



CITY COUNCIL REGULAR MEETING AGENDA

CITY COUNCIL CHAMBERS, CITY HALL
7351 ROSANNA STREET, GILROY, CA
95020

MAYOR
Greg Bozzo

COUNCIL MEMBERS
Dion Bracco
Tom Cline
Terence Fugazzi
Zach Hilton
Carol Marques
Kelly Ramirez

MONDAY, FEBRUARY 3, 2025 | 6:00 PM

CITY COUNCIL PACKET MATERIALS ARE AVAILABLE ONLINE AT www.cityofgilroy.org
AGENDA CLOSING TIME IS 5:00 P.M. THE TUESDAY PRIOR TO THE MEETING

PUBLIC COMMENTS ON AGENDA ITEMS ARE TAKEN BEFORE THE CITY COUNCIL TAKES ACTION. [Please keep your comments to 3 minutes](#). Time restrictions may vary based on the Mayor's discretion.

Send written comments on any agenda item to publiccomments@cityofgilroy.org or City Hall, 7351 Rosanna Street, Gilroy, CA 95020. Comments received by 1 p.m. on the meeting day will be distributed to the City Council before the meeting. Comments are also available at bit.ly/3NuS1IN.



In compliance with the Americans with Disabilities Act, the City will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Clerk's Office at least 72 hours prior to the meeting at (408) 846-0204 or cityclerk@cityofgilroy.org to help ensure that reasonable arrangements can be made.



If you dispute any planning or land use decision from this meeting in court, you may only raise issues you or someone else presented at this meeting's public hearing or in written letters to the City Council before the hearing. Be aware that the time to seek a judicial review of any final decision made at this meeting is defined by Section 1094.6 of the California Code of Civil Procedure.

During this meeting, a Closed Session may be called under Government Code Section 54956.9 (d)(2). This will happen if, in the City's legislative body's opinion (based on current facts, circumstances, and legal advice), there's a significant risk of a lawsuit against the City.

Additional materials submitted after agenda distribution are available on www.cityofgilroy.org as soon as possible.

KNOW YOUR RIGHTS UNDER THE GILROY OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, task forces, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE, TO RECEIVE A FREE COPY OF THE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION STAFF AT (408) 846-0204.

If you need translation assistance, contact the City Clerk 72 hours before the meeting at 408-846-0204 or cityclerk@cityofgilroy.org.

Si necesita un intérprete durante la junta y gustaría dar un comentario público, comuníquese con el Secretario de la Ciudad un mínimo de 72 horas antes de la junta al 408-846-0204 o envíe un correo electrónico a la Oficina del Secretario de la Ciudad a cityclerk@cityofgilroy.org.



To access written translation during the meeting, please scan the QR Code or click this link:

Para acceder a la traducción durante la reunión, por favor escanee el código QR o haga clic en el enlace:

bit.ly/3FBiGA0

Choose Language and Click Attend | *Seleccione su lenguaje y haga clic en asistir*

Use a headset on your phone for audio or read the transcript on your device.

Use sus auriculares para escuchar el audio o leer la transcripción en el dispositivo.

The agenda for this meeting is outlined as follows:

- 1. OPENING**
 - 1.1. Call to Order**
 - 1.2. Pledge of Allegiance**
 - 1.3. Invocation**
 - 1.4. City Clerk's Report on Posting the Agenda**
 - 1.5. Roll Call**
 - 1.6. Orders of the Day**
 - 1.7. Employee Introductions**
- 2. CEREMONIAL ITEMS - Proclamations and Awards**
- 3. COUNCIL CORRESPONDENCE (Informational Only)**
 - 3.1. Departmental Workplan Update**
- 4. PRESENTATIONS TO THE COUNCIL**
 - 4.1. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL**

This part of the meeting allows public address on non-agenda topics within the Council's jurisdiction. To speak, complete a Speaker's Card from the entrances and give it to the City Clerk. Speaking time ranges from 1-3 minutes based on the Mayor's discretion. Extended discussions or actions on non-agenda items are restricted by law. For Council action, the topic may be listed on a future agenda.

Email written comments on non-agenda topics to publiccomments@cityofgilroy.org or mail them to City Hall, 7351 Rosanna Street, Gilroy, CA 95020, by 1:00 p.m. on the meeting day. These comments, available at City Hall, will be shared with the Council and included in the meeting record. Late submissions will be shared as soon as possible. A 10-page limit applies to hard-copy materials, but electronic submissions are unlimited.

5. REPORTS OF COUNCIL MEMBERS

Council Member Bracco – Downtown Committee, Santa Clara County Library Joint Powers Authority, Santa Clara Water Commission, Santa Clara Valley Water Joint Water Resources Committee, SCRWA

Council Member Fugazzi – Santa Clara Water Commission (alternate), Silicon Valley Regional Interoperability Authority Board (alternate), SCRWA, Visit Gilroy California Welcome Center, VTA Mobility Partnership Committee

Council Member Marques – ABAG, Downtown Committee, Santa Clara County Library Joint Powers Authority (alternate), Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, SCRWA (alternate)

Council Member Hilton – CalTrain Policy Group, Santa Clara County Expressway Plan 2040 Advisory Board (alternate), Silicon Valley Clean Energy Authority JPA Board, South County Youth Task Force Policy Team (alternate), VTA Policy Advisory Committee

