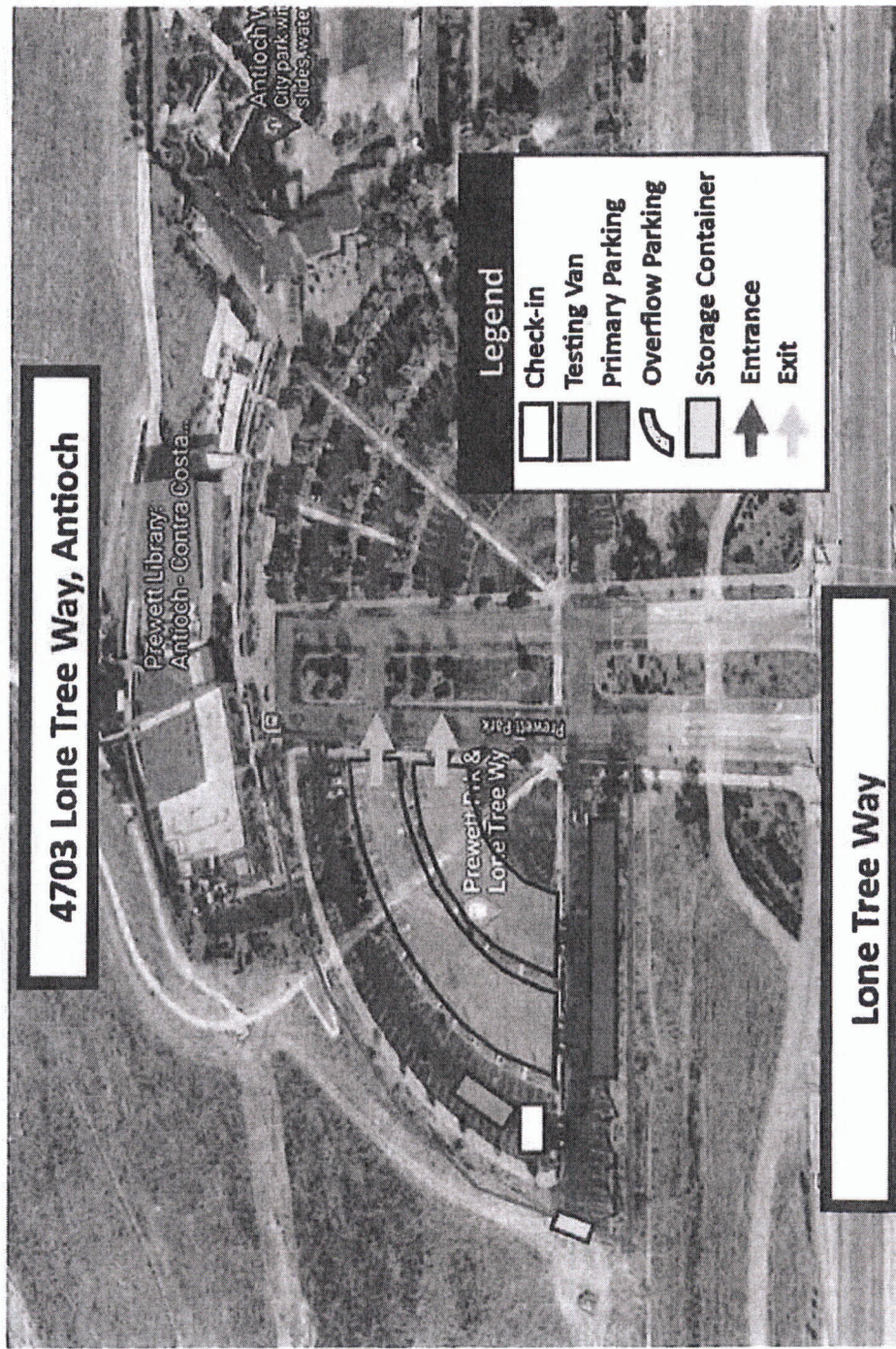
By: 
Deputy County Counsel

Approved as to Form:

By: 
Thomas Lloyd Smith
City Attorney

H:\Emergency\MOA\AntiochCommCenter.2.5.21.docx

Prewett Community Center Parking Lot – Not to Scale



28 - 944

**MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Memorandum of Agreement ("Agreement") is made and entered into on January 5, 2021 (the "Effective Date"), by and between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties"),

RECITALS

WHEREAS, a novel coronavirus that causes a respiratory illness referred to as coronavirus disease 2019 ("COVID-19") has resulted in a pandemic; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of COVID-19; and

WHEREAS, on March 10, 2020, the County Board of Supervisors declared the existence of a local emergency throughout Contra Costa County caused by the Introduction of COVID-19; and

WHEREAS, on March 24, 2020, the City Council for the City of Antioch adopted Resolution No. 2020-38 proclaiming a local emergency to exist in the City of Antioch due to the COVID-19 Pandemic; and

WHEREAS, on March 22, 2020, President Donald J. Trump approved a Major Disaster Declaration for the State of California in connection to COVID-19 and ordered federal funding available to state, tribal and local governments for emergency protective measures, including direct federal assistance to bolster California's COVID-19 emergency response efforts; and

WHEREAS, Contra Costa County has identified the Nick Rodriguez Community Center at 213 F Street in Antioch, California (the "Premises"), as a suitable location for COVID-19 testing and requested the City to make the Premises available for this purpose as either a county, or state facilitated testing site;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Parties agree as follows:

1. **Term.** The term of this Agreement shall commence on January 5, 2021, and continue through July 31, 2021 (the "Term"), unless terminated early in accordance with Section 10 or extended by mutual agreement of the Parties with the City Manager delegated the authority to extend the Agreement. On the last day of the Term or sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

2. **Use of Premises.** City shall make available the Premises, particularly described in Exhibit A attached hereto (the "Testing Site"), for the exclusive use by County to provide COVID-19 testing, COVID-19 vaccinations or services related thereto at the Testing Site, including but not limited to supplies, staff, security and sanitation services, through the Term of this Agreement.

Premises shall be used for COVID-19 testing and COVID-19 vaccinations from Monday through Friday, 7:00 a.m. to 7:00 p.m. with the option to open on the weekend after a written request by a County representative and approval from the City of Antioch. No other use of Premises is allowed.

3. **Hazardous Materials.** No storage of flammable liquids or products shall be allowed unless approved by City. At the end of each day of use, County shall ensure that all biohazardous materials are removed from the Premises.

4. **Janitorial Services.** County shall be responsible for providing all janitorial, disinfecting and sanitation services at the Premises, including but not limited to portable sanitation stations outside

of the Premises. Janitorial, disinfecting and sanitation services shall be provided every day after use.

5. **Parking.** There are no dedicated parking spaces for the Premises. County acknowledges that the Nick Rodriguez Community Center parking lot is a public parking space, which will continue during the term of this Agreement.
6. **Security; Damage; Loss.** County shall be responsible for providing appropriate security services during testing and after-hours. County will be provided keys and alarm codes to enter and exit the Premises. County shall ensure that the Premises are secured after use by locking and setting the alarm. City shall not be responsible for any damage to or loss of County's personal property and County shall carry appropriate property insurance for such loss. County shall be responsible for all damage or loss to Premises or City's personal property in Premises, normal wear and tear excepted.
7. **Improvements; Signs.** County may not make any improvements or alterations to Premises or construct or install any sign without the prior written consent of the City. At this time, City is not approving any antenna to be affixed to the Premises but will consider a non-permanent approach. If County desires to provide a more detailed proposal, City retains complete discretion whether to approve or not. County shall have the right to place portable signs directing the public to the Premises.
8. **Nondiscrimination.** County shall comply with all laws, including but not limited to, federal and state nondiscrimination laws related to employment and provision of services.
9. **Compliance with Public Health Orders.** County shall comply with all State and County public health orders, including all applicable social distancing and face covering requirements related to the COVID-19 pandemic.
10. **No Dedication.** Nothing In this Agreement shall be deemed a gift or dedication of any portion of the Premises to or for the general public. Use of Premises shall not entitle anyone to any relocation benefits pursuant to federal, state or local law and County and Contractors waive any such claim against City.
11. **Payment.** Given the public purpose of COVID-19 Testing and vaccinations, City has agreed to the use of the Testing Site by Contra Costa Health Services and Its Contractors at no cost through the Term of this agreement. City calculates the deferred value of the use of the Testing Site to be \$22,000 per month, consistent with the Premises rental fees as provided for in the City's current Master Fee Schedule.
12. **Insurance.** County shall maintain during the term of this AGREEMENT insurance against claims or injuries to persons or damages to property arising from or in connection with County's operation and use of the premises. The cost of such insurance shall be borne by the County. County shall maintain insurance at least as broad as follows:
 - a. **Commercial General Liability Insurance** Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit.
 - b. The General Liability policy is to contain, or be endorsed to contain, the following provisions:

The City of Antioch, its officers, officials, agents, employees and volunteers are to be covered as additional insureds by endorsement with respect to liability arising out of work or operations performed by or on behalf of County including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement of the County's insurance at least as broad as ISO Form CG 20 10. ISO Form CG 20 11 01 96 is appropriate. The coverage shall contain no special limitations on the scope of protection afforded to the City of Antioch, its officers, officials, agents, employees or volunteers.

The County's insurance coverage shall be primary insurance with regard to the City of Antioch, its officers, officials, agents, employees and volunteers. Any insurance maintained by the City of Antioch, its officers, officials, agents, employees and volunteers shall be in excess of County's insurance and shall not contribute to it.

13. **Indemnification.** The County shall defend, indemnify, and hold the City, its officials, officers, employees, agents, and volunteers, harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damage arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the County, its officials, officers, employees, agents, or volunteers.
14. **Injuries.** To the extent that County or City personnel provide services under this Agreement, such services will be considered to be disaster service activities under Government Code section 3100, and subject to applicable workers' compensation requirements.
15. **Disclaimer of Condition of Premises.** City makes no warranty or representation of any kind or nature regarding the Premises or the fitness of the Premises for the use intended by County. County and its employees and contractors waive any claims against the City regarding the Premises.
16. **Compliance with Laws.** The parties will comply with all applicable local, state, and federal laws and regulations with respect to the terms and conditions of this Agreement.
17. **Amendments.** This Agreement may be amended by mutual consent of the Parties. Any amendment will be in writing, signed by both Parties.
18. **Waivers.** The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law.
19. **Termination.** Each Party may terminate this Agreement upon 30 days written notice to the other Party.
20. **Notices.** Any notices relating to this agreement will be given in writing and will be deemed sufficiently given and served for all purposes when delivered personally, by email, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Antioch
PO Box 5007
Antioch, CA 94531
Phone No.: (925)779-6863
Attn: Ron Bernal, City Manager
Email: rbernal@antiochca.gov

For County:
Contra Costa Health Services
1220 Morello Avenue, Suite 200
Martinez, CA 94553
Phone No.: (925) 608-5459
Attn: Anna Roth, Health Director
Email: Doc.Logistics@cchealth.org

Either party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

21. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and will supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.
22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original, but such counterparts together will constitute one and the same instrument. A copy of this Agreement will be as effective as an original.
23. **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though the unenforceable provision was not contained in this Agreement. However, if the invalid, illegal or unenforceable provision materially affects this Agreement, the Agreement may be terminated by either Party pursuant to Section 10 of this Agreement.
24. **Costs; Reimbursement** Each Party will be responsible for its own mutual aid assistance costs and other costs arising from this Agreement, and for seeking any reimbursement from the State of California, Federal Emergency Management Agency or any other source of funding. County shall not be responsible for making claims for funding or reimbursement on behalf of the City.
25. **Disputes.** In the event of a dispute between the parties as to the language of this Agreement or its construction or meaning of any term, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any part to this Agreement.

COUNTY OF CONTRA COSTA

DocuSigned by:
By: Anna Roth
433A2E458AD7436...

Anna Roth, Director
Contra Costa Health Services

DocuSigned by:
By: Enid Mendoza
463480A309C94E4...

Enid Mendoza

Senior Deputy County Administrator

CITY OF ANTIOCH

DocuSigned by:
By: Ron Bernal
DA48BC18CA7649A...

Ron Bernal, City Manager

ATTEST:

DocuSigned by:
By: Elizabeth Householder
1A15FEBD210A41A...

Elizabeth Householder, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: Abigail L. Dye (Deputy County Counsel)
9DE39DCA475942F...
Abigail L. Dye (Deputy County Counsel)
_____, County Counsel

DocuSigned by:
By: Thomas Lloyd Smith
8D3775315C484EC...
Thomas Lloyd Smith, City Attorney

DS
JS

DS
mw

Nick Rodriguez Community Center – Not to Scale



General Outline of Community Center space

Multi-Use room, Classrooms, NRCC Kitchen

Additional restrooms available

ANTIOCH
CALIFORNIA
OPPORTUNITY LIVES HERE

**AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Amendment ("Amendment") to the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic is entered into July 1, 2021, between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties").

RECITALS

- A. On February 4, 2021, the Parties entered into the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic (MOU), authorizing COVID-19-related services to occur at the Antioch Community Center. The term of the MOU extended through July 1, 2021.
- B. The Parties wish to extend the term of the MOU through August 31, 2021.

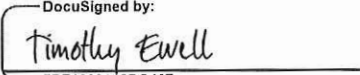
AGREEMENT

- 1. Section 1 of the MOU is amended to read as follows:

Term. The term of this Agreement shall commence on February 4, 2021, and continue through August 31, 2021 (the "Term"), unless terminated early in accordance with Section 10 or extended by mutual agreement of the Parties with the City Manager delegated the authority to extend the Agreement. On the last day of the Term or sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

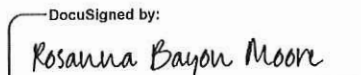
- 2. In all other respects, the terms of the MOU are ratified and confirmed.

COUNTY OF CONTRA COSTA

By: 
DocuSigned by:
5074238116DC467...

Timothy Ewell
Chief Assistant County Administrator

CITY OF ANTIOCH

By: 
DocuSigned by:
01ABC8229049495...

Rowland E. Bernal, Jr.
City Manager

ATTEST:

DocuSigned by:
By: Christina Garcia for
Elizabeth Householder
City Clerk

Approved as to Form:

DocuSigned by:
By: Thomas Lloyd Smith
Thomas Lloyd Smith
City Attorney

**AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Amendment ("Amendment") to the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic is entered into July 1, 2021, between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties").

RECITALS

- A. On January 5, 2021, the Parties entered into the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic (MOU), authorizing COVID-19-related services to occur at the Nick Rodriguez Community Center. The term of the MOU extended through July 1, 2021.
- B. The Parties wish to extend the term of the MOU through August 31, 2021, and modify the hours of operation for COVID-related services.

AGREEMENT

1. Section 1 of the MOU is amended to read as follows:

Term. The term of this Agreement shall commence on January 5, 2021, and continue through August 31, 2021 (the "Term"), unless terminated early in accordance with Section 10 or extended by mutual agreement of the Parties with the City Manager delegated the authority to extend the Agreement. On the last day of the Term or sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

2. The second paragraph of Section 2 is amended to read:

Premises shall be used for COVID-19 services from Tuesday through Saturday, 7:00 a.m. to 7:00 p.m. with the option to change the days after a written request by a County representative and approval from the City of Antioch. No other use of Premises is allowed.

3. In all other respects, the terms of the MOU are ratified and confirmed.

COUNTY OF CONTRA COSTA

DocuSigned by:
By: Timothy Ewell
5D74238116DC467...

Timothy Ewell
Chief Assistant County Administrator

CITY OF ANTIOCH

DocuSigned by:
By: Rosanna Bayon Moore
01ABC6229049495...

Rowland E. Bernal, Jr.
City Manager

ATTEST:

DocuSigned by:
By: Christina Garcia for
Elizabeth Householder
City Clerk

Approved as to Form:

DocuSigned by:
By: Thomas Lloyd Smith
Thomas Lloyd Smith
City Attorney

**AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Amendment ("Amendment") to the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic is entered into September 7, 2021, and effective as of August 31, 2021, between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties").

RECITALS

- A. On February 4, 2021, the Parties entered into the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic (MOU), authorizing COVID-19-related services to occur at the Antioch Community Center parking lot. The term of the MOU extended through July 31, 2021.
- B. On July 1, 2021, the Parties entered into an agreement to extend the term of the MOU through August 31, 2021.
- C. The Parties now wish to extend the term of the MOU through December 31, 2021, change the portion of the parking lot to be made available for the provision of COVID-19-services, and modify the hours of operation.

AGREEMENT

- 1. The term "Premises" as used in the MOU and in this Agreement means the southwestern portion of the Antioch Community Center parking lot, depicted as the area outlined in red on Exhibit A attached hereto.
- 2. Section 1 of the MOU is amended to read as follows:

Term. The term of this Agreement shall commence on February 4, 2021, and continue through December 31, 2021 (the "Term"), unless terminated early in accordance with Section 18 or extended by mutual agreement of the Parties with the City Manager delegated the authority to extend the Agreement. On the last day of the Term or sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

- 3. Section 2 is amended to read as follows:

Use of Premises. City shall make the Premises available for use by County, CDPH, and LHI and any other service providers with whom CDPH may contract (collectively "Contractors"), or by any of them, to provide either COVID-19

Testing or COVID-19 Vaccinations, or both, and services related thereto, including but not limited to security and sanitation, and the storage of associated equipment and supplies, through the Term of this Agreement. County, CDPH and Contractors will have access to and exclusive use of the Premises daily from Sunday through Saturday, 5 a.m. to 9 p.m., and at other times that may be approved in advance in writing by the City Manager or his designee. At all other times that may be approved in advance in writing by the City Manager or his designee. At all other times through the Term of this Agreement, County, CDPH and Contractors will have access to and non-exclusive use of the Premises for the purpose of storing two portable toilets, one handwashing station, and one storage container, provided that these items are placed and stored only in the most southwesterly corner of the Premises. County, CDPH and Contractors, along with members of the public that come to the Premises for COVID-19 Testing or COVID-19 Vaccinations, may exit through the westerly portion of the parking lot. No other use of the Premises is allowed. County acknowledges that the easterly portion of the parking lot is used for public parking and City programs and services, which continue during the term of this Agreement.

4. In all other respects, the terms of the MOU, as amended, are ratified and confirmed.

COUNTY OF CONTRA COSTA

CITY OF ANTIOCH

By: _____

Timothy Ewell
Chief Assistant County
Administrator

By: _____

Rowland E. Bernal, Jr.
City Manager

ATTEST:

DocuSigned by:

433A2E458AD7436...

Anna Roth

Health Director

By: _____

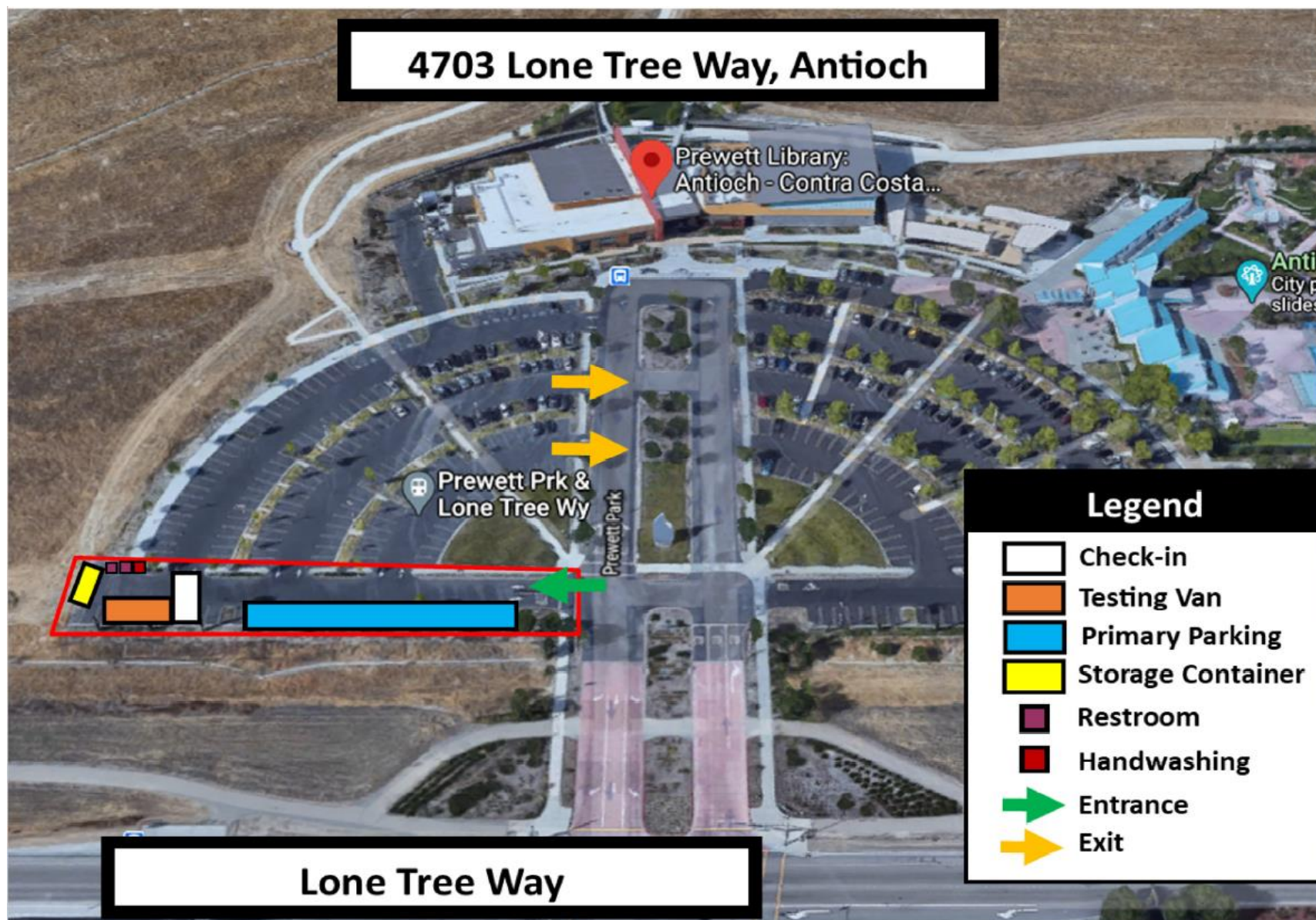
Elizabeth Householder
City Clerk

Approved as to Form:

By: _____

Thomas Lloyd Smith
City Attorney

Exhibit A



**AMENDMENT TO
MEMORANDUM OF AGREEMENT
BETWEEN CONTRA COSTA COUNTY AND CITY OF ANTIOCH
FOR MUTUAL AID ASSISTANCE IN RESPONSE TO THE COVID-19 PANDEMIC**

This Amendment ("Amendment") to the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic is entered into September 7, 2021, and effective as of August 31, 2021, between the City of Antioch, a municipal corporation ("City") and the County of Contra Costa, a political subdivision of the State of California ("County") (each a "Party" and collectively, the "Parties").

RECITALS

- A. On January 5, 2021, the Parties entered into the Memorandum of Agreement Between Contra Costa County and City of Antioch for Mutual Aid Assistance in Response to the COVID-19 Pandemic (MOU), authorizing COVID-19-related services to occur at the Nick Rodriguez Community Center (the "Premises"). The term of the MOU extended through July 31, 2021.
- B. On July 1, 2021, the Parties entered into an agreement to extend the term of the MOU through August 31, 2021.
- C. The Parties now wish to extend the term of the MOU through December 31, 2021, and change the portion of the Premises to be made available for operation of COVID-19-related services.

AGREEMENT

- 1. Section 1 of the MOU is amended to read as follows:

Term. The term of this Agreement shall commence on January 5, 2021, and continue through December 31, 2021 (the "Term"), unless terminated early in accordance with Section 19 or extended by mutual agreement of the Parties with the City Manager delegated the authority to extend the Agreement on behalf of City. On the last day of the Term or sooner if the Agreement is terminated, County will surrender to City the Premises in good order, condition and repair, excepting reasonable use and wear.

- 2. Section 2 of the MOU is amended to read as follows:

Use of Premises. City shall make available a portion of the Premises, shown as the area with the dashed outline on Exhibit A attached hereto ("Testing Site"), for the exclusive use by County to provide COVID-19 testing, COVID-19 vaccinations or services related thereto at the Testing Site, including but not limited to supplies, staff, security and sanitation services, through the Term of this Agreement.

The Testing Site shall be used for COVID-19 testing and COVID-19 vaccinations from Tuesday through Saturday, 7:00 a.m. to 7:00 p.m. with the option to open on the weekend after a written request by a County representative and approval from the City of Antioch. No other use of the Premises is allowed.

3. Exhibit A attached to the MOU is removed and replaced with Exhibit A attached hereto.
4. In all other respects, the terms of the MOU, as amended, are ratified and confirmed.

COUNTY OF CONTRA COSTA

By: _____
Timothy Ewell
Chief Assistant County
Administrator

DocuSigned by:
Anna Roth
433A2E458AD7436...

Anna Roth

Health Director

CITY OF ANTIOCH

DocuSigned by:
By: *Rowland E. Bernal, Jr.*
DA48BC18CA7649A
Rowland E. Bernal, Jr.
City Manager

ATTEST:

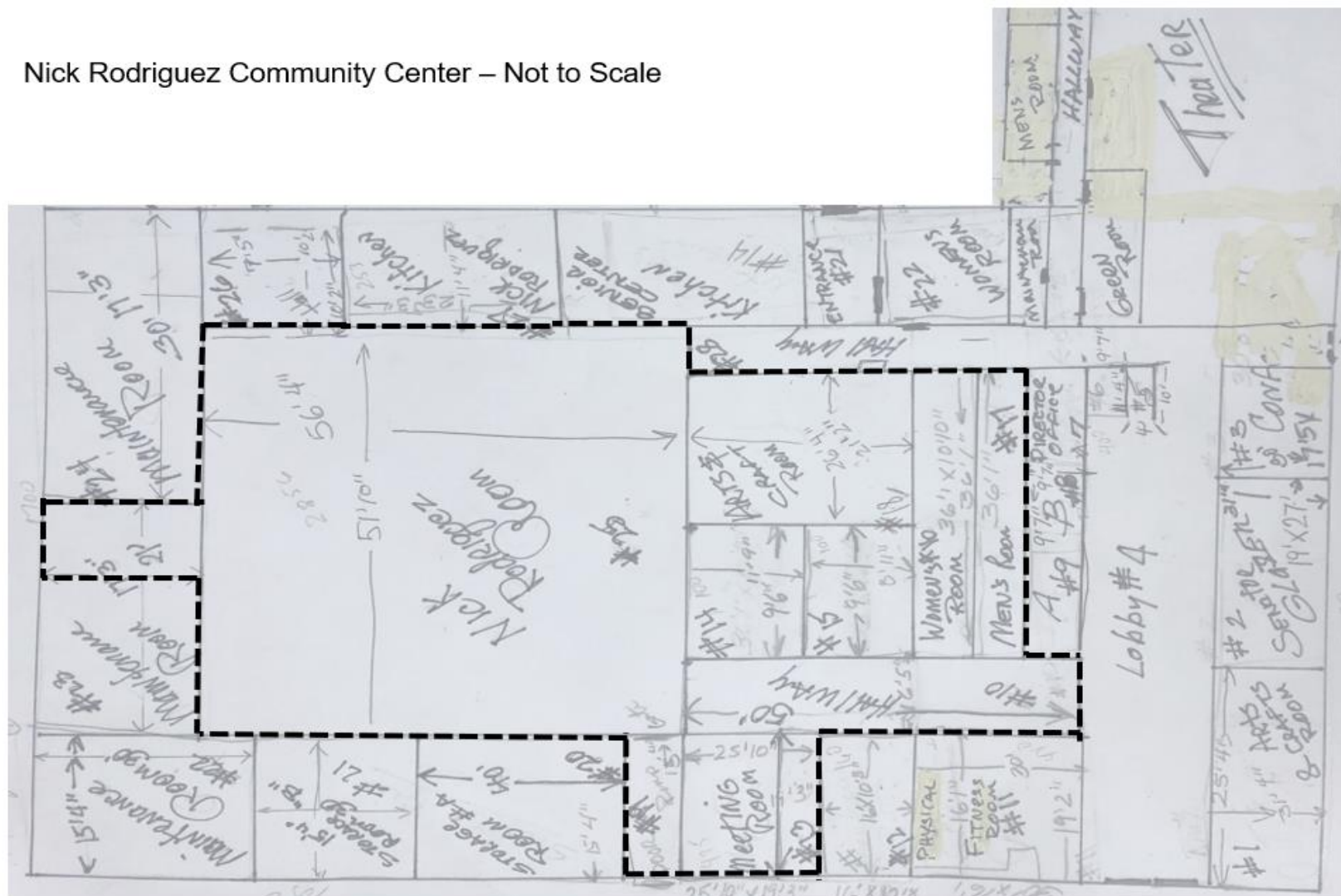
By: _____
Elizabeth Householder
City Clerk

Approved as to Form:

By: _____
Thomas Lloyd Smith
City Attorney

Exhibit A

Nick Rodriguez Community Center – Not to Scale



- General Outline of Community Center space |
Multi-Use room, Classrooms, NRCC Kitchen

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Carlos Zepeda, Deputy Public Works Director

APPROVED BY: John Samuelson, Public Works Director/City Engineer *CZ For JS*

SUBJECT: Consideration of Bids for Various Asphalt Repairs – Service Cuts
Bid No. 968-0526-21A Award

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Awarding the Maintenance Services Agreement ("Agreement") for Various Asphalt Repairs – Service Cuts, to the responsive, and responsible bidder G&S Paving,
2. Approving an Agreement with G&S Paving for a term of two (2) years with the option to extend an additional two (2) years in an amount of \$241,950 for the first year and \$243,450. for the second year, with an additional \$100,000 in contingency work per year, for a total amount not to exceed \$685,400, and
3. Authorizing the City Manager to execute the Agreement with G&S Paving for the total amount not to exceed \$685,400.

FISCAL IMPACT

Funding for the Asphalt Repairs – Service Cuts is included in the adopted fiscal year 2021-23 budget in the Water and Sewer Enterprise Funds.

DISCUSSION

This service contract provides asphalt repairs to roadways after water and sewer-wastewater utility service repairs are completed. The contract amount is for service repairs that are necessary at this time while the additional funding is for new service cuts that may occur during the contract period.

The Public Works Department published the Various Asphalt Repairs - Service Cuts Request for Bids on May 5, 2021; the bid closed on May 26, 2021. Bids were solicited and two complete and qualified bids were received. HM Construction, Inc. was found to be the lowest bidder and was awarded the contract at the June 22, 2021 City Council meeting, however, they failed to provide the necessary information required to execute

an agreement and was therefore determined to be unresponsive. City staff recommends awarding the agreement to G&S Paving who submitted the second lowest responsive, and responsible bid.

ATTACHMENTS

- A. Resolution
- B. Bid Tabulation
- C. Draft Maintenance Services Agreement

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AWARDING THE CONTRACT AND AUTHORIZING THE CITY MANAGER TO
EXECUTE AN AGREEMENT WITH G&S PAVING FOR VARIOUS ASPHALT
REPAIRS – SERVICE CUTS
BID NO. 968-0526-21A**

WHEREAS, the City of Antioch requested formal bid responses to permanently repair asphalt service cuts following Water Distribution and Sewer-Wastewater utility service repairs; and

WHEREAS, bids were solicited on May 6, 2021, the solicitation closed on May 26, 2021 and two (2) bids were received; and

WHEREAS, G&S Paving was the responsive and responsible bid in the amount of \$241,950 for the first year and \$243,950 for the second year to complete these asphalt service cuts; and

WHEREAS, an additional \$100,000 contingency has been budgeted each year for unscheduled repairs.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Awards the Maintenance Services Agreement ("Agreement") for Asphalt Repairs – Service Cuts to the responsive and responsible bidder G&S Paving; and
2. Approves an Agreement with G&S Paving for a term of two (2) years with the option to extend an additional two (2) years in an amount of \$241,950 for the first year and \$243,950 for the second year, with an additional \$100,000 in contingency work per year, for a total amount not to exceed \$685,400 in substantially the form attached as "Attachment C"; and
3. Authorizes the City Manager to execute the Agreement in a form approved by the City Attorney.

* * * * *

RESOLUTION NO. 2021/**

September 14, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

ABSENT:

ABSTAIN:

NOES:

ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH

ATTACHMENT "B"



VARIOUS ASPHALT REPAIRS - SERVICE CUTS BID NO. 968-0526-21A

BID CLOSED: May 26, 2021

BID TABULATION

HM	Grand Total:	Year 1	\$194,575.00	Year 2	\$209,910.00
Construction		Optional Year 3	\$204,700.00	Optional Year 4	\$222,075.00
	<u>Line Items</u>	<u>Unit Cost</u>	<u>Units/Qty</u>	<u>Sub Totals</u>	<u>Line Item Totals</u>
Year 1	A.) Saw Cutting	\$4.00 x	8,000 =	\$32,000.00	\$32,000.00
Year 2	Saw Cutting	\$4.00 x	8,000 =	\$32,000.00	\$32,000.00
Year 3	Saw Cutting	\$4.25 x	8,000 =	\$34,000.00	\$34,000.00
Year 4	Saw Cutting	\$4.50 x	8,000 =	\$36,000.00	\$36,000.00
Year 1	B.) Raise Utilities				\$5,075.00
	Valve Can	\$50.00 x	50 =	\$2,500.00	
	Man Holes	\$105.00 x	15 =	\$1,575.00	
	Rodding Inlets	\$200.00 x	5 =	\$1,000.00	
Year 2	Raise Utilities				\$5,410.00
	Valve Can	\$55.00 x	50 =	\$2,750.00	
	Man Holes	\$109.00 x	15 =	\$1,635.00	
	Rodding Inlets	\$205.00 x	5 =	\$1,025.00	
Year 3	Raise Utilities				\$5,700.00
	Valve Can	\$60.00 x	50 =	\$3,000.00	
	Man Holes	\$110.00 x	15 =	\$1,650.00	
	Rodding Inlets	\$210.00 x	5 =	\$1,050.00	
Year 4	Raise Utilities				\$6,075.00
	Valve Can	\$65.00 x	50 =	\$3,250.00	
	Man Holes	\$115.00 x	15 =	\$1,725.00	
	Rodding Inlets	\$220.00 x	5 =	\$1,100.00	
Year 1	C.) Asphalt	\$5.25 x	30,000 =	\$157,500.00	\$157,500.00
Year 2	Asphalt	\$5.75 x	30,000 =	\$172,500.00	\$172,500.00
Year 3	Asphalt	\$5.50 x	30,000 =	\$165,000.00	\$165,000.00
Year 4	Asphalt	\$6.00 x	30,000 =	\$180,000.00	\$180,000.00
	D.) Asphalt Price	Year 1	Year 2	Year 3	Year 4
	Per Inch				
	4"	\$6.00	\$6.25	\$6.50	\$6.75
	5"	\$7.00	\$7.25	\$7.50	\$7.75
	6"	\$8.00	\$8.25	\$8.50	\$8.75
	7"	\$9.00	\$9.25	\$9.50	\$9.75
	8"	\$10.00	\$10.25	\$10.50	\$10.75