Council Member Ramirez – ABAG (alternate), Gilroy Gardens Board of Directors (alternate), Gilroy Sister Cities, Gilroy Youth Task Force (alternate), SCRWA, Santa Clara Housing and Community Development Advisory Committee

Council Member Cline – CalTrain Policy Group (alternate), Gilroy Sister Cities (alternate), Gilroy Youth Task Force, Santa Clara County Expressway Plan 2040 Advisory Board, Silicon Valley Clean Energy Authority JPA Board (alternate), Silicon Valley Regional Interoperability Authority Board, Visit Gilroy California Welcome Center (alternate), VTA Mobility Partnership Committee, VTA Policy Advisory Committee (alternate)

Mayor Bozzo – Gilroy Gardens Board of Directors, Santa Clara Valley Water Joint Water Resources Committee, South County Youth Task Force Policy Team, VTA Board of Directors (alternate), Santa Clara Housing and Community Development Advisory Committee (alternate)

6. CONSENT CALENDAR

Items under the Consent Calendar are deemed routine and approved with one motion. If a Council member or a member of the public wishes for a separate discussion on an item, it must be requested for removal before the Council's approval vote. If removed, the item will be discussed in its original order.

- 6.1. **Authorize the City Administrator to Execute the Grant Agreement Under the Fiscal Year 2024 Safe Streets and Roads for All (SS4A) Grant**
- 6.2. **Adopt a Resolution Approving the City to Enter into the Joint Powers Agreement with the Cities Association of Santa Clara County and Authorizing the City Administrator to Execute the Agreement**

7. BIDS AND PROPOSALS

- 7.1. **Award a Three-Year Contract to Swimming Swan LLC in the Amount of \$816,492.42 to Serve as the Christopher High School Aquatics Center Operator Beginning in 2025 through 2027, with Two, One-Year Extension Options**

1. Staff Report: Bryce Atkins, Assistant to the City Administrator
2. Public Comment
3. Possible Action:
 1. Award a three-year contract with two, one-year extension options to Swimming Swan LLC to serve as the Christopher High School Aquatics Center Operator from 2025 through 2027 in the total amount of \$816,492.42:

\$258,998.39 (Year 1)

\$271,948.31 (Year 2)

\$285,545.72 (Year 3)

\$816,492.42 (3-Year Total)
 2. Authorize the City Administrator to execute the contract and associated documents.

8. PUBLIC HEARINGS

9. UNFINISHED BUSINESS

- 9.1. **Selection and Appointment of Boards, Commissions, and Committee Members**

1. Staff Report: Beth Minor, Interim City Clerk
2. Public Comment
3. Possible Action:

Review the applications and interviews from the candidates and proceed with the formal appointment of suitable candidates to the vacant positions on the following Boards and Commissions: Art and Culture Commission, Library Commission, Library Bond Oversight Committee, Open Government Commission, Parks and Recreation Commission, Personnel Commission, Physically Challenged Commission, Planning Commission, and Youth Commission.

10. INTRODUCTION OF NEW BUSINESS

10.1. Review of the City Council Norms

1. Staff Report: Jimmy Forbis, City Administrator
2. Public Comment
3. Possible Action:

Council review the norms.

11. ADJOURN TO THE MEETING OF THE GILROY PUBLIC FACILITIES FINANCING AUTHORITY

12. OPENING (GILROY PUBLIC FACILITIES FINANCING AUTHORITY)

12.1. Call to Order

12.2. Roll Call

13. CONSENT CALENDAR (GILROY PUBLIC FACILITIES FINANCING AUTHORITY)

13.1. Approval of the Action Minutes of the March 4, 2024 Gilroy Public Facilities Financing Authority Meeting

13.2. Adoption of a Resolution Setting the Budget for Fiscal Year 2025-26

14. ADJOURN TO THE MEETING OF THE GILROY CITY COUNCIL

15. FUTURE COUNCIL INITIATED AGENDA ITEMS

16. CITY ADMINISTRATOR'S REPORTS

16.1. Santa Teresa Fire Station Update

17. CITY ATTORNEY'S REPORTS

18. CLOSED SESSION

18.1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec. 17A.8
Property: Gilroy Gardens Theme Park, 3050 Hecker Pass Highway, Gilroy, CA (APN's: 810-17-024, 810-17-026, 810-17-029, 810-17-030, 810-17-031, 810-18-002, 810-18-013, 810-19-005, 810-19-007, 810-19-010, 810-19-011, 810-19-014)
Negotiators: Jimmy Forbis, City Administrator; Victoria Valencia, Economic Development Manager
Other Party to Negotiations: Gilroy Gardens Family Theme Park, LLC
Under Negotiations: Price and terms of payment for sale or lease.

18.2. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION. Pending Litigation Pursuant to Paragraph (1) of Subdivision (d) of Government Code Section 54956.9 and Gilroy City Code Section 17A.11 (3) (a), Gandolfi Investments, LLC v. City of Gilroy, et.al., Superior Court for the County of Santa Clara, Case Number 24CV444165, filed July 26, 2024.