G&S Paving Inc. Grand Total:		Year 1		\$241,950.00	Year 2	\$243,450.00
		Optional Year 3		\$244,950.00	Optional Year 4	\$246,450.00
	Line Items	Unit Cost	Units/Qty		Sub Totals	Line Item Totals
Year 1	A.) Saw Cutting	\$2.00 x	8,000 =	\$16,000.00		\$16,000.00
Year 2	Saw Cutting	\$2.00 x	8,000 =	\$16,000.00		\$16,000.00
Year 3	Saw Cutting	\$2.00 x	8,000 =	\$16,000.00		\$16,000.00
Year 4	Saw Cutting	\$2.00 x	8,000 =	\$16,000.00		\$16,000.00
Year 1	B.) Raise Utilities					\$31,250.00
	Valve Can	\$450.00 x	50 =	\$22,500.00		
	Man Holes	\$500.00 x	15 =	\$7,500.00		
	Rodding Inlets	\$250.00 x	5 =	\$1,250.00		
Year 2	Raise Utilities					\$31,250.00
	Valve Can	\$450.00 x	50 =	\$22,500.00		
	Man Holes	\$500.00 x	15 =	\$7,500.00		
	Rodding Inlets	\$250.00 x	5 =	\$1,250.00		
Year 3	Raise Utilities					\$31,250.00
	Valve Can	\$450.00 x	50 =	\$22,500.00		
	Man Holes	\$500.00 x	15 =	\$7,500.00		
	Rodding Inlets	\$250.00 x	5 =	\$1,250.00		
Year 4	Raise Utilities					\$31,250.00
	Valve Can	\$450.00 x	50 =	\$22,500.00		
	Man Holes	\$500.00 x	15 =	\$7,500.00		
	Rodding Inlets	\$250.00 x	5 =	\$1,250.00		
Year 1	C.) Asphalt	\$6.49 x	30,000 =	\$194,700.00		\$194,700.00
Year 2	Asphalt	\$6.54 x	30,000 =	\$196,200.00		\$196,200.00
Year 3	Asphalt	\$6.59 x	30,000 =	\$197,700.00		\$197,700.00
Year 4	Asphalt	\$6.64 x	30,000 =	\$199,200.00		\$199,200.00
	D.) Asphalt Price	Year 1	Year 2	Optional Year 3	Optional Year 4	
	Per Inch					
	4"	\$6.74	\$6.79	\$6.84	\$6.89	
	5"	\$6.94	\$6.99	\$7.04	\$7.09	
	6"	\$7.14	\$7.19	\$7.24	\$7.29	
	7"	\$7.34	\$7.39	\$7.44	\$7.49	
	8"	\$7.54	\$7.59	\$7.64	\$7.69	

No Bids: AJW Construction
American Asphalt Northern California
APCO Paving Co.
California Pavement Maintenance
Gradetech, Inc.
Granite Construction
MCE Corporation
MCK Services, Inc.

Pacific Coast General Engineering, Inc.
Redgwick Construction
Teichert Construction

ATTACHMENT "C"

CITY OF ANTIOCH MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement ("**Agreement**") is made and entered into this *****INSERT DAY***** day of *****INSERT MONTH*****, *****INSERT YEAR***** ("**Effective Date**") by and between the City of Antioch, a municipal corporation organized under the laws of the State of California with its principal place of business at 200 H Street, Antioch California 94509 ("**City**") and **G&S Paving**, a **Sole Ownership** with its principal place of business at **13 Gold Run Ct, Oakley, CA 94561** ("**Contractor**"). City and Contractor are sometimes individually referred to as "**Party**" and collectively as "**Parties**" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **asphalt removal and replacement services** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the **Various Asphalt Repairs – Service Cuts** project ("**Project**") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **asphalt removal and replacement** maintenance services necessary for the Project ("**Services**"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 The term of this Agreement shall be from **July 1, 2021 to June 30, 2023**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates **Carlos Zepeda, Deputy Public Works Director**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **[***INSERT NAME OR TITLE***]**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Two Hundred Dollars (\$200.00)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one

calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its 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 to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-

discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed \$241,950.00 for the first year, \$243,450.00 for the second year with up to an additional \$100,000 in contingency work per year for a grand total of up to Six Hundred Eight Five Thousand Four Hundred Dollars (**\$685,400.00**) without written approval of City's Finance Director. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor 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, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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 Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor 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 Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Agreement Subject to Appropriation of Funds. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Antioch City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the

discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

G&S Paving
13 Gold Run Ct
Oakley, CA 94561

City:

Public Works Department
Attn: Carlos Zepeda
City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007

City:

City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and

paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third-Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

3.5.19.1 Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.5.19.3 If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.5.19.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.5.19.5 Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

3.5.19.6 Notice provided to the City shall be addressed to: Attention: City Manager, P. O. Box 5007, Antioch, CA 94531-5007. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF ANTIOCH
AND G&S PAVING**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the *****INSERT DAY*****
day of *****INSERT MONTH*****, *****INSERT YEAR*****.

CITY OF ANTIOCH

G&S Paving

Approved By:

Rowland E. Bernal Jr.
City Manager

Signature

Name

ATTEST:

Title

Elizabeth Householder
City Clerk

Approved As To Form:

Thomas Lloyd Smith
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

[*INSERT SCOPE***]**

EXHIBIT "B"

[IF NO SCHEDULE EXISTS, PLEASE STATE THAT SERVICES ARE PERFORMED ON AN AS-NEEDED BASIS OR PROVIDE OTHER SUITABLE EXPLANATION OF SERVICE SCHEDULE]

SCHEDULE OF SERVICES

*****INSERT SCHEDULE*****

EXHIBIT "C"
COMPENSATION

INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES

IF NO RATE SHEET EXISTS, PLEASE PROVIDE OTHER SUITABLE EXPLANATION

EXHIBIT "D"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's Agreement.**

Contractor shall procure and maintain for the duration of the Agreement 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 and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.

Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

 X Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

 Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

X Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000.00** combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

___ Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriates to the Contractor's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees. Waiver needed.)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Contractor's Pollution Legal Liability:

____ Contractor's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

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

Cyber Liability Insurance

____ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- ____ Bid Bond
- ____ Performance Bond
- ____ Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations

coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

___ **Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)**

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

___ **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

___ **Waiver of Subrogation:**

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor, its employees, agents and subcontractors.

___ **Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the

option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

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 City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

[*INCLUDE THIS EXHIBIT (AND CORRESPONDING AGREEMENT PROVISION) ONLY IF APPLICABLE; DELETE OTHERWISE. IF APPLICABLE, YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE SOLICITATION DOCUMENT. CONSULT THE CITY ATTORNEY IF NECESSARY***]**

EXHIBIT "E"

FEDERAL REQUIREMENTS

[*INSERT ALL FORMS, PROVISIONS AND OTHER REQUIREMENTS
OF THE FEDERAL FUNDING SOURCE***]**

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

PREPARED BY: Julie Haas-Wajdowicz, Environmental Resource Coordinator *Julie*

SUBMITTED BY: Forrest Ebbs, Community Development Director *FE*

SUBJECT: Resolution Approving a First Amendment Agreement for Services of Independent Contractor with the Local Government Commission (LGC) and the Community Development Department and Authorizing the City Manager to enter into the Agreement

RECOMMENDED ACTION

It is recommended that the City Council adopt the resolution:

1. Approving an amended agreement with LGC, in substantially the form attached as Attachment A, to provide a second CivicSpark Fellow in the increased amount not to exceed \$57,000, and
2. Authorizing the City Manager to execute the Amended Agreement.

FISCAL IMPACT

The increase in contract cost to add the second Fellow is \$28,000 and this will be split between existing budgets of the Climate and Energy Efficiency Fund, the Solid Waste Fund, Housing Fund and CDBG Fund.

DISCUSSION

CivicSpark is a Governor's Initiative AmeriCorps program dedicated to building capacity for local public agencies to address community resilience issues such as climate change, water resource management, housing, and mobility. CivicSpark is a program of the Local Government Commission in partnership with the State of California through the Office of Planning and Research, and California Volunteers.

The CivicSpark program provides a dedicated Fellow for an eleven-month period (1,700 hours) to support research, planning, and implementation projects for community resilience. CivicSpark Fellows are AmeriCorps members selected through a competitive national application process. Fellows have at minimum a college degree in a relevant field, as well as workplace and community service experience. Projects must support local public agency resiliency needs around climate change adaptation or mitigation, affordable housing, energy efficiency, water management or policy, sustainable mobility, or rural broadband.

The Community Development Department has been contracting with LGC to be a site partner for the CivicSpark program since 2016. In recent years, we have been sharing a Fellow between the Housing/CDBG program and Environmental Resources. The existing contract is for 1 Fellow for \$29,000.

At the wrap up of the 2020-2021 program year, staff learned that it might be possible to secure a 2nd Fellow for the 2021-2022 program year. In mid-August, our application was approved for the 2nd Fellow.

The new (2nd) Fellow will be working on engaging and supporting our diverse population, providing a variety of housing and environmental services while helping to modernize our housing programs and housing stock. The Fellow will be assisting lower income renters to access critical rental assistance post-COVID, and engaging lower income households to inform them of money-saving programs to make housing more affordable, such as home/apartment weatherization and energy saving programs, waste prevention programs, and drought friendly landscaping.

The Fellow will test different outreach methodologies to various populations and lower income census tract/block groups. The Fellow will report on the effectiveness of each strategy, then create policies and procedures for future outreach to ensure equitable housing access for all Antioch residents.

ATTACHMENT

- A. Resolution
- B. First Amendment Agreement

RESOLUTION NO. 2021**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AUTHORIZING
THE CITY MANAGER TO ENTER INTO THE FIRST AMENDMENT THE
AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR WITH THE
LOCAL GOVERNMENT COMMISSION (LGC) AND THE COMMUNITY
DEVELOPMENT DEPARTMENT AND AUTHORIZING THE CITY MANAGER TO
ENTER INTO THE AGREEMENT**

WHEREAS, the City and LGC have entered into the Agreement for one CivicSpark Fellow and

WHEREAS, the City and LGC desire to modify the Agreement on the terms and conditions set forth herein to update contractual clauses in increase the contract to two CivicSpark Fellows;

AGREEMENT

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves a first amendment to the agreement with LGC in substantially the form attached as Exhibit 1, to provide two CivicSpark Fellows at a cost not to exceed \$57,000, and
2. Authorizes the City Manager to execute the First Amendment to the Agreement in a form approved by the City Attorney.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

FIRST AMENDMENT TO
AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AMENDMENT is made and entered into as of September XX, 2021 by and between City of Antioch ("City") and the Local Government Commission ("LGC").

RECITALS

- A. WHEREAS, the City and LGC have entered into the Agreement (as defined below); and
- B. WHEREAS, the City and LGC desire to modify the Agreement on the terms and conditions set forth herein to update contractual clauses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements set forth herein, the City and LGC hereby covenant and agree as follows:

- 1. **Agreement.** Refers to the Agreement dated April 22, 2021 between The City and LGC.
- 2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:
 - a. **Exhibit "D" Description of Compensation**

Exhibit "D" paragraph 2 is hereby replaced with the following text

LGC will receive no more than 57,000 for 2 Fellows for performing the services of this contract.

Unless otherwise agreed, invoices will be the total amount of the contract divided into 11 equal installments and billed monthly over the Fellows' 11-month term of service. Invoices will only include the amount due in each given installment. A separate hours to date report is provided for reference each month. Partner must inform LGC prior to the project start if they need invoices to include specific format, tasks, billing codes, or other details. Partner must also provide clear instructions to LGC about how time should be tracked and reported, if necessary

CITY OF ANTIOCH

LOCAL GOVERNMENT COMMISSION

Ron Bernal, City Manager

ATTEST:

Lare Bloodworth, Chief Financial Officer

Elizabeth Householder, City Clerk

Approved as to Form:

Thomas Lloyd Smith, City Attorney



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Ordinance Granting a Franchise Agreement extension to California Resources Production Corporation (CRC), to transport natural gas and other hydrocarbon products within certain public streets in the City of Antioch

RECOMMENDED ACTION


Staff recommends that the City Council continue the item to the September 28, 2021 City Council Meeting.




STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Elizabeth Householder, MPP, City Clerk
Christina Garcia, CMC, Deputy City Clerk 

APPROVED BY: Nickie Mastay, Administrative Services Director 

SUBJECT: Board of Administrative Appeals appointments for two vacancies expiring March 2024 and one vacancy expiring March 2022

RECOMMENDED ACTION

It is recommended that the Mayor nominate, and Council appoint by resolution:

- 1) Two members to the Board of Administrative Appeals for the two full-term vacancies expiring March 2024; and
- 2) One member to the Board of Administrative Appeals for the vacancy expiring March 2022.

FISCAL IMPACT

There is no fiscal impact as all positions are voluntary.

DISCUSSION

The Board of Administrative Appeals consists of five members and one alternate to be appointed by the Mayor and confirmed by a majority of the Council. The Alternate Member shall serve a term of two years. The Board hears appeals regarding administrative decisions by any official of the City dealing with Municipal Code interpretations. These administrative citations are typically issued by a Code Enforcement Officer, Police Officer, or Animal Control Officer.

Three of the Board Members shall have experience in the building construction trades and/or training in the California Code of Regulations, or such training and experience necessary to hear appeals on Building, Housing, and Technical Codes. All appointed members of the Board shall be Antioch residents. Meetings are held the first Thursday of every month at 3:00 p.m.; or on other dates as needed.

Currently there are three (3) Board Members, 4-year term vacancies, expiring March 2024, two (2) Board Members, 2-year term vacancies, expiring March 2022, and one (1) Alternate Member, 2-year term vacancy expiring March 2022.

The City of Antioch advertised to fill the vacancies in the usual manner. The Clerk's Office received five applications from the following residents to be considered for appointments:

- Marie Livingston
- Ademuyiwa "Ade" Adeyemi
- Antwon Webster
- Darrell Goodbeer
- Matthew Lemming

Both Darrell Goodbeer and Matthew Lemming withdrew their applications from consideration. Remaining applicants were interviewed by Mayor Thorpe.

ATTACHMENTS

- A. Resolution
- B. Applications

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPOINTING [INSERT NAME OF APPOINTEES AFTER APPOINTMENT] TO THE
BOARD OF ADMINISTRATIVE APPEALS FOR THE TWO (2) VACANCIES ENDING
MARCH 2024 AND [INSERT NAME OF APPOINTEE AFTER APPOINTMENT] FOR
THE ONE (1) VACANCY ENDING MARCH 2022**

WHEREAS, there are currently three (4-year term) vacancies on the Board of Administrative Appeals ending in March 2024; two (2-year term) vacancies on the Board of Administrative Appeals ending in March 2022; and one (1) Alternate Member vacancy (2-year term), ending in March 2022;

WHEREAS, the City Clerk's Office made announcement of the vacancies and solicited applications for all of these vacancies;

WHEREAS, Mayor Lamar A. Thorpe received and offered interviews to five (5) interested applicants;

WHEREAS, Applicants Darrell Goodbeer and Matthew Lemming withdrew their applications from consideration and the remaining three (3) applicants were interviewed by Mayor Thorpe;

WHEREAS, Antioch Municipal Code Section 2-5.201 requires that the Mayor nominate candidates for membership on all boards and commissions and requires that the City Council approve, by a majority vote, the appointment of said nominees; and

WHEREAS, Mayor Lamar A. Thorpe has nominated [insert name of appointees after appointments] to the Board of Administrative Appeals.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby approves the Mayor's nominations of [insert names of appointees after appointments] and appoints them to serve on the Board of Administrative Appeals, with the term of [insert names of appointees] ending in March 2024 and the term of [insert names of appointee] ending in March of 2022.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER, MPP
CITY CLERK OF THE CITY OF ANTIOCH**



RECEIVED

APR 11 2020

CITY OF ANTIOCH
CITY CLERK**APPLICATION DEADLINE DATE: 5:00 p.m., April 17, 2020****APPLICATION FOR COMMUNITY SERVICE****BOARD OF ADMINISTRATIVE APPEALS****Three (3) Board Members, 4-year term vacancies, expiring March 2024****Two (2) Board Members, 2-year term vacancies, expiring March 2022**PRINT YOUR NAME Ademuyiwa "Ade" AdeyemiADDRESS A stret # CITY AntiochZIP CODE 94509 PHONE (H) (W) (C) E-MAIL ADDRESS EMPLOYER ADETRONICS ADMINISTRATIVE SERVICES INCADDRESS A stret # CITY AntiochOCCUPATION Business ConsultantYEARS LIVE IN THE CITY OF ANTIOCH 30 YEARS

LIST THE THREE (3) MAIN REASONS FOR YOUR INTEREST IN THIS APPOINTMENT:

INTREST IN MY COMMUNITY AND BEEN INVOLVED IN SOLUTIONS.TEACHING MY SONS THE IMPORTANCE OF COMMUNITY INVOLVEMENTLEARNING MORE ABOUT HOW LOCAL GOVERNMENT WORKS ALSO ALREADY
SERVING IN THIS POSITIONHAVE YOU ATTENDED ANY MEETINGS OF THIS BOARD? YESHAVE YOU HAD ANY PREVIOUS CITY COMMUNITY SERVICE ON THIS BOARD? (If yes,
please explain) I am the Vice Chair of the Boards of Appeal been on the board for 6
yearsWHAT SKILLS/KNOWLEDGE DO YOU HAVE THAT WOULD BE HELPFUL IN SERVING ON
THE BOARD OF ADMINISTRATIVE APPEALS? CLOSE TO 6 YEARS ON THE BOARD I

HAVE LEARNED TO LISTEN PROPERLY AND ALSO TEMPER MERCY WITH JUSTICE SINCE EACH CASE AND EVERYONE IS DIFFERENT.

PLEASE INDICATE ANY FURTHER INFORMATION OR COMMENTS YOU WISH TO MAKE THAT WOULD BE HELPFUL IN REVIEWING YOUR APPLICATION.

I have been living in Antioch for over 30 years and seen some good things and also know that we can not depend on elected officials to do it alone they need the help of citizens to help carry the load of the city.

PLEASE READ THE ATTACHED GENERAL INFORMATION REGARDING BOARDS AND COMMISSION SO YOU ARE AWARE OF THE DUTIES, TIME AND FREQUENCY OF MEETINGS. CAN YOU ATTEND MEETINGS AT THE DESIGNATED TIME? _____

PLEASE ATTACH YOUR RESUME (Recommended to enhance your application).

PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC REVIEW.

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also mail/deliver to:

Office of the City Clerk
City of Antioch
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007



Signature

04/11/2020

Date



RECEIVED

MAR 09 2020

CITY OF ANTIOCH
CITY CLERK

APPLICATION DEADLINE DATE: 5:00 p.m., March 13, 2020

APPLICATION FOR COMMUNITY SERVICE

BOARD OF ADMINISTRATIVE APPEALS

Three (3) Board Members, 4-year term vacancies, expiring March 2024

Two (2) Board Members, 2-year term vacancies, expiring March 2022

PRINT YOUR NAME Marie Livingston

ADDRESS White Rock Way CITY Antioch

ZIP CODE 94531 PHONE (H) _____ (W) N/A (C) _____

E-MAIL ADDRESS _____

EMPLOYER Retired

ADDRESS _____ CITY _____

OCCUPATION _____

YEARS LIVE IN THE CITY OF ANTIOCH 25 years

LIST THE THREE (3) MAIN REASONS FOR YOUR INTEREST IN THIS APPOINTMENT:

1. To work towards a better quality of life for residents and businesses in the City of Antioch.
2. Participate in the effort to resolve issues related to violations of city municipal codes.
3. Assist Board members in applying municipal codes as written whereby citizens can depend on public servants to be consistent in the application of codes.

HAVE YOU ATTENDED ANY MEETINGS OF THIS BOARD? Yes

HAVE YOU HAD ANY PREVIOUS CITY COMMUNITY SERVICE ON THIS BOARD? (If yes, please explain) I am currently serving as an Alternate on the Board of Administrative Appeals.

WHAT SKILLS/KNOWLEDGE DO YOU HAVE THAT WOULD BE HELPFUL IN SERVING ON THE BOARD OF ADMINISTRATIVE APPEALS? Previous work experience provides me

knowledge and skill in the interpretation and application of federal, state and local ordinances,

laws, regulations and policies.

I am currently serving as an Alternate Board Member and have two (2) years of experience.

PLEASE INDICATE ANY FURTHER INFORMATION OR COMMENTS YOU WISH TO MAKE THAT WOULD BE HELPFUL IN REVIEWING YOUR APPLICATION.

PLEASE READ THE ATTACHED GENERAL INFORMATION REGARDING BOARDS AND COMMISSION SO YOU ARE AWARE OF THE DUTIES, TIME AND FREQUENCY OF MEETINGS. CAN YOU ATTEND MEETINGS AT THE DESIGNATED TIME? Yes

PLEASE ATTACH YOUR RESUME (*Recommended to enhance your application*).

PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC REVIEW.

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also mail/deliver to:

Office of the City Clerk
City of Antioch
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007


Signature

03/08/2020

Date

White Rock Way
Antioch, CA 94531
Home:

MARIE LIVINGSTON

OBJECTIVE

To continue service on the Board of Administrative Appeals.

PROFESSIONAL EXPERIENCE

Currently I serve as an Alternate on the City of Antioch Board of Administrative Appeals. Before retiring from the City of Berkeley I worked in the Human Resources Department as a Human Resources Technician. I was the supervisor in the Employee Records and Transactions division. A major part of my duties consisted of the interpretation and implementation of personnel rules, regulations, policies and procedures to city payroll staff, department budget analysts and city auditor payroll staff.

EMPLOYMENT HISTORY

CITY OF BERKELEY

June 1986 through December 2012

I performed a wide variety of technical and paraprofessional duties involving the administration of the City's personnel system; maintaining employees' compensation and benefits records. I have knowledge of: principles, practices and theories of public personnel administration and management. I was responsible for applying federal, state and local laws and regulations related to municipal personnel functions. I have knowledge of office methods and procedures, and skill in using computer hardware and software. One small example; I downloaded computer payroll data using a report writer (Cognos-Impromptu) to provide various reports to city departments, other agencies, and to satisfy FOIA requests.

I assisted in the preparation of city budgets by providing reports of authorized, budgeted FTE of city employees to the City Manager's Office and to department budget analysts. I also interpreted laws and rules, and communicated effectively with others by phone, in writing and in person. I worked independently with little supervision and worked with teams to accomplish specific goals.

EDUCATION

CASTLEMONT HIGH SCHOOL - OAKLAND, CA. DIPLOMA

HEALD BUSINESS COLLEGE – OAKLAND, CA. CERTIFICATES IN BASIC, COBOL AND ACCOUNTING

LOS MEDANOS COMMUNITY COLLEGE, PITTSBURG, CA

BUSINESS MGMT/HR ADMIN – GPA 3.96

ORGANIZATION

Police Crime Commission – Neighborhood Watch Block Captain

Nextdoor.com – Lead

Friday Morning Breakfast Club – Former Member. Club disbanded in 2018.



RECEIVED

MAR 12 2020

CITY OF ANTIOCH
CITY CLERK

APPLICATION DEADLINE DATE: 5:00 p.m., March 13, 2020

APPLICATION FOR COMMUNITY SERVICE

BOARD OF ADMINISTRATIVE APPEALS

Three (3) Board Members, 4-year term vacancies, expiring March 2024

Two (2) Board Members, 2-year term vacancies, expiring March 2022

PRINT YOUR NAME Antwon Webster

ADDRESS Alumrock Dr CITY Antioch

ZIP CODE 94509 PHONE (H) _____ (W) _____ (C) _____

E-MAIL ADDRESS _____

EMPLOYER Department of the Army Corps of Engineers

ADDRESS Golden Gate CITY San Francisco

OCCUPATION Lotistics

YEARS LIVE IN THE CITY OF ANTIOCH 2 Years

LIST THE THREE (3) MAIN REASONS FOR YOUR INTEREST IN THIS APPOINTMENT:

1. To continue to serve as an active member of Antiochs Board of Amin. Appeals
2. To provide a service to the Residents of Antioch by ensuring eqaulitty and Fairness.
3. My commitment to service before self, drives me towards wanting to make a difference. This position is one of the many way in which I can make a difference.

HAVE YOU ATTENDED ANY MEETINGS OF THIS BOARD? Yes

HAVE YOU HAD ANY PREVIOUS CITY COMMUNITY SERVICE ON THIS BOARD? (If yes, please explain) Yes, I served on the board from June 2019 to March 2020.

WHAT SKILLS/KNOWLEDGE DO YOU HAVE THAT WOULD BE HELPFUL IN SERVING ON THE BOARD OF ADMINISTRATIVE APPEALS? I have knowledge of municipal codes and appeals procedures within the City of Antioch. My engineering background also supports my claim to the understanding of municipal codes and it's verbage.

PLEASE INDICATE ANY FURTHER INFORMATION OR COMMENTS YOU WISH TO MAKE
THAT WOULD BE HELPFUL IN REVIEWING YOUR APPLICATION.

PLEASE READ THE ATTACHED GENERAL INFORMATION REGARDING BOARDS AND
COMMISSION SO YOU ARE AWARE OF THE DUTIES, TIME AND FREQUENCY OF
MEETINGS. CAN YOU ATTEND MEETINGS AT THE DESIGNATED TIME? Yes

PLEASE ATTACH YOUR RESUME *(Recommended to enhance your application).*

**PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC
REVIEW.**

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also
mail/deliver to:

Office of the City Clerk
City of Antioch
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007



Signature


March 12, 2020

Date

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Brad Helfenberger, Parks and Recreation Director 

SUBJECT: Policy for Ensuring Equitable Access to Inclusive Play Environments in Parks and Public Spaces

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached resolution adopting a Policy for Ensuring Equitable Access to Inclusive Play Environments in Parks and Public Spaces

FISCAL IMPACT

This recommended action has no direct fiscal impact at this time. Implementation of the policy is anticipated to result in increased expenditures for accessible park features and related costs.

DISCUSSION

At the City Council Regular Meeting of November 24, 2020, direction was given to staff to develop a policy for all-inclusive park design. At the City Council Regular Meeting of May 25, 2021, a presentation was given to City Council on Inclusive Park Design and further direction was given to staff, including a request that a draft policy be sent to the Parks and Recreation Commission for review and recommendation for approval. The draft policy attached for the City Council's consideration was developed in consultation with Gates and Associates, who are subject matter experts on the topic. Input was also received and incorporated from First Five Contra Costa County, as well as Be Exceptional Programs, a local non-profit agency dedicated toward providing programs for people with disabilities.

COMMISSION RECOMMENDATION

At the Parks and Recreation Commission Regular Meeting of August 19, 2021, the Commission voted unanimously to recommend that the City Council adopt the attached policy. The Commission also asked that additional language be added regarding playground color schemes, which is included in the final policy.

ATTACHMENTS

- A. Resolution
- B. Policy
- C. Presentation

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ADOPTING A POLICY FOR ENSURING EQUITABLE ACCESS TO INCLUSIVE PLAY
ENVIRONMENTS IN PARKS AND PUBLIC SPACES**

WHEREAS, the City of Antioch is dedicated to providing equitable access to Parks and Recreation Programs and Facilities, specifically with respect to serving Antioch residents who are differently abled or with special needs;

WHEREAS, the City of Antioch recognizes that providing high-quality outdoor play experiences that foster active, independent play are critical for the developmental health, well-being and social engagement of all children.

WHEREAS, the City acknowledges that the American with Disabilities Act Assembly Guidelines only require the removal of physical barriers to access play environments and do not address equitable physical and social inclusion;

WHEREAS, the City of Antioch's intent to exceed basic requirements, develop new play facilities and renovate existing playgrounds that support inclusive play experiences; and

WHEREAS, the City of Antioch has developed a policy that will provide for fully accessible playgrounds at four destination parks and ensure that all parks are developed and renovated to include fully accessible features.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby adopts the attached Policy for Ensuring Equitable Access to Inclusive Play Environments in Parks and Public Spaces.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



POLICY FOR ENSURING EQUITABLE ACCESS TO INCLUSIVE PLAY ENVIRONMENTS IN PARKS AND PUBLIC SPACES

Overview

The City of Antioch is dedicated to providing equitable access to Parks and Recreation Programs and Facilities, specifically with respect to serving Antioch residents who are differently abled or with special needs. The purpose of this policy is to outline an approach to ensure inclusive play environments are available to all members of the community regardless of their physical, cognitive or behavioral ability.

It is estimated that the spectrum of disabilities, including autism, learning disabilities, visual, hearing and mobility challenges, impact 8.5% to 14% of all children.

The City of Antioch recognizes that providing high-quality outdoor play experiences that foster active, independent play are critical for the developmental health, well-being and social engagement of all children. The City acknowledges that the American with Disabilities Act Assembly Guidelines only require the removal of physical barriers to access play environments and do not address equitable physical and social inclusion. This City policy captures the agency's intent to exceed basic requirements, develop new play facilities and renovate existing playgrounds that support inclusive play experiences.

Inclusive Design

An inclusive play environment considers the needs of children of all abilities and their parents. The availability of shade and restroom facilities, in addition to accessible routes, sidewalks and parking areas to the play environment are key. Adequate space in terms of acreage allows for the ease of movement between play elements and places to comfortably retreat and observe activity. A fully inclusive playground provides identical or equitable access to all play elements regardless of ability.

For the purposes of inclusivity design, the Antioch Park system will include three categories. Tier 1 includes three Community Parks, which are destinations for the whole community and important locations to develop fully inclusive play environments.

Tier 2 parks are neighborhood parks designed to meet the needs of the local neighborhood and should also include convenient access to inclusive play elements. Tier 2 parks have characteristics that support inclusivity such as level topography, restrooms, shaded seating areas, accessible on-site parking, and adequate area to accommodate

City of Antioch

Polices & Procedures

space requirements of inclusive play features. Tier 2 parks will be targeted for additional accessible features as playgrounds are upgraded.

Tier 3 parks are neighborhood parks that lack Tier 1 and Tier 2 qualities and require improvements beyond the playground to achieve an inclusive design. However, inclusive elements should be incorporated into playground structures of Tier 3 parks as they are upgraded to ensure that all of Antioch's parks are inclusive. A list of each park and their current tier assignment is below:

Tier 1:

Antioch Community Park
Prewett Community Park
Antioch City Park

Tier 2:

Chichibu Park
Country Manor Park
Diablo West Park
Gentrytown Park
Hillcrest Park
Marchetti Park
Nelson Ranch Park
Williamson Ranch Park

Tier 3:

Almondridge Park
Canal Park
Chaparral Park
Contra Loma Estates Park
Dallas Ranch Park
Deerfield Park
Eagles' Ridge Park
Fairview Park
Hansen Park
Harbour Park
Heidorn Park
Jacobsen Park
Knoll Park
Markley Creek Park

Meadowbrook Park
Meadow Creek Park
Mira Vista Park
Mira Vista Hills Park
Mountaire Park
Prosserville Park
Village East Park

General Policies

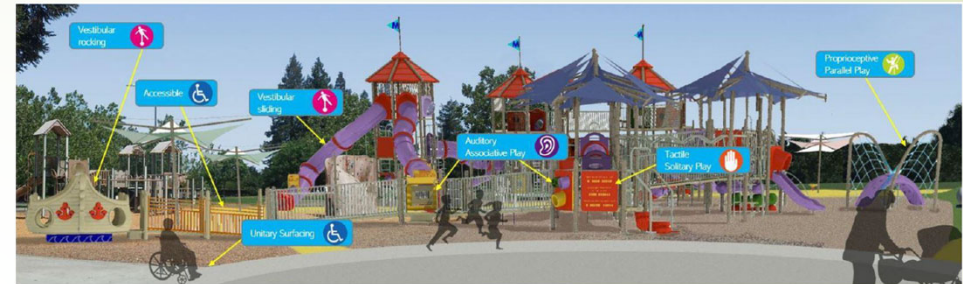
1. Conduct and regularly update, an inclusivity assessment of existing parks to inform prioritization of park renovation projects.
2. Develop fully inclusive playgrounds at each of the three Tier 1 Parks (Antioch Community Park, Antioch City Park, Prewett Community Park).
3. Explore opportunity to develop a 4th fully inclusive playground in Northwestern portion of City, to provide equitable distribution of facilities across 4 quadrants. A park currently classified as Tier 2 should be selected for this purpose.
4. Fully Inclusive (Tier 1) Guidelines:
 - a. Recognize that a fully inclusive playground is composed of elements that allow a fully inclusionary experience. Designs should allow people of all abilities to participate in ways that allow for independent experiences, but also foster interaction between participants. Designs should allow people of all abilities to have tactile and auditory sensory experiences, but also provide opportunities for quiet creativity. Fully inclusive playgrounds should include a multi-use path to offer a chance to scout the playground and be enclosed to provide comfort and safety.
 - b. Accommodate adults with disabilities who want to supervise or participate in play activities in the playground design.
 - c. Encourage social participation and cooperation in the playground design.
 - d. Include an enclosed play environment, associated seating and gathering spaces with controlled access points to facilitate supervision and reinforce safety.
 - e. Feature fully inclusive safety surfacing, such as pour-in-place rubber.
 - f. Usage of natural colors in playground equipment that are less likely to alarm children with autism than bright colors.
 - g. Offer equitable gross motor skills play experiences in the playground, including swinging, balancing, climbing, spinning, sliding and rocking.

City of Antioch

Polices & Procedures

- h. Solicit and integrate input from community groups/members with insights into the special needs community when a playground is developed or renovated.
- 5. As Tier 2 neighborhood playgrounds are renovated, all-inclusive play elements are incorporated into the overall playground design, additional site improvements are provided such as shaded seating amenities, access from sidewalks and parking areas, and access to restrooms, to create a comfortable inclusive environment for both parents and children.
- 6. As Tier 3 neighborhood playgrounds are renovated, all-inclusive play elements are incorporated into the overall playground design, access from sidewalks, and shaded seating amenities are added. Existing restroom facilities should also be upgraded as park renovations take place.

Policy for Ensuring Equitable Access to Inclusive Play in Parks and Public Spaces



ANTIOCH
CALIFORNIA

Introduction



- Council Direction November 2020
- Worked with Consultant to gather information
- Presented Information to Council May 2021 – Received additional direction
- Draft Policy Presented to Parks and Recreation Commission August 2021



Types of Inclusive Parks

All Inclusive

- Features equally accessible to all people regardless of ability
- Emphasis on multi-sensory play – All children can participate on all features

All Abilities

- Ramps and ground level access to play environments
- Some accessible features
- Multiple Play Activities

All Access

- Accessible Route of Travel
- Features not necessarily accessible



The Proposed Policy

- ▀ Divides Parks into three categories
 - ▀ Tier 1: Destination/Community Parks
 - ▀ Tier 2: Neighborhood Parks with Restrooms and Parking
 - ▀ Tier 3: Other Neighborhood Parks

Tier 1 Parks

- Community Park, Prewett Park, City Park, and one more Park TBD
- Fully Inclusive upon renovation





Tier 2 and 3 Parks

Tier 2: Total of 8 Parks (plus two new parks)

- One to be selected for a fully inclusive playground (Tier 1)
- All abilities – Inclusive Elements, Plus Restrooms, On-Site Parking, Level Grade

Tier 3: Remaining Neighborhood Parks

- All abilities – Inclusive Elements, Added Shade Structure and Seating
- Some Tier 3 Parks include restrooms

Summary

- ▀ Policy Brings Antioch above ADA standards and industry best practices
- ▀ Innovation Lives Here
- ▀ Input received from Be Exceptional and First 5 Contra Costa
 - ▀ Incorporated into Policy
- ▀ Parks and Recreation Commission Recommendation
 - ▀ Added language on color schemes for playgrounds




Questions?