18.3. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION.
Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) and Paragraph (3) of Subdivision (e) of Government Code Section 54956.9 and Gilroy City Code Section 17A.11 (3) (b), based upon receipt of a written communication from Shenkman & Hughes, PC (available for inspection upon request at the office of the City Clerk). One case as defendant.

18.4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec. 17A.8
Properties: APNs 841-10-010 and 841-10-028
Negotiators: Jimmy Forbis, City Administrator
Other Party to Negotiations: Jessup Roberta A Trustee (Jessup Transportation, Inc.)
Under Negotiation: Price and terms of payment

19. ADJOURN TO OPEN SESSION

Report of any action taken in Closed Session and vote or abstention of each Council Member if required by Government Code Section 54957.1 and GCC Section 17A.13(b); Public Report of the vote to continue in closed session if required under GCC Section 17A.11(5).

20. ADJOURNMENT

FUTURE MEETING DATES

February 2025

12 Strategic Planning Study Session – 8:30 AM

24 Regular Meeting/Joint Meeting with GUSD - 6:00 p.m

March 2025

3 Regular Meeting - 6:00 p.m

17 Regular Meeting - 6:00 p.m

April 2025

7 Regular Meeting - 6:00 p.m

21 Regular Meeting - 6:00 p.m

Meetings are live streamed on the City of Gilroy's website at gilroy.city/meetings and on YouTube at <https://bit.ly/45jor03>.

Access the 2025 City Council Meeting Calendar at <https://gilroy.city/2025>.



City of Gilroy

STAFF REPORT

Agenda Item Title: Authorize the City Administrator to Execute the Grant Agreement Under the Fiscal Year 2024 Safe Streets and Roads for All (SS4A) Grant

Meeting Date: February 3, 2025

From: Jimmy Forbis, City Administrator

Department: Public Works

Submitted By: Daniel Padilla, City Engineer

Prepared By: Shaun Wright, Engineer I

STRATEGIC PLAN GOALS

Maintain and Improve City Infrastructure

RECOMMENDATION

Authorize the City Administrator to Execute the Grant Agreement for the Fiscal Year 2024 Safe Streets and Roads for All (SS4A) Grant.

EXECUTIVE SUMMARY

The Safe Streets and Roads for All (SS4A) program, administered by the Federal Highway Administration (FHWA), provides funding to support local agencies in creating safer roadways. The program aims to reduce traffic-related fatalities and serious injuries through initiatives such as action plans and implementation projects. The City was awarded a \$190,000 SS4A grant for the development of a Gilroy Comprehensive Roadway Safety Action Plan (GCRSP), also known as a Local Road Safety Plan (LRSP). Approval to execute the grant agreement is needed to proceed with this project, which will identify and prioritize safety improvements, align with regional plans, and position the City for future funding opportunities.

BACKGROUND

The Safe Streets and Roads for All (SS4A) program, administered by the Federal Highway Administration (FHWA), provides funding to support local agencies in creating safer roadways. The program aims to reduce traffic-related fatalities and serious injuries

through initiatives such as action plans and implementation projects. The City was awarded a \$190,000 SS4A grant for the development of a Gilroy Comprehensive Roadway Safety Action Plan (GCRSP), also known as a Local Road Safety Plan (LRSP). The SS4A grant requires a 20% city match. This results in a maximum city cost of \$47,500 and a maximum total project cost of \$237,500. In October 2024, City Council approved a resolution amending the budget for the City of Gilroy for fiscal year 2024-25 appropriating various grant awards, including the awarded SS4A grant.

The GCRSP will analyze roadway safety conditions and create a prioritized list of improvement projects based on a data-driven and collaborative approach. Developing a local roadway safety plan is a requirement to qualify for additional roadway safety funding opportunities through FHWA and Caltrans.

ANALYSIS

The SS4A grant will fund the development of the GCRSP. The plan will:

- Align with City and regional transportation planning documents such as the City General Plan, Traffic Circulation Master Plan, Caltrans' Strategic Highway Safety Plan, and the Safe Systems approach.
- Analyze collision data and roadway conditions to develop a prioritized list of safety improvements.
- Include funding, implementation, monitoring, and evaluation plans to address systemic traffic safety concerns.
- Be data driven and objective with some opportunities to engage stakeholders and the community to identify traffic safety concerns.

ALTERNATIVES

City Council authorization of the grant agreement is necessary to proceed with the project. Without approval, the City will be unable to accept and use the grant funds, essentially rejecting and terminating the grant.

FISCAL IMPACT/FUNDING SOURCE

The total project cost is estimated at \$237,000. The grant provides a maximum of \$190,000. The City's match will be a maximum of \$47,500 from Fund 205 - Gas Tax; this amount may be reduced by staff time that may be considered for the match.

PUBLIC OUTREACH

Stakeholder engagement will occur during the development of the Gilroy Comprehensive Roadway Safety Action Plan (Local Road Safety Plan).

NEXT STEPS

1. Upon City Council authorization and receipt of the final grant agreement from the SS4A team, the City Administrator will execute it.
2. Staff will issue a Request for Proposals (RFP) to hire a consultant to develop the Gilroy Comprehensive Roadway Safety Action Plan (the City's Local Road Safety Plan)
3. The consultant contract will be brought to the City Council for approval.

Attachments:

1. Draft Grant Agreement

1. Federal Award No.

3. Assistance Listings No. 20.939

5. Sponsoring Office
U.S. Department of Transportation
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue, SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590

6. Period of Performance
Effective Date of Award – [insert date or number of months]

7. Total Amount	
Federal Share:	\$0
Recipient Share:	\$0
Other Federal Funds:	\$0
Other Funds:	\$0
Total:	\$0

9. Authority
Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”)

11. Federal Funds Obligated
[for phased agreement, enter phase number and name]: [Insert Amount \$]

13. Accounting and Appropriations Data
[insert Data]

14. Description of the Project

FEDERAL HIGHWAY ADMINISTRATION

16. Signature of Agreement Officer

Signature _____ Date _____
Name: _____ p. 10 of 221
Title: Agreement Officer

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE

FISCAL YEAR 2024 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

This agreement is between the United States Department of Transportation’s (the “USDOT”) Federal Highway Administration (the “FHWA”) and the [insert full name of applicant] (the “Recipient”).

This agreement reflects the selection of the Recipient to receive a Safe Streets and Roads for All (“SS4A”) Grant for the [insert project name from the application].

The parties therefore agree to the following:

ARTICLE 1

GENERAL TERMS AND CONDITIONS

1.1 General Terms and Conditions.

- (a) In this agreement, “**General Terms and Conditions**” means the content of the document titled “General Terms and Conditions Under the Fiscal Year 2024 Safe Streets and Roads for All (“SS4A”) Grant Program,” which is available at <https://www.transportation.gov/grants/ss4a/grant-agreements> under “Fiscal Year 2024.” Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (b) The Recipient acknowledges that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, termination of the SS4A Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the FHWA the SS4A Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2

2.1 Application.

Application Title: [Insert full title from the submitted application.]

Application Date: [Insert the date in Box 3 of the SF-424 submitted with the application; if Box 3 is blank, use the date the application was submitted, which is located next to the applicant's signature at the bottom of the SF-424.]

2.2 Award Amount.

SS4A Grant Amount: [\$XXX]

2.3 Federal Obligation Information.

[Alternative #1: If all funds are being obligated at once:]

Federal Obligation Type: Single

[Alternative #2: If funds are to be obligated in multiple project phases:]

Federal Obligation Type: Multiple

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
[insert name of first phase (e.g., “Base Phase: Pre-NEPA”)]	[\$XXX]	

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
[insert name of second phase (e.g., “Option Phase 1: Final Design, Right-of-Way, and Utility Relocation”)]	[\$XXX]	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the final design and construction of an Implementation Project unless and until: (1) The requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA’s notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting “preliminary design” as specified in FHWA Order 6640.1A.

Obligation Condition Table		
Phase the Project	Allocation of the SS4A Grant	Obligation Condition
[insert name of third phase (e.g., “Option Phase 2: Construction”)]	[\$XXX]	The Recipient shall not expend any funds (Federal or non-Federal) for, seek reimbursement of eligible costs, or otherwise begin any part of the construction or final design and construction of an Implementation Project unless and until: (1) The requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations have been met; and (2) FHWA, or a State with applicable NEPA Assignment authority, has approved the NEPA document for the Project and provided the Recipient with a written notice that the environmental review process is complete; and (3) FHWA has obligated additional funds for this phase and notified the Recipient in writing that the Recipient may proceed to the next activity after NEPA approval, and the Recipient has acknowledged receipt in writing of FHWA’s notification. Recipient shall not proceed with any such activities until (2) and (3) as described in this section are met. Costs that are incurred before (2) and (3) as described in this section are met are not allowable costs under this agreement. Extent of activities that are permissible before NEPA is complete are those activities constituting “preliminary design” as specified in FHWA Order 6640.1A.

2.4 Budget Period.

[Choose the appropriate one of these two alternatives.]

[**Alternative #1:** If all funds are being obligated at once:]

Budget Period: See Block 6 of Page 1

[**Alternative #2:** If funds are to be obligated in multiple project phases:]

Base Phase Budget Period: [insert start and end dates]

Option Phase 1 Budget Period: [reserved]

Option Phase 2 Budget Period: [reserved]

2.5 Grant Designation.

Designation: [Planning and Demonstration] or [Implementation]

ARTICLE 3 SUMMARY PROJECT INFORMATION

3.1 Summary of Project's Statement of Work.

Drafting Instructions: Provide a summary of the narrative from the grant application. Provide details on the work to be completed. If this project is an action plan, supplemental plan and/or demonstration activity with no changes to the built environment, please provide a planning and demonstration narrative below.

Planning and Demonstration Narrative:

The project will be completed in [one/two/three] phases.

Base Phase: Pre-NEPA: [describe work]

Option Phase 1: Final Design, Right-of-Way, and Utility Relocation: [describe work]

Option Phase 2: Construction: [describe work]

3.2 Project's Estimated Schedule.

Drafting Instructions: Provide the schedule for each significant deliverable from the grant application. The purpose of this section is to ensure that all SS4A funded activities are completed before the end of the Period of Performance and/or the budget period. Use the table(s) that pertain(s) to your project and delete the others. Please add additional action plan schedules if multiple action plans will be developed. It is recommended to estimate ample time for completion of each component of the project, factoring in the time required for grant agreement execution.