Thank you!

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Brad Helfenberger, Parks and Recreation Director 

SUBJECT: Policy for Inclusion in Parks and Recreation Programs for People of All Abilities

RECOMMENDED ACTION

It is recommended that the City Council adopt the attached resolution adopting a Policy for Inclusion in Parks and Recreation Programs for People of All Abilities.

FISCAL IMPACT

This recommended action has no direct fiscal impact at this time. However, implementation of the policy is anticipated to result in increased expenditures for staff, training, and/or equipment.

DISCUSSION

At the City Council Regular Meeting of May 25, 2021, direction was given to staff to develop a policy regarding accessibility and inclusion in recreation programming for people with disabilities. Council requested that a draft policy be sent to the Parks and Recreation Commission for recommendation for approval. The draft policy attached for your consideration was developed in consultation with several California cities that have adopted policies. Input was also received and incorporated from First Five Contra Costa County, as well as Be Exceptional Programs, a local non-profit agency dedicated toward providing programs for people with disabilities.

COMMISSION RECOMMENDATION

At the Parks and Recreation Commission Regular Meeting of August 19, 2021, the Commission voted unanimously to recommend that the City Council adopt the attached policy.

ATTACHMENTS

- A. Resolution
- B. Policy
- C. Presentation

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ADOPTING A POLICY FOR INCLUSION IN PARKS AND RECREATION
PROGRAMS FOR PEOPLE OF ALL ABILITIES**

WHEREAS, the City of Antioch is dedicated to providing equitable access to Parks and Recreation Programs and Facilities, specifically with respect to serving Antioch residents who are differently abled or with special needs.;

WHEREAS, the City of Antioch recognizes that providing high-quality recreational experiences that foster active, independent play are critical for the developmental health, well-being and social engagement of all children;

WHEREAS, the City acknowledges that the American with Disabilities Act Assembly Guidelines only require the removal of physical barriers to access play environments and do not address equitable physical and social inclusion;

WHEREAS, the City of Antioch's intends to exceed basic requirements, develop new programming, and enhance existing programming that supports inclusive play experiences; and

WHEREAS, the City of Antioch has developed a policy that will allow for reasonable accommodations in all programs and also provide for programs designed specifically to serve people with disabilities.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby adopts the attached Policy for Inclusion in Parks and Recreation Programs for People of All Abilities.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



POLICY FOR INCLUSION IN PARKS AND RECREATION PROGRAMS FOR PEOPLE OF ALL ABILITIES

Overview

The City of Antioch is dedicated to providing equitable access to Parks and Recreation Programs and Facilities, specifically with respect to serving Antioch residents who are differently abled or with special needs. The purpose of a Policy for Inclusion in Parks and Recreation Programs is to establish a guideline to ensure that all programs offered by the Parks and Recreation Department are accessible to all Antioch Residents regardless of their physical abilities. The policy also establishes a framework for programs designed for people with disabilities.

The City of Antioch recognizes that providing high-quality recreational experiences that foster active independent play are critical for the developmental health, well-being, and social engagement of all children. The City acknowledges that the Americans with Disabilities Act (ADA) guidelines establishes a baseline standard that may not adequately provide for equitable and inclusionary programming. This City policy captures the agency's intent to exceed basic requirements, develop new programming, and enhance existing programming that supports inclusive play experiences.

Policies

It is the policy of the City of Antioch Parks and Recreation Department to accommodate people with disabilities in programs that require pre-registration as well as drop-in programs whenever possible. All accommodation requests need to be made a minimum of two weeks before the time of scheduled participation. For programs requiring advanced registration, the department's standard registration form includes an option for accommodation due to a disability. Once the form is received, a Recreation Supervisor or designee will contact the family to discuss the nature of the accommodation and work with them to the best of the City's ability. For drop-in programs, participants and their families can either call the Recreation main line at (925) 776-3050 or email us at recreation@antiochca.gov.

All Recreation Staff will receive training on inclusion for people with disabilities. While this training will help staff learn how to integrate people with disabilities into existing programs, it is recognized that staff are not necessarily experts or specialists on the topic. In addition to making reasonable accommodations for people with disabilities, the Parks and Recreation Department will offer programming designed for people with disabilities as qualified staff and/or contractors are available. The City may choose to retain a contractor or outside agency specializing in these programs for the provision of services.

City of Antioch

Polices & Procedures

Process:

Upon receiving a request for Reasonable Accommodation, a Recreation Supervisor or designee will contact the participant or participant's guardians. In order to qualify to participate in recreational programming, the participant needs to be:

- Toilet-trained
- Able to feed and dress oneself
- Medically stable and free of contagious diseases that are potentially life-threatening
- Not a danger to themselves or others
- Able to function without a 1 on 1 aide.

Types of Reasonable Accommodations

Reasonable accommodations specifically mentioned in the ADA include, but are not limited to the following:

- Enhanced Staff Training
- Enhanced Participant to Staff Ratio
- Changes to Rules and Policies – When a rule can be changed without resulting in a fundamental alteration of a program or service, it can be modified for the person with a disability
- Adaptive Equipment or Supplies – Many vendors make adaptive sports equipment, game pieces, card holders, and musical instruments. The City shall make every reasonable effort to acquire adaptive equipment, if needed.
- Removal of Architectural Barriers
- Other Effective Modifications

“Undue Burden”

The ADA provides guidance on what is considered a reasonable accommodation. When an accommodation is not considered to be reasonable, it is sometimes referred to as an “undue burden” in the ADA law. Reasonable accommodations for qualified participants are determined by individual need, programmatic elements and staff competencies. Although the City will give primary consideration to an individual's choice of accommodation, the City may deny an accommodation, if to provide the accommodation, including auxiliary aides or services, would result in a fundamental alteration in the nature of the program, activity or service or result in an undue financial or administrative burden. In such instances, the City will reasonably attempt to provide an accommodation that does not result in a fundamental alteration or undue burden.

City of Antioch

Polices & Procedures

The City shall abide by the three legally identified categories to evaluate the determination of an undue burden:

- Undue Administrative Burden - When all existing and available resources are applied and an accommodation cannot be found, the City has complied with the ADA requirements.
- Undue Economic Burden - When the cost of an accommodation will result in a substantial financial burden to the City of Antioch, a finding of economic burden is justified.
- Fundamental Alteration – When the accommodation could be made, but would fundamentally change the activity or the policy, the accommodation need not be made.

Social Behavior & Safety

Under the ADA, an accommodation is not reasonable if it compromises the safety of the staff and/or participants, and/or significantly alters the purpose of the program or activity. Safety issues will be formally identified and recorded.

Appropriate social behavior is required during all programs and activities. The staff and volunteers will do their best to ensure each participant's success. If a participant's behavior is detrimental to the group or to oneself (i.e. persistent kicking, biting, hitting, spitting, self-abusing, refusal to stay with the group), a parent/guardian will be called to pick up the participant immediately. If the behavior continues, a behavior plan will be discussed, and possible removal from the program or activity could result if the behavior cannot be reduced or eliminated.

One-on-One Support

When it is determined that an individual needs a one-on-one aide in order to be able to participate successfully in a program, the City of Antioch can provide an accommodation by allowing the aide to accompany the participant. However, the provision of an individual aide for the participant is the responsibility of the parent/guardian or outside organization with whom the participant may be working. This includes sign language interpreters. All aides must be at least 18 years of age and are required to complete a volunteer application, complete a fingerprint and background check, and test negative for TB. Aides are also required to follow Recreation Staff and Program policies and procedures. A parent or other family member may serve as an aide as long as the above requirements are satisfied.

Personal Services

Individuals with disabilities are welcomed and encouraged to participate in all City programs. However, the City is not able to provide direct assistance with toileting, feeding and/or dressing. City staff may provide indirect assistance with toileting through the use

City of Antioch

Polices & Procedures

of verbal cues and reminders, and may provide assistance with dressing (i.e. snapping, buttoning of clothing). The City does not provide assistance with diapering or lifting and/or transferring of participants. The City of Antioch Parks and Recreation Department is not able to supply personal devices (wheelchairs, hearing aids, or glasses) or personal readers.

Service Animals

Service animals include guide dogs, signal dogs and other animals individually trained to provide assistance to a person with disabilities. Service animals are welcome as long as they remain under the control of the individual they are assisting at all times. Staff and other participants should not treat the animal as a pet. They must try not to interfere with the animal's ability to provide service to for the benefit of the individual with a disability. "Emotional Support Animals" are not recognized under the ADA as Service Animals.

All Abilities Day

The City of Antioch will introduce a new annual event to be known as "All Abilities Day." The event is envisioned to be held in March during National Disability Awareness Month. Activities will include demonstrations of adaptive equipment, introductions to programs designed for people with disabilities, access to resources for families, a chance for families with shared experiences to connect, and more.



ANTIOCH
CALIFORNIA

Policy for Inclusion in Parks and Recreation Programs for People of All Abilities



Introduction

Council Direction May 2021

Evaluated Existing Practices

Consulted with other Cities

Consulted with Outside Agencies

- First Five Contra Costa
- Be Exceptional

Draft Policy Presented to Parks and Recreation Commission

- Commission Recommended Adoption



The Proposed Policy

Goals:

- Bring Our Programs Above ADA Standards
- Design Our Programs so that everyone can be fully included

Provides Inclusion for All Parks and Recreation Programs

- Adapting Existing Programming

Provides for Programs Designed for People with Disabilities

- Pilot Programs launched in Summer 2021
- Expanded in Fall

Inclusion in Existing Programs

Registration Checkbox

Program Adaptations

- Ensuring Spaces Are Appropriate
- Enhanced Staff Ratio
- Provision of Adaptive Equipment
- Integrating Program Aides

Training in Inclusion for All Staff





Programs Designed for People with Disabilities

Partnership with Be Exceptional

- Dance
- Fitness
- Tumbling
- Skateboarding

Programs Launched in Summer 2021,
and expanded in Fall



New Annual Event – All Abilities Day

Envisioned to be held in March

Potential Activities

- Introduction to Programs
- Community Resources
- Demonstration of Adaptive Equipment
- Opportunity for Families to Connect



Summary

Policy Brings Antioch above ADA standards

Input received from Be Exceptional and First 5 Contra Costa

- Incorporated into Policy

Parks and Recreation Commission Recommendation

- August 2021



Questions?

THANK YOU!

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Redistricting Process and Community Outreach for City Council Member District Boundaries

RECOMMENDED ACTION

It is recommended that the City Council provide direction to staff regarding the proposed dates and times for the 2021-2022 redistricting meetings:

1. **Tuesday, Oct. 12, 2021**
(Special meeting prior to City Council meeting. At least one public hearing shall be held before maps are drawn.)
2. **Saturday, October 16, 2021**
(Special meeting time to be determined. At least one public hearing or public workshop shall be held on a Saturday, or Sunday or after 6 p.m. on a weekday.)
3. **Tuesday, November 9, 2021 and Tuesday, December 14, 2021**
(Special meetings prior to City Council meetings. At least two public hearings shall be held after maps are drawn.)
4. **Tuesday, January 11, 2022**
(Regular City Council meeting. Introduction of Ordinance: First Reading)
5. **Tuesday, January 25, 2022**
(Regular City Council meeting. Second Reading: Adoption of Ordinance)

FISCAL IMPACT

For the 2021-2022 redistricting process, the City Clerk's Office has \$50,000 available in the FY 21/22 General Fund budget, and the City Attorney's Office plans to use existing funds allocated in its budget for contract legal services. Additional funding may be required.

DISCUSSION

Cities in California with electoral districts are required to update ("redistrict") their district boundaries following receipt of updated population data from the 2020 Census. This

process occurs every 10 years. Cities such as Antioch, with district elections scheduled for November 8, 2022 must complete the process by April 17, 2022.

Procedural Requirements for Redistricting

General law cities, such as Antioch, must comply with State law procedural requirements for redistricting.

Assembly Bill 849, the State Legislature's Fair and Inclusive Redistricting for Municipalities and Political Subdivisions ("**FAIR MAPS**") Act, requires procedural steps that include a series of public hearings with substantial public input, community outreach to encourage participation, and a specific place on the City's webpage for redistricting information.

State law also provides cities with the option of forming one of three types of redistricting commissions to assist with the process: (1) an Advisory Redistricting Commission, (2) an Independent Redistricting Commission, or (3) a Hybrid Redistricting Commission.

Procedural Requirements for Redistricting and Public Participation

Before adopting a final map of district boundaries, at least four hearings must be held for the public to provide input about the composition of City Council districts. These hearing requirements include at least: (1) one hearing before any maps are drawn, (2) two hearings after maps are drawn, and (3) one hearing or workshop to be held on a Saturday, Sunday, or after 6 p.m. on a weekday.

The City must also take steps to encourage residents, including those in underrepresented and non-English speaking communities, to participate in the redistricting public review process.

These steps shall include a good faith effort to do all of the following:

- (1) Provide information to media organizations that offer City news coverage, including those serving language-minority communities;
- (2) Provide information through local community groups and organizations including those active in language-minority communities, those focused on good government, civil rights, civic engagement, or community groups or organizations active in the City, and those requesting to be notified about City redistricting;
- (3) If a request is made at least 72 hours before the meeting, the City shall conduct the public hearings with live translation in a requested "applicable language". ("Applicable language" means any language that is spoken by a group of City residents with limited English proficiency who constitute 3% or more of the City's population, as determined by the Secretary of State.)

The City is required to publish the date, time, and location of any public hearing or workshop at least five days before the hearing.

The City is required to establish and maintain a page on its website dedicated to redistricting that includes:

- (1) a general explanation of the redistricting process;
- (2) procedures for how a member of the public can participate;
- (3) a calendar of all public hearings;
- (4) the notice and agendas for those hearings;
- (5) recordings or written summaries of the hearings; and
- (6) all draft and final maps.

The general description of redistricting and procedures on how to participate must be in English and any applicable language. This information must be maintained for at least ten years after the redistricting process is completed.

Community Outreach

The City must prepare a community outreach plan, which could include the following efforts:

- Advertisements in local media outlets
- Public messaging via social media, the City's website, press releases, and other public communications, in English and Spanish, including social media engagement on the City's social media sites, a webpage on City's website for redistricting information, and press releases
- Public notices posted at various City facilities
- Public notices to City nonprofits, government groups, civil rights organizations, and community groups
- Online Interactive Tools (For example, a designated email address could be established for members of the public to provide input and comments and/or an online form to encourage electronic community participation in both English and Spanish)
- The City's demographer may also provide tools to allow members of the public to draw and submit plans.

In addition, public input will be obtained during all of the required public hearings, both before and after district boundary maps are drawn. Such hearings will include one to be held on a weekend, or after 6 p.m. on a weekday.

ATTACHMENTS

- A. City Council Redistricting Public Meetings Flyer
- B. Website Updates
- C. Redistricting Timeline: 2021-2022



antiochca.gov/district-elections

City Council Redistricting



The City of Antioch is redistricting after the 2020 Census count. The City Council will be holding hearings to receive public input on where district lines should be drawn. Share your specific thoughts, draw a map, or attend a workshop to get involved!