Action Plan Schedule

Milestone	Schedule Date
Planned Final Plan Publicly Available Date:	[insert date]
Planned SS4A Final Report Date:	[insert date]

Demonstration Activity Schedule

Milestone	Schedule Date
Planned NEPA Completion Date:	[insert date]
Planned Construction Substantial Completion and Open to Public Use Date:	[insert date]
Planned SS4A Final Report Date:	[insert date]

Supplemental Planning Schedule

Milestone	Schedule Date
Planned Final Plan Publicly Available Date:	[insert date]
Planned SS4A Final Report Date:	[insert date]

Implementation Schedule (Construction)

Milestone	Schedule Date
Planned NEPA Completion Date:	[insert date]
Planned Construction Substantial Completion and Open to Public Use Date:	[insert date]
Planned SS4A Final Report Date:	[insert date]

Implementation Schedule (Non-Construction)

Milestone	Schedule Date
Planned Activity Completion Date:	[insert date]
Planned SS4A Final Report Date:	[insert date]

3.3 Project's Estimated Costs.

Provide the costs from the grant application. Any changes should be documented in Attachment B.

(a) Eligible Project Costs

Eligible Project Costs	
SS4A Grant Amount:	[\$XXX]
Other Federal Funds:	[\$XXX]
State Funds:	[\$XXX]
Local Funds:	[\$XXX]
In-Kind Match:	[\$XXX]
Other Funds:	[\$XXX]
Total Eligible Project Cost:	[\$XXX]

(b) Cost Classification Table – For Planning and Demonstration Grants with demonstration activities and Implementation Grants Only

Drafting Instructions: Utilize the descriptions from the SF-424C (<https://www.grants.gov/forms/forms-repository/sf-424-family>) to determine what cost goes in each row. This table is only needed for Planning and Demonstration Grants with demonstration activities and Implementation Grants.

Cost Classification	Total Costs	Non-SS4A Previously Incurred Costs	Eligible Costs
Administrative and legal expenses			
Land, structures, rights-of-way, appraisals, etc.			
Relocation expenses and payments			
Architectural and engineering fees			
Other architectural and engineering fees			
Project inspection fees			
Site work			
Demolition and removal			
Construction			
Equipment			
Miscellaneous			
Contingency			
Project Total			

[If no costs are anticipated in a category, remove the row from the table. Remove the table if this is a Planning and Demonstration Grant with no demonstration activities.]

(c) Indirect Costs

Indirect costs are allowable under this Agreement in accordance with 2 CFR part 200 and the Recipient's approved Budget Application. In the event the Recipient's indirect cost rate changes, the Recipient will notify FHWA of the planned adjustment and provide supporting documentation for such adjustment. This Indirect Cost provision does not operate to waive the limitations on Federal funding provided in this document. The Recipient's indirect costs are allowable only insofar as they do not cause the Recipient to exceed the total obligated funding.

ARTICLE 4

CONTACT INFORMATION

4.1 Recipient Contact(s).

[Insert information for the person designated as the official contact. This person must be employed by the Recipient organization and shall not be a consultant.]

[enter name]
[enter job title]
[enter organization]
[enter address]
[enter telephone]
[enter email address]

4.2 Recipient Key Personnel.

[Insert name of key personnel who will be responsible for completing the task. Add rows to identify as many key personnel as necessary.]

Name	Title or Position
[Insert name]	[insert title]

4.3 USDOT Project Contact(s).

Safe Streets and Roads for All Program Manager
Federal Highway Administration
Office of Safety
HSSA-1, Mail Stop: E71-117
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-366-2822
SS4A.FHWA@dot.gov

and

Agreement Officer (AO)
Federal Highway Administration
Office of Acquisition and Grants Management
HCFA-42, Mail Stop E62-310
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-493-2402
HCFASS4A@dot.gov

and

Division Administrator – [enter name of State]
Agreement Officer's Representative (AOR)
[enter Division Office address]
[enter Division Office telephone]
[enter Division Office email address]

and

[enter name]
[enter State] Division Office Lead Point of Contact
[enter job title]
[enter address]
[enter telephone]
[enter Division Office Email Address]

ARTICLE 5 USDOT ADMINISTRATIVE INFORMATION

5.1 Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Office of Acquisition and Grants Management

SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the Agreement Officer (the “AO”) are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327. Note: This clause is only applicable to grants that do not include construction.

In accordance with 2 CFR 200.308(f)(6), the recipient or subrecipient shall obtain prior written approval from the USDOT agreement officer for the subaward, if the subaward activities were not proposed in the application or approved in the Federal award. This provision is in accordance with 2 CFR 200.308 (f) (6) and does not apply to procurement transactions for goods and services. Approval will be issued through written notification from the AO or a formal amendment to the Agreement.

The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

5.2 Reimbursement Requests

- (a) The Recipient may request reimbursement of costs incurred within the budget period of this agreement if those costs do not exceed the amount of funds obligated and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall use the DELPHI iSupplier System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.
- (c) The Recipient’s supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient’s share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the Agreement Officer’s Representative (the “AOR”) may withhold processing that request until the Recipient provides sufficient detail.
- (d) The USDOT shall not reimburse costs unless the AOR reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.
- (e) In the rare instance the Recipient is unable to receive electronic funds transfers (EFT), payment by EFT would impose a hardship on the Recipient because of their inability to manage an account at a financial institution, and/or the Recipient is unable to use the DELPHI iSupplier System to submit their requests for disbursement, the FHWA may waive the requirement that the Recipient use the

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DELPHI iSupplier System. The Recipient shall contact the Division Office Lead Point of Contact for instructions on and requirements related to pursuing a waiver.

- (f) The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

ARTICLE 6 SPECIAL GRANT TERMS

- 6.1 SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds, which is the budget period end date in section 10.3 of the Terms and Conditions and section 2.4 in this agreement.
- 6.2 The Recipient demonstrates compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements.
- 6.3 SS4A Funds will be allocated to the Recipient and made available to the Recipient in accordance with FHWA procedures.
- 6.4 The Recipient of a Planning and Demonstration Grant acknowledges that the [Action Plan] [Supplemental Action Plan] will be made publicly available and agrees that it will publish the final [Action Plan] [Supplemental Action Plan] on a publicly available website.
- 6.5 The Recipient of a Planning and Demonstration Grant that involves a demonstration activity agrees to provide an assessment of each demonstration activity and update the existing Action Plan, which will incorporate the information gathered in the Action Plan's list of projects or strategies and/or inform another part of the existing Action Plan. The Recipient also agrees that demonstration activities are temporary in nature and must be removed and/or ended following the conclusion of the project if the assessment of the demonstration activities does not affirm that the activities provide safety benefits.
- 6.6 The Recipient of an Implementation Grant agrees to update its Action Plan within two years of the date of this agreement to: align with all Comprehensive Safety Action Plan components in Table 1 of the SS4A FY 2024 NOFO corresponding with any "no" responses in the Self-Certification Eligibility Worksheet; ensure that the Action Plan's safety focus includes all road users, including pedestrians, bicyclists, and motor vehicle safety; and ensure that the Action Plan was last updated not more than three years prior.
- 6.7 The Recipient acknowledges that it is required to conduct certain environmental analyses and to prepare and submit to FHWA, or State with applicable NEPA Assignment authority, documents required under NEPA, and other applicable environmental statutes and regulations before the Government will obligate funds for Option Phase 1 under this agreement and provide the Recipient with a written notice to proceed with Option Phase 1.
- 6.8 The Government's execution of this agreement does not in any way constitute pre-approval or waiver of any of the regulations imposed upon Recipient under the applicable Federal rules, regulations and laws regarding SS4A projects undertaken in accordance with the terms and

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conditions of this agreement. The Recipient shall comply with all applicable Federal requirements before incurring any costs under this agreement.

- 6.9** The Recipient must coordinate its supplemental planning and/or demonstration activities with the jurisdiction that has an existing Action Plan in place that was used to apply for the supplemental planning and/or demonstration activities.
- 6.10** There are no other special grant requirements.

Study Area: [Insert description of the project location]

Baseline Measurement Date: [insert date when the Recipient anticipates beginning the construction of the project]

Baseline Report Date: [insert date two months after the Baseline Measurement Date]

Measure	Category and Description	Measurement Frequency and Reporting Deadline
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Fatalities: Total annual fatalities in the project location(s)	Annually and within 120 days after the end of the period of performance
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Serious Injuries: Total annual serious injuries in the project location(s) [if available]	Annually and within 120 days after the end of the period of performance
Safety Performance [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Crashes by Road User Category: Total annual crashes in the project location(s) broken out by types of roadway users involved (e.g., pedestrians, bicyclists, motorcyclist, passenger vehicle occupant, commercial vehicle occupant)	Annually and within 120 days after the end of the period of performance
Equity [for all Grants]	Percent of Funds to Underserved Communities: Funding amount (of total project amount) benefitting underserved communities, as defined by USDOT	Within 120 days after the end of the period of performance
Costs [for all Grants]	Project Costs: Quantification of the cost of each eligible project carried out using the grant	Within 120 days after the end of the period of performance

Measure	Category and Description	Measurement Frequency and Reporting Deadline
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Quantitative Project Benefits: Quantification of evidence-based projects or strategies implemented (e.g., miles of sidewalks installed, number of pedestrian crossings upgraded, etc.)	Within 120 days after the end of the period of performance
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Qualitative Project Benefits: Qualitative description of evidence-based projects or strategies implemented (e.g., narrative descriptions, testimonials, high-quality before and after photos, etc.)	Within 120 days after the end of the period of performance
Outcomes and Benefits [for Implementation Grants and Planning and Demonstration Grants with demonstration activities]	Project Location(s): GIS/geo coordinate information identifying specific project location(s)	Within 120 days after the end of the period of performance
Lessons Learned and Recommendations [for all Grants]	Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.	Within 120 days after the end of the period of performance

ATTACHMENT C

RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.