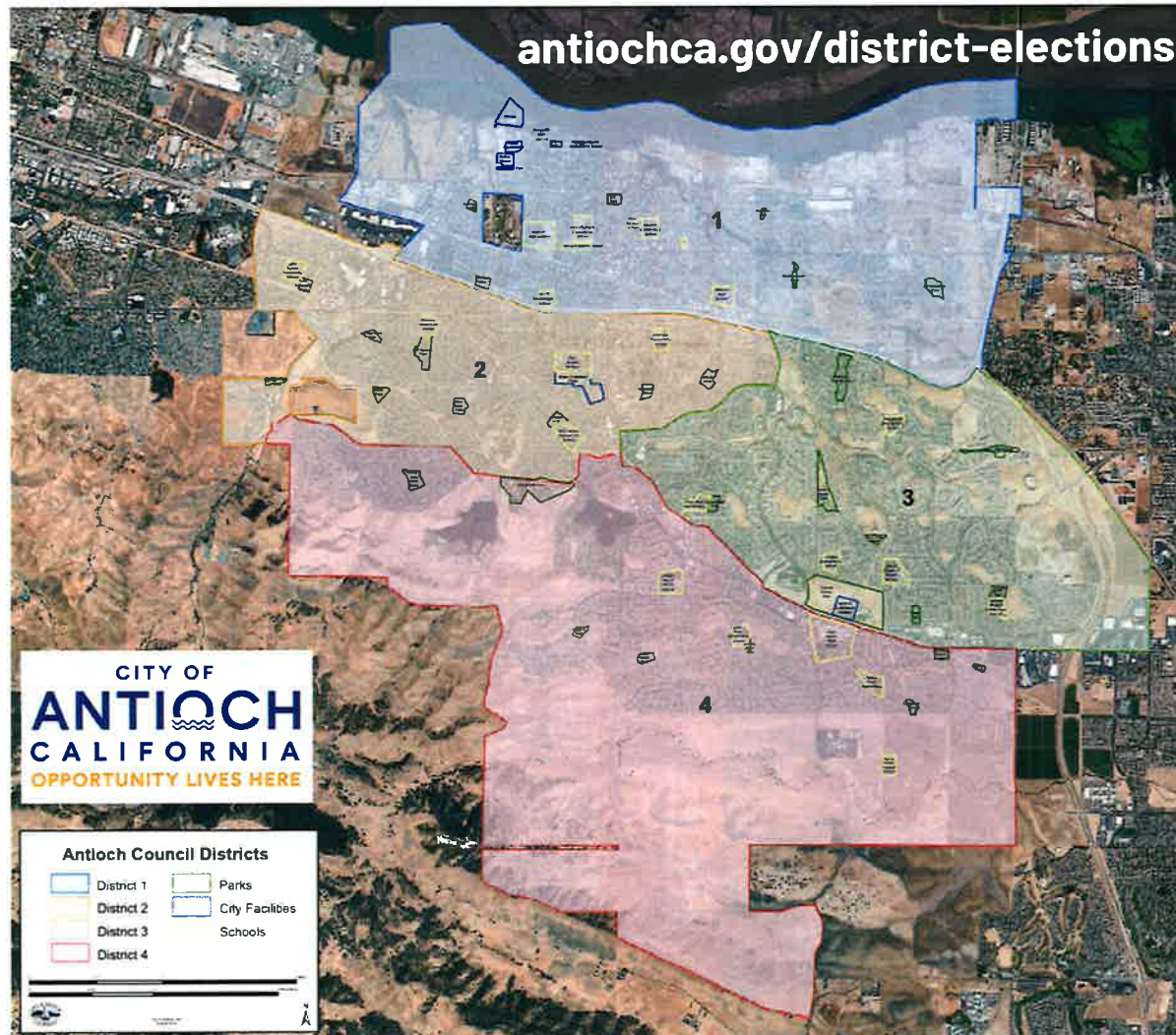
antiochca.gov/district-elections

Redistribución de Distritos del Ayuntamiento

La ciudad de Antioch se está redistribuyendo después del recuento del censo de 2020. El Concejo Municipal llevará a cabo audiencias para recibir comentarios del público sobre dónde se deben trazar las líneas del distrito. ¡Comparta sus pensamientos específicos, dibuje un mapa o asista a nuestro taller para participar!

antiochca.gov/district-elections





**JOIN THE
CONVERSATION**

**UNASE A LA
CONVERSACIÓN**

Redistricting determines which neighborhoods and communities are grouped together into a district for purposes of electing a councilmember.

La redistribución de distritos determina qué vecindarios y comunidades se agrupan en un distrito con el propósito de elegir un concejal.

Learn more
Aprenda más
[antiochca.gov/
district-elections](http://antiochca.gov/district-elections)

Current web address: <https://www.antiochca.gov/district-elections/district-elections/>
Current Council districts: <https://www.antiochca.gov/fc/public-works/gis/council-districts.pdf>
[Website Archive \(screenshots\)](#)

**FIVE days in advance for meetings

**SEVEN days before voting on maps

###

PROPOSED WEBSITE UPDATES

City of Antioch Redistricting Process 2021 *(landing/home page)*



(Alt text: Image of current Antioch City Council Districts with hand holding a red pencil and text that reads "Where do YOU draw the line?")

Every ten years, local governments use new census data to redraw their district lines to reflect how local populations have changed. [Assembly Bill 849 \(2019\)](#) requires cities and counties to engage communities in the redistricting process by holding public hearings and/or workshops and doing public outreach, including to non- English-speaking communities.

The City of Antioch is asking for your help to plan, draw, and redivide new City districts!

The finalized maps that you will help us create will define the six City of Antioch district borders, and these new districts will impact how you elect your councilmembers for the next 10 years.

Our primary goal when developing election districts is to draw lines that respect neighborhood, history and geographical elements. So we want to know: *What do you consider the boundaries of your neighborhood?*

Current District Boundaries:

District 1: Northernmost Council District. The western, northern, and eastern boundaries of this district are the city limits and the southern boundary is Highway 4.

- Schools
- Parks
- Other

District 2: Boundary lines include Highway 4, Davison Drive, Hillcrest, Lone Tree Way, Delta de Anza, James Donlon Boulevard ,and Sommerville Road

- Schools
- Parks
- Other

District 3: Eastern boundary is the city limits. Boundary lines include Highway 4, Lone Tree Way, Davison Drive, and Hillcrest Avenue.

- Schools
- Parks
- Other

District 4: Southernmost Council District. Boundary lines include Sommerville Road, James Donlon Boulevard, Delta de Anza, Lone Tree Way.

- Schools
- Parks
- Other

ANTIOCH CITY COUNCIL DISTRICTS:

To the extent practicable, district lines will be adopted using the following criteria:

- ☐ *Geographically contiguous districts*

EXHIBIT C

LAST UPDATED – 08/27/2021



REDISTRICTING TIMELINE: 2021 - 2022

At least (4) public hearings for the public to provide input (California Elections Code Sections 21620-21629)

- At least one (1) public hearing *before* maps are drawn:
 - Proposal – Sept. 28 or Oct. 12
- At least one (1) public hearing or public workshop shall be held on a Saturday, or Sunday or after 6 p.m. on a weekday:
 - Proposal – Saturday October 16
- At least two (2) public hearings *after* maps are drawn:
 - Proposal – Oct. 26 or Nov. 9
 - Proposal – Dec. 14
- Ordinance
 - Proposal – Jan. 11 for 1st read
 - Proposal – Jan. 25 for adoption

REDISTRICTING TIMELINE – 2021 to 2022			
DATE	MEETING TYPE	ACTION	MEDIA & LINKS
Tuesday July 27, 2021	Regularly scheduled Council meeting	Introduction to the redistricting process presentation.	[insert PPT]
Tuesday Sept. 14, 2021	Regularly scheduled Council meeting	Confirm Redistricting timeline with Council	[City Attorney Staff Report]
September 20, 2021	2021 Redistricting data released by California Statewide Database		

cityclerk@antiochca.gov
P: (925) 779-7009 #5007
F: (925) 779-7007 #5007

OFFICE OF THE CITY CLERK



www.antiochca.gov
200 H Street
Antioch, CA. 94509

Tuesday September 28, 2021 OR October 12, 2021	Regularly scheduled Council meeting	Pre-draft map public hearing: Provide information on the process and solicit public input on communities of interest	
Saturday October 16, 2021	Community Workshop - <i>Special Council Meeting?</i>	Community Workshop: Receive input and answer questions before maps are drawn	
Tuesday October 26, 2021 OR November 9, 2021	Regularly scheduled Council meeting	Post-draft map public hearing: Public and council input on initial draft maps	
Tuesday December 14, 2021	Regularly scheduled Council meeting	Second post-draft-map hearing: Public and council deliberation on map options. Council votes for preferred map	
Tuesday January 11, 2022	Regularly scheduled Council meeting	Introduction and 1st Reading of Ordinance; Choose final map.	
Tuesday January 25, 2022	Regularly scheduled Council meeting	Final Adoption/2nd Reading of Ordinance	
April 17, 2022	Statutory deadline for council to adopt a map.		
November 8, 2022	First election with the new Councilmember districts based on 2020 Census		

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OFFICE OF THE CITY CLERK




www.antiochca.gov
200 H Street
Antioch, CA. 94509

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Nickie Mastay, Administrative Services Director 

SUBJECT: Resolution Approving a New Class Specification for Assistant City Attorney, Assigning a Salary Range, and Assigning the Classification to the Management (Senior) Bargaining Unit

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving the New Class Specification for Assistant City Attorney, assigning a salary range, and assigning the classification to the Management (Senior) Bargaining Unit.

FISCAL IMPACT

The salary range (without benefits) for one (1) Assistant City Attorney is \$146,388 - \$177,936. The total annual range of cost of funding (1) Assistant City Attorney is (Step A – Step E) \$272,998 - \$324,839. The cost of this position is included in the General Fund Fiscal Year 2021-23 Budget.

DISCUSSION

The Assistant City Attorney position was approved by City Council on June 22, 2021 with the adoption of the Fiscal Year 2021-23 Budget. This classification will assist the City Attorney's Department to efficiently handle contract review, litigation, ordinance revisions, legal research and overseeing outside legal counsel. Some of the duties include:

- Research and analyze legal issues and statutory and case law; draft and review complex and routine opinions, ordinances, resolutions, contracts, leases, deeds and other legal documents and instruments; approve ordinances, resolutions and contracts as to form and legality.
- Represent the City in civil, criminal, and administrative proceedings and in transactional matters; perform all phases of pretrial, trial and appellate work; develop litigation strategy, prepare briefs, drafts pleadings, motions and arguments, and conduct discovery and depositions; file motions and briefs; represent the City in court.
- Provide legal advice to City departments, City staff, City officials, and certain boards and commissions on a wide range of municipal law; conduct research

and provide opinions and advice regarding the duties, powers, functions and obligations of City departments and related bodies.

- Review insurance information and contracts submitted by all City departments to the City Attorney's Office.

Please refer to Attachment A – Exhibit 1 for the Assistant City Attorney Class Specification.

ATTACHMENTS

A. Resolution

Exhibit 1 to Resolution – Assistant City Attorney Class Specification

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING A NEW CLASS SPECIFICATION FOR ASSISTANT CITY ATTORNEY,
ASSIGNING A SALARY RANGE, AND ASSIGNING THE CLASSIFICATION TO THE
MANAGEMENT BARGAINING UNIT**

WHEREAS, the City has an interest in the effective and efficient management of the classification plan;

WHEREAS, City Council has appropriated for and approved this New Classification on June 22, 2021 with the adoption of the Fiscal Year 2021 – 23 Budget;

WHEREAS, for internal equity purposes the recommended salary range for the Assistant City Attorney Classification is \$12,199 - \$14,828 per month;

WHEREAS, the Management (Senior) Bargaining Unit has reviewed and approved the Class Specification; and

WHEREAS, the Assistant City Attorney Class Specification will be assigned to the Management (Senior) Bargaining Unit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

Section 1. The Class Specification for the classification of Assistant City Attorney, attached hereto as "Exhibit 1", is hereby approved and added to the City of Antioch Employees' Classification System;

Section 2. The Assistant City Attorney Classification is hereby assigned a monthly salary range of \$12,199 - \$14,828; and

Section 4. The Assistant City Attorney Classification is hereby assigned to the Management (Senior) Bargaining Unit with Tier 2 Administrative Leave.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ASSISTANT CITY ATTORNEY

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

SUMMARY DESCRIPTION

Under general direction of the City Attorney, provides a wide range of legal services; analyzes complex legal issues, evaluates alternative approaches to problems, and implements sound solutions; prepares legal opinions, pleadings, ordinances, resolutions, contracts, leases, staff reports, and similar documents; represents the City in criminal, civil, and administrative proceedings and in transactional matters; and responds to inquiries from City officials, City staff, community organizations, state and local agencies, and the general public.

DISTINGUISHING CHARACTERISTICS

The Assistant City Attorney is supervised and directed by the City Attorney and exercises technical and functional supervision over administrative support staff, legal staff and legal service providers, though direct supervision and management of support and legal staff is the responsibility of the City Attorney. Employees in this classification are distinguished from the Deputy City Attorney due to the elevated level of decision making associated with complex and specialized legal services. Specialized legal services may be in areas such as: litigation and claims liability, criminal prosecution, employment law, public contracting, planning, zoning and environmental laws, complex transactions, police, fire, Brown Act, first amendment, public records act, conflicts of interest, finance, real estate, public housing, information technology, records retention, state election laws, state and federal law pertaining to public utility law, redevelopment law, federal law and/or risk management. Work may involve assigning, supervising and reviewing the work of subordinate attorneys.

REPRESENTATIVE DUTIES

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

1. Directs specified program area activities of the City Attorney's Office; assigns legal work to subordinate staff and legal service providers then review work for technical accuracy and completeness.
2. Research and analyze legal issues and statutory and case law; draft and review complex and routine opinions, ordinances, resolutions, contracts, leases, deeds and other legal documents and instruments; approve ordinances, resolutions and contracts as to form and legality.
3. Represent the City in civil, criminal, and administrative proceedings and in transactional matters; perform all phases of pretrial, trial and appellate work; develop litigation strategy, prepare briefs, drafts pleadings, motions and arguments, and conduct discovery and depositions; file motions and briefs; represent the City in court.
4. Provide legal advice to City departments, City staff, City officials, and certain boards and commissions on a wide range of municipal law; conduct research and provide opinions and advice regarding the duties, powers, functions and obligations of City departments and related bodies.

CITY OF ANTIOCH
ASSISTANT CITY ATTORNEY (CONTINUED)

5. Respond to staff inquiries regarding the legality of complex and routine issues, questions on policy, interpretation of Antioch Municipal Code, and related matters.
6. Assist code enforcement efforts involving nuisances or uninhabitable properties; prepare notices and orders; follow-up on enforcement efforts; advise City staff.
7. Attend meetings of boards, commissions, and committees as requested by the City Attorney; review staff reports and resolutions including those for the Planning Commission; provide staff with feedback and comments.
8. Review insurance information and contracts submitted by all City departments to the City Attorney's Office.
9. Prepare gun forfeiture petitions for the Police Department; attend hearings and prepare Police Officer witnesses.
10. Prepare oppositions to Pitchess motions and attend related court hearings.
11. Respond to correspondence and public inquiries on legal matters related to City business.
12. Maintain current knowledge of complex and routine legal issues and precedents; attend and participate in professional group meetings; participate in professional development activities; read publications relevant to area of assignment.
13. Assist in department budget preparation and administration.
14. Supervise, train and evaluate assigned staff.
15. Perform related duties as required.

QUALIFICATIONS

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

- Legal principles and practices including civil, criminal, administrative law and procedures, especially as they relate to municipal governments.
- General, municipal, and public contract law.
- Principles, methods and techniques of legal research and investigation.
- Municipal government organization, structure and functional responsibilities.
- Laws, principles and practices related to municipal government and public administration.
- Judicial procedures and rules of evidence.
- Legal precedents and court decisions related to assignments.
- Appellate practices.
- Office procedures, methods, and equipment including computers and applicable software applications.
- Pertinent federal, state, and local laws, codes, and regulations.

Ability to:

- Define legal issues, collect and analyze information, and recommend action.

- Properly interpret and make decisions in accordance with laws, regulations, and policies.
- Prepare clear and concise legal documents, including but not limited to, briefs, ordinances, resolutions, correspondence, and supporting documents.
- Conduct research on legal problems and prepare sound legal opinion.
- Present statements of fact, law, and argument clearly and logically.
- Exercise sound, independent judgment within general policy guidelines and legal parameters.
- Represent the City effectively in hearings, courts of law, and meetings.
- Read, understand, interpret, apply, and explain codes, regulations, and other written materials.
- Effectively perform and administer all phases of City legal work.
- Analyze, appraise, and apply legal principles and precedents to difficult legal problems.
- Demonstrate effective leadership, set priorities and meet deadlines.
- Develop and implement goals, objectives, policies, procedures, work standards and internal controls.
- Draw valid conclusions and project consequences of decisions and recommendations.
- Analyze situations and make quick decisions requiring sound judgement.
- Negotiate with other parties.
- Establish and maintain accurate records, prepare concise, comprehensive reports.
- Act with resourcefulness, courtesy and initiative.
- Operate office equipment including computers and supporting software applications.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain effective working relationships with employees, public officials, community organizations, the general public and those contacted in the course of work.

Education and Experience Guidelines

Education/Training:

Graduation from a law school accredited by the American Bar Association with a Juris Doctorate degree, and,

Experience:

Four years of progressively responsible experience performing legal work. Experience in specialized legal matters such as those pertaining to litigation and claims liability, criminal prosecution, human resources, employment law, complex transactions, police, fire, Brown Act, first amendment, public records act, conflicts of interest, finance, real estate, public housing, information technology, records retention, state election laws, public utilities, redevelopment, and/or risk management is highly desirable. Prior experience in the practice of municipal or other government law is desirable.

License or Certificate:

Current membership in the California State Bar.

PHYSICAL DEMANDS AND WORKING ENVIRONMENT

The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

Environment: Work is performed primarily in a standard office setting.

Physical: Primary functions require sufficient physical ability and mobility to work in an office setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; and to verbally communicate to exchange information.

FLSA: Exempt

Created: September 2021


This class specification identifies the essential functions typically assigned to positions in this class. Other duties not described may be assigned to employees in order to meet changing business needs or staffing levels but will be reasonably related to an employee's position and qualifications. Other duties outside of an individual's skill level may also be assigned on a short term basis in order to provide job enrichment opportunities or to address emergency situations.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Nickie Mastay, Administrative Services Director 

SUBJECT: Resolution Assigning the Class Specification of Deputy City Attorney to the Management (Mid/Professional) Bargaining Unit

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution assigning Class Specification of Deputy City Attorney to the Management (Mid/professional) Bargaining Unit.

FISCAL IMPACT

Adopting this resolution has no fiscal impact.

DISCUSSION

Currently, the Deputy City Attorney class specification is assigned to the Management (Senior) Bargaining Unit. With the addition of the Assistant City Attorney class specification to the Management (Senior) Bargaining Unit, it is necessary to assign the Deputy City Attorney class specification to the Management (Mid/Professional) Bargaining Unit.

ATTACHMENT

A. Resolution

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ASSIGNING THE CLASS SPECIFICATION OF DEPUTY CITY ATTORNEY TO THE
MANAGEMENT BARGAINING UNIT**

WHEREAS, the City has an interest in the effective and efficient management of the classification plan;

WHEREAS, the Assistant City Attorney Class Specification is assigned to the Management (Senior) Bargaining Unit; and

WHEREAS, for internal equity purposes it is necessary to assign the Deputy City Attorney to the Management (Mid/Professional) Bargaining Unit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

Section 1. The Class Specification for the classification of Deputy City Attorney is assigned to the Management (Mid/Professional) Bargaining Unit with Tier 3 Administrative Leave.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Discussion Item: Proposed Ordinance Amending §9-5.2507 of the Antioch Municipal Code Regarding Rules of Procedure for the Timing of Recommendations by the Planning Commission

RECOMMENDED ACTION

It is recommended that the City Council provide direction concerning whether staff should return with an ordinance limiting the time the Planning Commission has to deliver recommendations to the City Council.