The Recipient states that rows marked with “X” in the following table align with the application:

	A racial equity impact analysis has been completed for the Project. <i>(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)</i>
	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. <i>(Identify the relevant programs, plans, or policies in the supporting narrative below.)</i>
	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. <i>(Identify the relevant investments in the supporting narrative below.)</i>
	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but intends to take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

ATTACHMENT D CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

1. Consideration of Climate Change and Environmental Justice Impacts.

The Recipient states that rows marked with “X” in the following table align with the application:

	The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Recipient or a project partner used environmental justice tools, such as the EJScreen, to minimize adverse impacts of the Project on environmental justice communities. <i>(Identify the tool(s) in the supporting narrative below.)</i>
	The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. <i>(Describe that shift in the supporting narrative below.)</i>
	The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. <i>(Describe those strategies in the supporting narrative below.)</i>
	The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. <i>(Describe the incorporated infrastructure in the supporting narrative below.)</i>
	The Project supports the installation of electric vehicle charging stations. <i>(Describe that support in the supporting narrative below.)</i>
	The Project promotes energy efficiency. <i>(Describe how in the supporting narrative below.)</i>
	The Project serves the renewable energy supply chain. <i>(Describe how in the supporting narrative below.)</i>
	The Project improves disaster preparedness and resiliency <i>(Describe how in the supporting narrative below.)</i>
	The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. <i>(Describe how in the supporting narrative below.)</i>
	The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. <i>(Describe that infrastructure in the supporting narrative below.)</i>
	The Project supports or incorporates the construction of energy- and location-efficient buildings. <i>(Describe how in the supporting narrative below.)</i>

	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. <i>(Describe the materials in the supporting narrative below.)</i>
	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project, as described in the supporting narrative below.
	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

ATTACHMENT E LABOR AND WORKFORCE

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with “X” in the following table align with the application:

	The Recipient demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>
	The Recipient or a project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project. <i>(Describe the relevant provisions in the supporting narrative below.)</i>
	The Recipient or a project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. <i>(Describe the use of registered apprenticeship in the supporting narrative below.)</i>
	The Recipient or a project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. <i>(Describe the training programs in the supporting narrative below.)</i>
	The Recipient or a project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. <i>(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)</i>
	The Recipient or a project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. <i>(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)</i>
	The Recipient or a project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>

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	The Recipient or a project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including: a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law; b. proactive partnerships with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements and meet the requirements as outlined in the Notice of Funding Opportunity to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color; c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements; d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin; e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and f. maintaining robust anti-retaliation measures covering employees and contractors. <i>(Describe the equal opportunity plan in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the project, will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improving good-paying jobs and strong labor standards and will not take those actions under this award.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

ATTACHMENT F

CRITICAL SECURITY INFRASTRUCTURE AND RESILIENCE

1.

Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.

The Recipient states that rows marked with “X” in the following table are accurate:

	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
	For projects in floodplains: The Recipient appropriately considered whether the project was upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Solicit and Considering Stakeholder Input (80 FR 6425).

2.

Supporting Narrative.

[Insert supporting text, as described in the table above.]

**ATTACHMENT G
CIVIL RIGHTS AND TITLE VI**

1. Recipient Type Designation.

[Choose the appropriate one of these two alternatives.]

[Alternative #1, if either

(1) the Recipient has an award with FHWA that makes the Recipient subject to the administering operating administration's Title VI requirements; or

(2) the Recipient had an award with FHWA as a result of which the Recipient is already in compliance with the operating administration's Title VI requirements:]

Recipient Type Designation: Existing

Existing Award Program: [Assistance Listing Number or Name for grant program]

[Alternative #2:]

Recipient Type Designation: New

2. Title VI Assessment Information.

[Choose the appropriate one of these two alternatives.]

[Alternative #1, if the Recipient Type Designation is Existing:]

This section is not applicable because the Recipient Type Designation is "Existing."

[Alternative #2, if the Recipient Type Designation is New:]

Title VI Assessment Completion Date: See date of execution of this agreement and Exhibit B, Term B.

U.S. DEPARTMENT OF TRANSPORTATION

GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2024 SAFE STREETS AND ROADS FOR ALL (“SS4A”) GRANT
PROGRAM:
FHWA PROJECTS

Date: June 13, 2024

Revised: October 1, 2024

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”) established the Safe Streets and Roads for All (the “SS4A”) Discretionary Grant Program (BIL Section 24112) and appropriated funds to the United States Department of Transportation (the “USDOT”) under Division J, Title VIII of BIL to implement the program. The funds are available to provide Federal financial assistance to support local initiatives to prevent death and serious injury on roads and streets, commonly referred to as “Vision Zero” or “Toward Zero Deaths” initiatives.

The USDOT published a Notice of Funding Opportunity (the “NOFO”) to solicit applications for Federal financial assistance in Fiscal Year 2024 for the SS4A Discretionary Grant Program.

These general terms and conditions are incorporated by reference in a project-specific grant agreement under the fiscal year 2024 SS4A grant program. Articles 1–6 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through F are project-specific attachments.

ARTICLE 7 PURPOSE

7.1 Purpose. The purpose of this award is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development or projects focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial vehicle operators. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.

ARTICLE 8 USDOT ROLE

8.1 Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is ultimately responsible for the USDOT’s administration of the SS4A Grant Program.
- (b) The Federal Highway Administration (the “FHWA”) will administer this grant agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FHWA.

8.2 USDOT Program Contact.

Safe Streets and Roads for All
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590
SS4A.FHWA@dot.gov
(202) 366-2822

ARTICLE 9 RECIPIENT ROLE

9.1 Statements on the Project. The Recipient states that:

- (1) all material statements of fact in the Grant Application were accurate when that application was submitted; and
- (2) Attachment B documents all material changes in the information contained in that application.