FISCAL IMPACT

There is no projected fiscal impact for the City.

DISCUSSION

State law grants the discretion to a city council to form, or not to form, a planning commission. (Government Code §65100.) When a city council exercises its discretion to create a planning commission, the city council may establish rules, procedures, or standards for the planning commission, provided they do not conflict with state or federal law. (Government Code §65102.)

State law requires that, even if a city council creates a planning commission, the city council is the final decision-maker on a variety of land use issues, such as the adoption of general plan amendments, zoning ordinances, and development agreements. (See e.g., Government Code §§65350 *et seq.*, 65800 *et seq.*, and 65864 *et seq.*) State law recognizes that matters under consideration by a planning commission that will ultimately be decided by the city council should be reviewed by the planning commission in a timely manner and forwarded to the city council for review and final action (See e.g., Government Code §65853.)

Timely review and processing of land use matters is important to the City's ability to attract new and expanded commercial, industrial, and residential development key to the City's viability. Unreasonable delay may result in projects, beneficial to the City's residents and businesses going to neighboring cities.

The proposed ordinance would amend the Antioch Municipal Code §9-5.2507 to grant the Planning Commission up to sixty days to make a written recommendation to the City Council on any properly noticed and agendaized agenda item before the Planning Commission where the City Council, and not the Planning Commission, is the final decision maker. If the Planning Commission does not take action on the agenda item resulting in a written recommendation to the City Council within the sixty-day period, the proposed ordinance specifies that the Planning Commission's written recommendation shall be deemed as "refer to the City Council for review and possible action." Any findings or other information required by state law or the Antioch Municipal Code to be included in the referral to the City Council shall be incorporated from the staff report for the Planning Commission, which accompanied the agenda item. For those matters initiated by a project applicant, the project applicant can request more time in addition to the sixty days.

ATTACHMENTS

None.


CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Nickie Mastay, Administrative Services Director

APPROVED BY: Ron Bernal, City Manager 

SUBJECT: Resolution Adopting the Options of the COVID-19 Mandatory Testing and Vaccination Policy

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution for the Options of the COVID-19 Mandatory Testing and Vaccination Policy.

FISCAL IMPACT

Costs related to this policy are unknown at this time. Costs may include, but may not be limited to, the cost of weekly testing, the cost of a third part to administer the test, mileage, loss in productivity.

DISCUSSION

During the August 24, 2021 City Council meeting, the City Council directed staff to return to Council with a resolution requiring vaccination or weekly testing for employees, contractors and volunteers with costs borne by the City, time to do so would be limited to a certain duration, and the policy would include a start and end date.

ATTACHMENT

A. Resolution

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ADOPTING A COVID-19 TESTING AND VACCINATION POLICY**

WHEREAS, the City has an interest in protecting the health, safety, and welfare of City personnel, community members with whom City personnel interact, and all residents and visitors of the City;

WHEREAS, many City employees come in close contact with members of our community as part of their daily job duties and this often includes members of our community who are unable to receive the COVID-19 vaccine at this time, such as children under the age of twelve, or those with medical conditions contraindicated for the vaccine;

WHEREAS, all City of Antioch employees are designated to be Disaster Service Workers under California Government Code sections 3100-3109 and are required to return to work during an emergency;

WHEREAS, all City employees shall either be vaccinated for COVID-19 or be subject to weekly COVID-9 testing requirements; and

WHEREAS, this policy is an effective way to ensure that City personnel do not pose harm to the public or other employees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

Section 1. The COVID-19 Testing and Vaccination Policy shall address: vaccinations; weekly testing for City employees and contracted personnel at the City's expense for a specified duration that commences on October 1, 2021.

Section 2. Policy implementation shall be administratively executed by the City Manager and incorporate any applicable Federal, State and local policy directives on an ongoing basis.

* * * * *

RESOLUTION NO. 2021/**

September 14, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 14th day of September 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:


**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 14, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Nickie Mastay, Administrative Services Director 

SUBJECT: League of California Cities Annual Conference Resolutions Packet

RECOMMENDED ACTION

It is recommended that the City Council review and discuss the League of California Cities Annual Conference Resolutions Packet and provide direction to the voting delegate (Councilmember Barbanica).

FISCAL IMPACT

There is no fiscal impact.

DISCUSSION

At the December 8, 2020 City Council meeting, the City Council appointed Councilmember Barbanica as our 2021 Voting Delegate for the League of California Cities Annual Conference. Councilmember Barbanica will be representing Antioch's vote on two (2) resolutions before the League General Assembly. This is the opportunity for the City Council to discuss the resolutions and provide direction to Councilmember Barbanica as to the City's intended vote. The resolutions are:

- 1) Resolution of the League of California Cities ("Cal Cities") Calling on the State Legislature to Pass Legislation that Provides for a Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax from In-State Online Purchases, Based on Data where Products are Shipped to, and that Rightfully Takes into Consideration the Impacts that Fulfillment Centers have on Host Cities but also Provides a Fair Share to California Cities that do not and/or cannot have a Fulfillment Center within their Jurisdiction.
- 2) A Resolution Calling Upon the Governor and the Legislature to Provide Necessary Funding for CPUC to Fulfill its Obligation to Inspect Railroad Lines to Ensure that Operators are Removing Illegal Dumping, Graffiti and Homeless Encampments that Degrade the Quality of Life and Results in Increased Public Safety Concerns for Communities and Neighborhoods that Abut the Railroad Right-of-Way.

The background and analysis of these resolutions are included in the attached packet.

ATTACHMENTS

- A. League of California Cities Annual Conference Resolutions Packet



RECEIVED

AUG 23 2021

**CITY OF ANTIOCH
CITY CLERK**

**2020-2021
CAL CITIES OFFICERS**

August 6, 2021

President

Cheryl Viegas Walker
Mayor,
El Centro

TO: Mayors, City Managers and City Clerks

RE: Cal Cities 2021 Annual Conference Resolution Packet
Notice of Cal Cities Annual Meeting

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Attached is the 2021 Resolutions Packet for the League of California Cities' 2021 Annual Conference & Expo being held September 22 - 24 in Sacramento. The conference announcement has been sent to all cities and we hope that you and your colleagues will be able to attend. More information about the conference is available on Cal Cities website at www.calcities.org. We look forward to welcoming city officials to the conference.

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

Resolutions: Two resolutions have been submitted for Cal Cities members to consider. The attached packet contains the proposed resolutions along with background materials provided by the sponsors, supporting letters from cities and city officials, and the Cal Cities staff analysis for the resolutions. The packet also includes detailed information on Cal Cities resolution process. The resolution packet also is posted on Cal Cities website, www.calcities.org/resolutions, for your convenience.

**Executive Director
and CEO**

Carolyn M. Coleman

Voting Delegates: In order to vote during the General Assembly, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event the designated voting delegate is unable to serve in that capacity. If your city has not already done so, please complete the Voting Delegate form located on the Cal Cities website www.calcities.org/resolutions under the "voting delegates" section, and email it to Darla Yacub at dyacub@calcities.org by Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference. The Closing Luncheon and General Assembly will be held on Friday, September 24, at 12:30 p.m.

We encourage each city council to consider the resolution and to determine a city position so that your voting delegate can represent your city's position on the resolution. Should you have any questions regarding the attached material, please contact Meg Desmond at mdesmond@calcities.org or by phone at 916-837-6822.



*Annual Conference
Resolutions Packet*

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number Key Word Index Reviewing Body Action

		1	2	3
--	--	---	---	---

1 - Policy Committee Recommendation
to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

KEY TO ACTIONS TAKEN

- | | |
|-----|---|
| A | Approve |
| D | Disapprove |
| N | No Action |
| R | Refer to appropriate policy committee for study |
| a | Amend+ |
| Aa | Approve as amended+ |
| Aaa | Approve with additional amendment(s)+ |
| Ra | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+ |
| Da | Amend (for clarity or brevity) and Disapprove+ |
| Na | Amend (for clarity or brevity) and take No Action+ |
| W | Withdrawn by Sponsor |

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. **RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES") CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION**

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background Information to Resolution

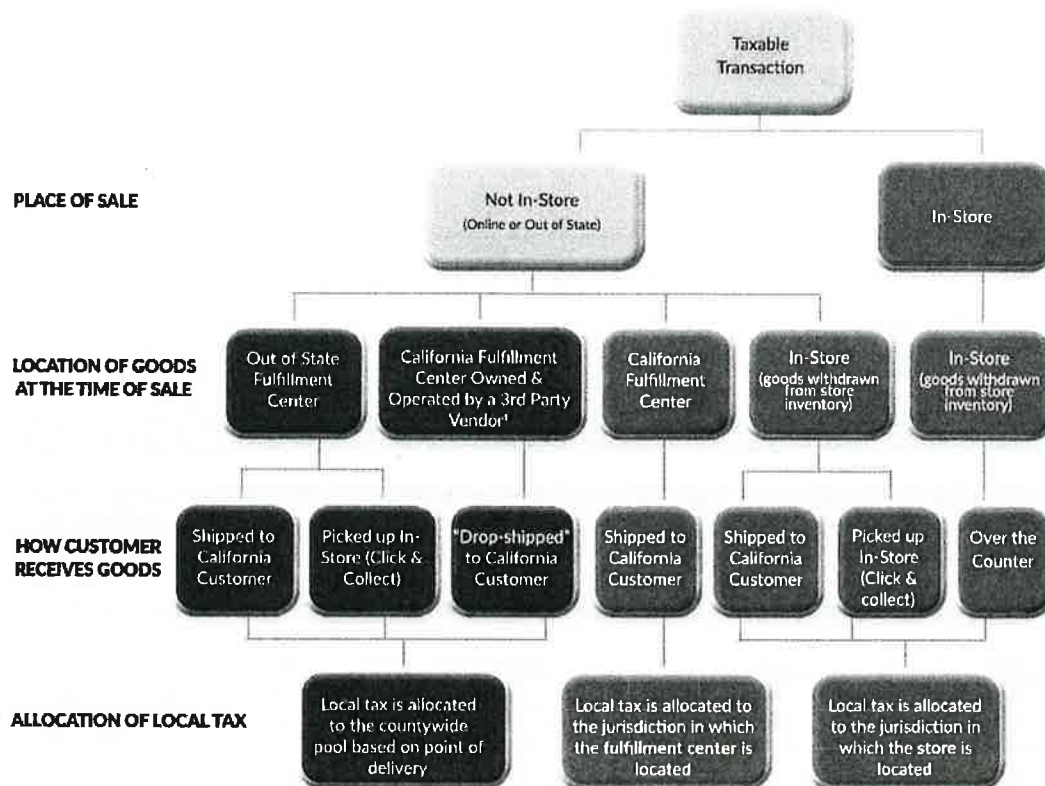
Source: City of Rancho Cucamonga

Background:

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

LETTERS OF CONCURRENCE
Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

A handwritten signature in dark ink, appearing to read "Curt Emick", written in a cursive style.

Curt Emick
Mayor

July 21, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Fadelli". The signature is fluid and cursive, with the first name "Paul" and last name "Fadelli" clearly distinguishable.

Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
City of Rancho Cucamonga



City Council
Terry Walker, Mayor
Keith Eich, Mayor Pro Tem
Jonathan C. Curtis
Michael T. Davitt
Richard B. Gunter III

July 14, 2021

Ms. Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private

Ms. Cheryl Viegas Walker, President

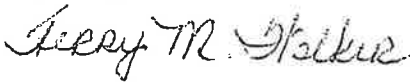
July 14, 2021

Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terry M. Walker". The signature is written in a cursive, flowing style.

Terry Walker

Mayor



CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599
www.cityoflaverne.org

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Community Services 909/596-8700
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

July 19, 2021
Re: Online Sales Tax Equity Support
Page 2

especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Russi", with a stylized flourish at the end.

Bob Russi
City Manager
City of La Verne

Steve C. Kelly
Vice Mayor

David L. Smith
Council Member



Jeff Wood
Mayor

Vicki L. Stuckey
Council Member

India Rogers
Council Member

July 15, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

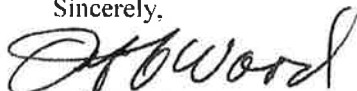
Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,


Jeff Wood
Mayor

Lakewood



CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

TRANSMITTED ELECTRONICALLY

Cheryl Viegas-Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,

A handwritten signature in cursive script, reading "Janice S. Parvin".

Janice S. Parvin
Mayor

cc: City Council
City Manager

The People are the City

Mayor

CRAIG S. GREEN

Mayor Pro Tem

CHAD P. WANKE

Councilmembers:

RHONDA SHADER

WARD L. SMITH

JEREMY B. YAMAGUCHI



City Clerk:

ROBERT S. MCKINNELL

City Treasurer

KEVIN A. LARSON

City Administrator

DAMIEN R. ARRULA

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

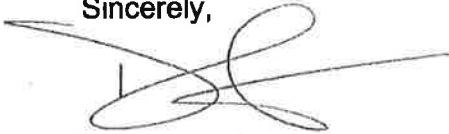
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

Letter of Support: City of Rancho Cucamonga
July 14, 2021
Page 2 of 2

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at administration@placentia.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Damien R. Arrula', with a long horizontal line extending to the right.

Damien R. Arrula
City Administrator

SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager


City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,


Leyne Milstein (Jul 19, 2021 14:48 PDT)

Leyne Milstein
Assistant City Manager

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:

The City of Rancho Cucamonga is sponsoring this resolution to *"address the issues in how sales and use taxes are distributed in the 21st century."*

The City notes that *"sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances."*

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers."

The City's resolution calls for action on an unspecified solution that *"rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,"* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer's physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller's business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business' sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives - either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "The Bradley-Burns Tax and Local Transportation Funds, noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013). Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support:

The following letters of concurrence were received:

Town of Apple Valley
City of El Cerrito
City of La Canada Flintridge
City of La Verne
City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento

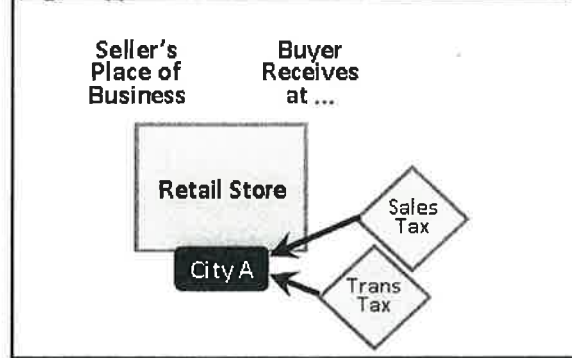
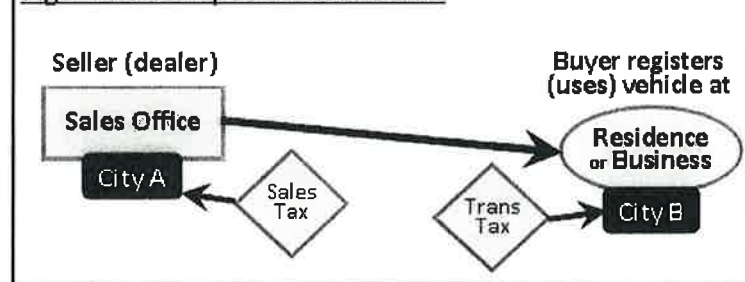
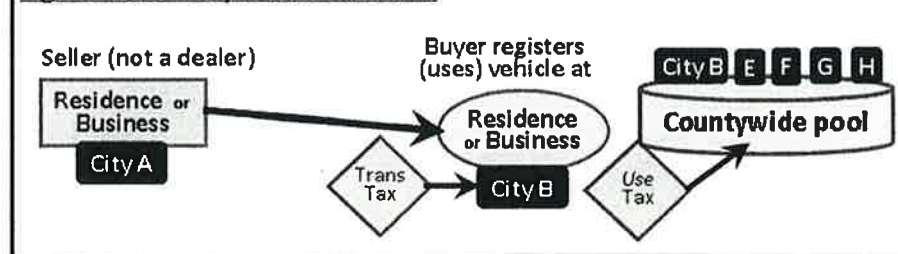
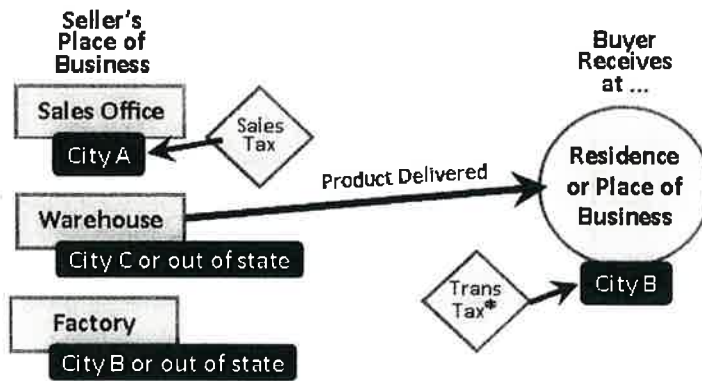
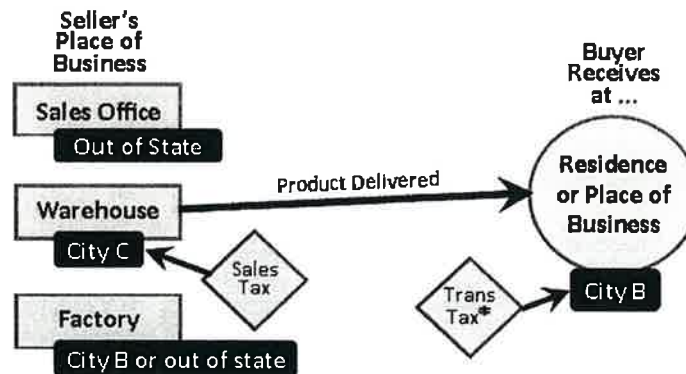
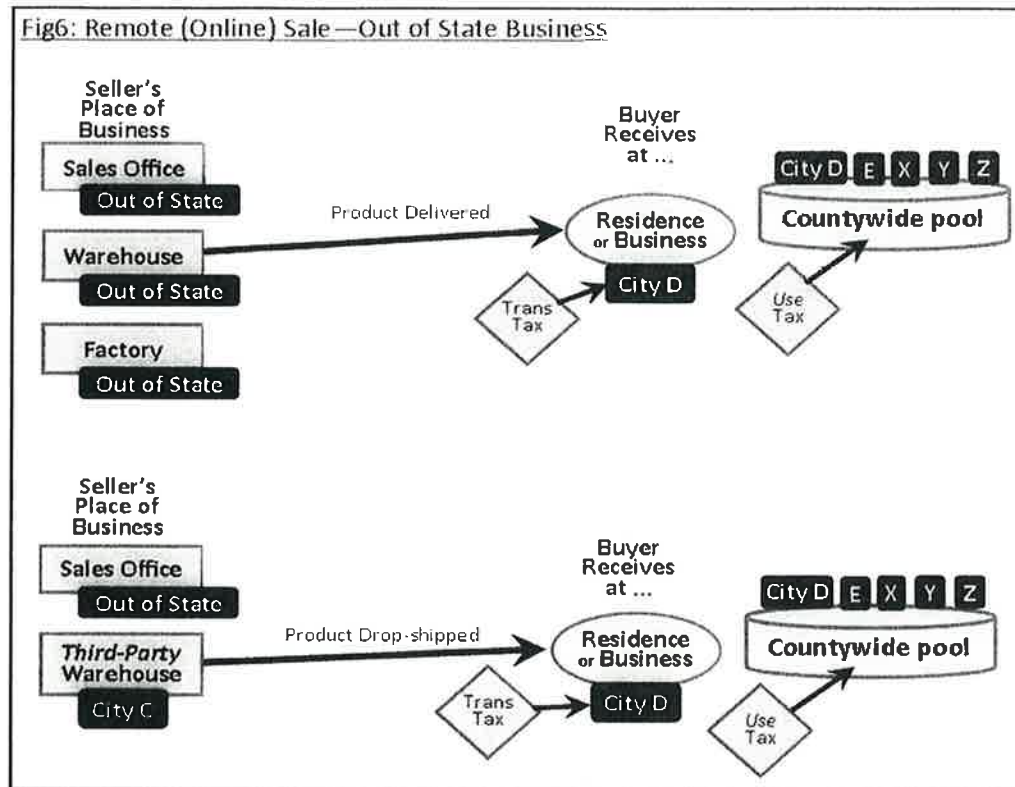
Fig1: Typical "Over the Counter" Transaction**Fig2: Dealership Automobile Sale****Fig3: Private Party Automobile Sale**

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

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

Fig5: Remote (Online) Sale—In-State Warehouse, Out-of-State Sales Office

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



GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE			
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online - Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online - Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.⁶

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

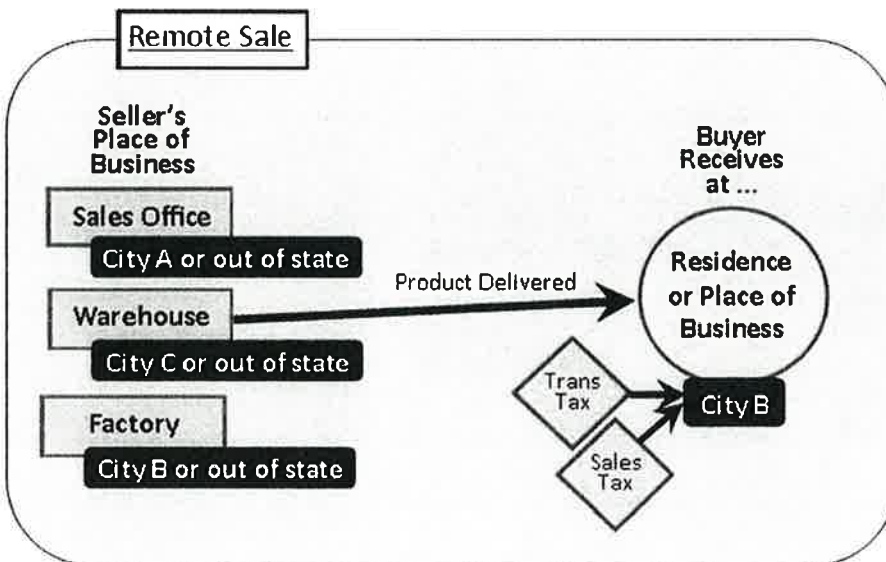
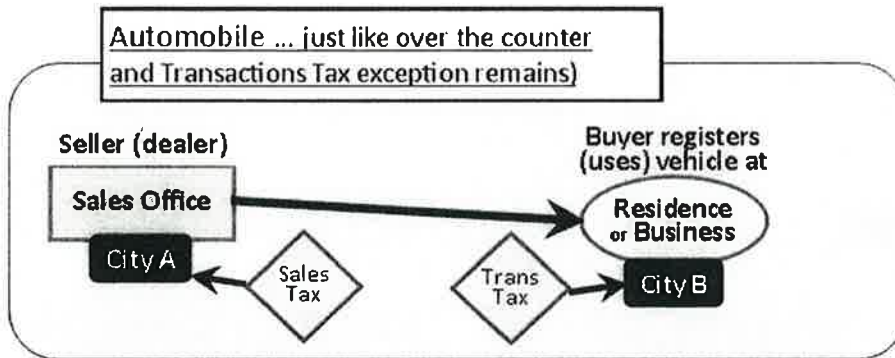
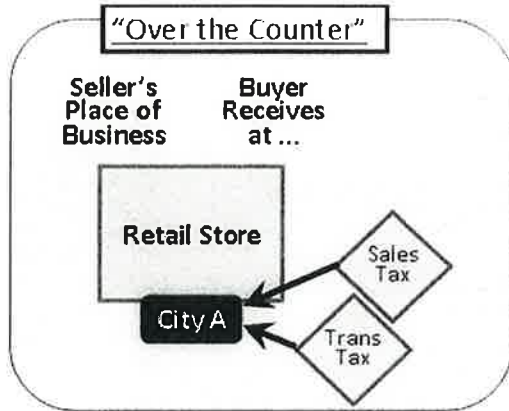
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

⁶ See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

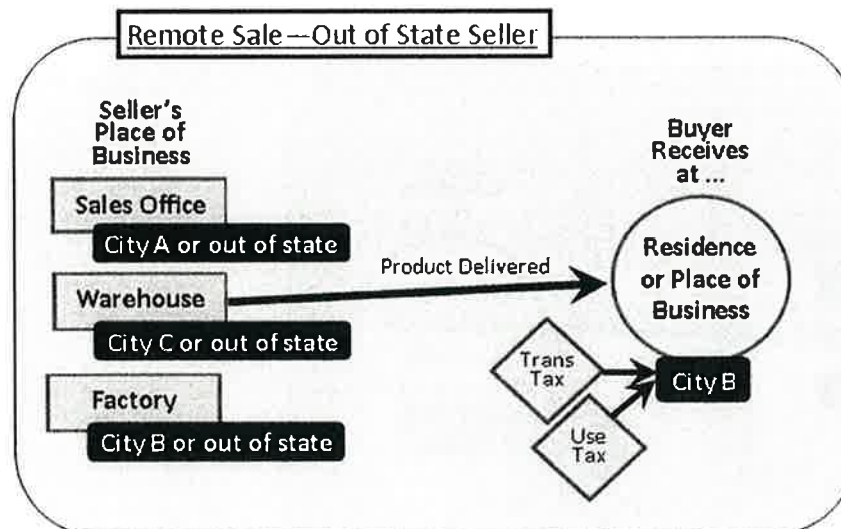
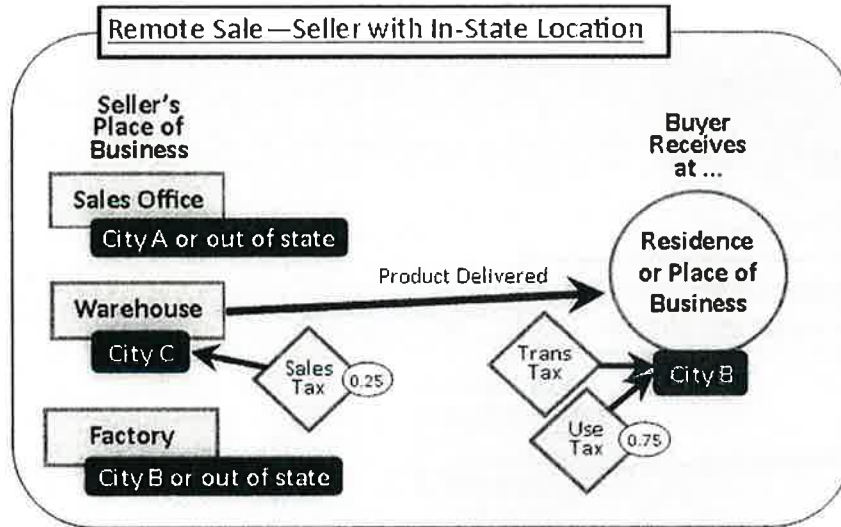
⁷ The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

Destination Sourcing Scenario 1: Full-On



Destination Sourcing Scenario 2: Split Source

- Same as now for "over the counter" and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where the warehouse fulfillment centers ~~is~~ are located as opposed to going into ~~a~~ countywide pools that ~~is~~ are shared with all jurisdictions in ~~those counties that County~~, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by them center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:

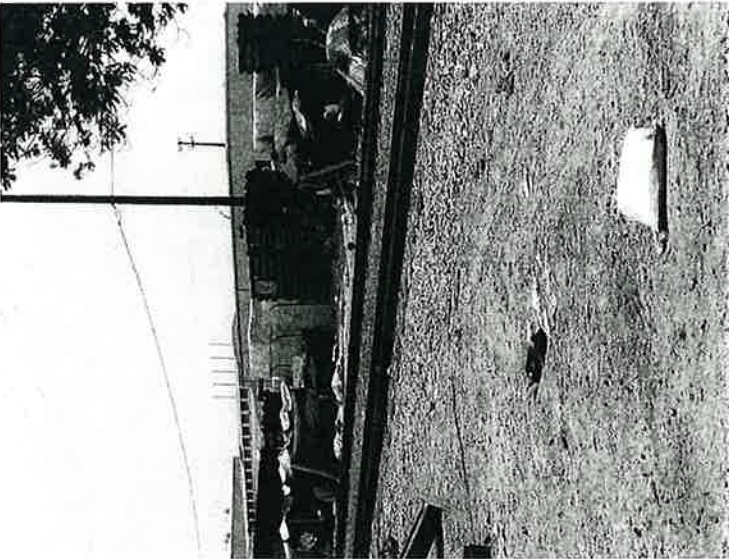
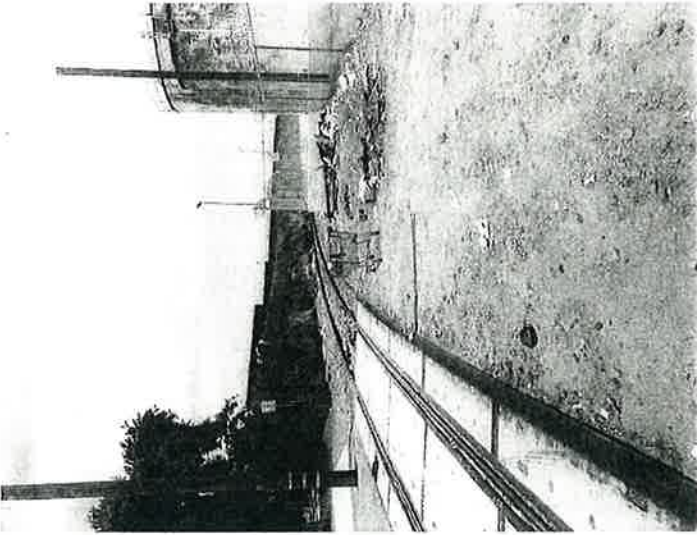
The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

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



LETTERS OF CONCURRENCE
Resolution No. 2



City of
BELL GARDENS

7100 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



City of
BELL GARDENS

7200 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Liseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

Liseth Flores

Liseth Flores
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division,



CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Railroad Oversight Annual Conference Resolution

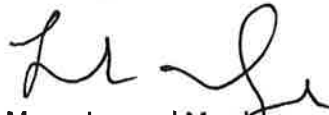
President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at ecisneros@ci.commerce.ca.us or at 323-722-4805, should you have any questions.

Sincerely,



Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

5220 Santa Ana Street
Cudahy, California 90201
(323)773-5143

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,



Jose Gonzalez
Mayor

CC: Chris Jeffers, City Manager, City of South Gate



City of El Segundo

Office of the Mayor

July 16, 2021

Elected Officials:

Drew Boyles,
Mayor
Chris Pimentel
Mayor Pro Tem
Carol Piraztlik,
Council Member
Scot Nicol,
Council Member
Lance Gfroux,
Council Member
Tracy Weaver,
City Clerk
Matthew Robinson,
City Treasurer

Appointed Officials:

Scott Minkick,
City Manager
Mark D. Hensley,
City Attorney

Department Directors:

Barbara Voss
Deputy City Manager
Joseph Lillo,
Finance
Chris Donovan,
Fire Chief
Charles Mallory,
Information Technology
Services
Melissa McCollum,
Community Services
Rebecca Redyk,
Human Resources
Dennis Cook,
Interim Development Services
Jamie Bermudez,
Interim Police Chief
Elias Sassoon,
Public Works

www.elsegundo.org
www.elsegundobusiness.com
www.elsegundo100.org

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles
Mayor of El Segundo

CC: City Council, City of El Segundo
Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
Jeff Kleman, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813
Phone (310) 524-2302 Fax (310) 322-7137



CITY OF GLENDORA CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL
CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at araymond@ci.vofglendora.org or (626) 914-8201.

Sincerely,

Karen K. Davis
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

PRIDE OF THE FOOTHILLS



Office of the Mayor

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Graciela Ortiz", is written over a light blue horizontal line.

Graciela Ortiz
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Enclosure(s)



CITY OF LA MIRADA
DEDICATED TO SERVICE

13700 La Mirada Boulevard
La Mirada, California 90638
P.O. Box 828
La Mirada, California 90637-0828
Phone: (562) 943-0131 Fax: (562) 943-1464
www.cityoflamirada.org

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Ed Eng
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Ed Eng, EdD
Mayor

Anthony A. Otero, DPPD
Mayor Pro Tem

Steve De Ruse, D. Min.
Councilmember

John Lewis, Esq.
Councilmember

Andrew Sarega
Councilmember

Jeff Boynton
City Manager

July 22, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate's proposed resolution for the League of California Cities' (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to **increase oversight of rail operators' land maintenance**. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City's Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate's proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



OFFICE OF THE
MAYOR
MARISELA SANTANA

City of
LYNWOOD

Incorporated 1921

1330 Ballis Road, Lynwood, CA 90262
(310) 603-0220 x 200



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,



Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Resolution in Support of City of South Gate Annual Conference Resolution

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



BRENDA OLMOS
Mayor

VILMA CUELLAR STALLINGS
Vice Mayor

ISABEL AGUAYO
Councilmember

LAURIE GUILLEN
Councilmember

PEGGY LEMONS
Councilmember

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

**RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL
ASSEMBLY RESOLUTION**

President Walker:

The City of Paramount supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.

Dedicated to providing fiscally responsible services that maintain a vibrant community.

16400 Colorado Avenue • Paramount, CA 90723-5012 • Ph: 562-220-2000 • paramountcity.com
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Steve Carmona
City Manager

City of Pico Rivera
OFFICE OF THE CITY MANAGER
6615 Passons Boulevard · Pico Rivera, California 90660
(562) 801-4371

Web: www.pico-rivera.org e-mail: scastror@pico-rivera.org

City Council

Raul Elias
Mayor
Dr. Monica Sánchez
Mayor Pro Tem
Gustavo V. Camacho
Councilmember
Andrew C. Lara
Councilmember
Erik Lutz
Councilmember

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Pico Rivera supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

City Manager
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
Jason Rhine, Assistant Director, Legislative Affairs
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
Housing, Community, and Economic Development

Summary:

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of Commission GO 118-A, which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

Commission GO 26-D, which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

According to the 2020 Annual Homeless Assessment Report (AHAR) to Congress, there has been an increase in unsheltered individuals since 2019. More than half (51 percent or 113,660 people) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the Federal Railroad Administration over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to compel railroad companies to increase their efforts to address homeless encampments on their railroads or grant a local authority's application for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:

Public Safety:

Grffiti

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works

Transportation

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:

The following letters of concurrence were received:

City of Bell Gardens
City of Bell
City of Commerce
City of Cudahy
City of El Segundo
City of Glendora
City of La Mirada
City of Paramount
City of Pico Rivera
City of Huntington Park
City of Long Beach
City of Lynwood
City of Montebello

ATTACHMENT A

2. **A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECESSARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.**

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission~~ (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the Cal Cities League~~ calls for the Governor and the Legislature to work with the Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.