9.2 Statements on Authority and Capacity. The Recipient states that:

- (1) it has the authority to receive Federal financial assistance under this agreement;
- (2) it has the legal authority to complete the Project, including either ownership and/or maintenance responsibilities over a roadway network; safety responsibilities that affect roadways; or has an agreement from the agency that has ownership and/or maintenance responsibilities for the roadway within the applicant's jurisdiction; if applicable;
- (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (4) not less than the difference between the "Total Eligible Project Cost" and the "SS4A Grant Amount" listed in section 3.3 are committed to fund the Project;
- (5) it has sufficient funds available, or an agreement with the agency that has ownership and/or maintenance responsibilities for the roadway within the recipient's jurisdiction, to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and

- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 9 and in section 0 on behalf of the Recipient.

9.3 USDOT Reliance. The Recipient acknowledges that:

- (1) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award;
- (2) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
- (3) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
- (4) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

9.4 Project Delivery.

- (a) The Recipient shall complete the Project under the terms of this agreement.
- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.
- (c) The Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies.
- (d) The Recipient shall provide access to records as provided at 2 C.F.R. 200.337.

9.5 Rights and Powers Affecting the Project.

- (a) The Recipient shall not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this agreement without written approval of the USDOT.
- (b) The Recipient shall act, in a manner acceptable to the USDOT, promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this agreement.

9.6 Notification of Changes to Key Personnel. The Recipient shall notify all USDOT representatives who are identified in Section 4.3 in writing within 30 calendar days of any change in key personnel who are identified in Section 4.2.

ARTICLE 10 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

10.1 Federal Award Amount The USDOT hereby awards a SS4A Grant to the Recipient in the amount listed in section 2.2 as the SS4A Grant Amount.

10.2 Federal Obligations.

This agreement obligates funds for the period of performance listed on Page 1, Block 6 of the grant agreement.

(a) If the Federal Obligation Type identified in section 2.3 is “Single,” then the project-specific agreement obligates for the budget period the amount listed in Section 2.2. as the Grant Amount and sections 10.2 (c)–10.2(f) do not apply to the project specific agreement.

(b) If the Federal Obligation Type identified in section 2.3 is “Multiple,” (for phased agreements) then an amount up to the Grant Amount listed in Section 2.2 will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 10.2(c)–10.2(f).

(c) The Obligation Condition Table in section 2.3 allocates the Grant funds among separate phases of the Project for the purpose of the Federal obligation of funds. The scope of each phase of the Project that is identified in that table is described in section 2.3.

(d) The project-specific agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2.3 to portions of the Project for which that table does not list an obligation condition.

(e) The project-specific agreement does not obligate amounts allocated in the Obligation Condition Table in section 2.3 to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only by modifying the project specific agreement under section 21.

(f) For each portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, the amount allocated in that table to that portion of the Project will be obligated if the condition is met not later than the date listed in Section 2.4 of the project-specific agreement.

(g) For any portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, if the obligation condition is satisfied, the parties amend this agreement documenting that:

(1) the FHWA determines that the obligation condition listed in that table for that portion of the Project is satisfied; and

(2) the FHWA determines that all applicable Federal requirements for obligating the amount are satisfied.

(h) The Recipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 10.2(c)-(f).

(i) Reserved.

(j) The Recipient acknowledges that:

(1) the FHWA is not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2.3 lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 10.2(c)-(f);

(2) any portion of the Grant that is not obligated under this section 10.2 by the budget period end date identified in the project-specific agreement for those funds lapses on the day after that date and becomes unavailable for the Project; and

(3) the FHWA may consider the failure to obligate funds by the budget period end date identified in the project-specific agreement as applicable to the Grant Program for those funds to be a basis for terminating the project-specific agreement under section 16.

10.3 Budget Period

The budget period for this award begins on the effective date of this agreement and ends on the budget period end date that is listed in section 2.4, which shall be no later than 5 years from the date of grant execution. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

10.4 Period of Performance.

(a) The period of performance for this award begins on the effective date of award listed in page 1, Block 2 and ends on the period of performance end date that is listed in Page 1, Block 6.

(b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

ARTICLE 11 STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

11.1 Notification Requirement. The Recipient shall notify all USDOT representatives who are identified in section 4.3 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification

requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.

11.2 Statement of Work Changes. If the Project's activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.

11.3 Schedule Changes. If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant date(s):

- (1) a substantial completion date for the Project or a component of the Project that is listed in section 3.2 and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
- (2) a schedule change would require the period of performance to continue after the period of performance end date listed on Page 1, Block 6.

For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.

11.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project's budget to the amounts listed in section 3.3:
 - (1) the "Non-Federal Funds" amount decreases; or
 - (2) the "Total Eligible Project Cost" amount decreases.
- (c) For budget changes that are not identified in section 11.4(b), the Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- (d) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in sections 7.1 and 3.1, and that the Recipient could complete with the difference between the "Total Eligible Project Cost" that is listed in section 3.3 and the actual eligible project costs.

- (e) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3 and either the Recipient does not make a proposal under section 11.4(d) or the USDOT does not accept the Recipient’s proposal under section 11.4(d), then:
- (1) in a request under section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs; and
 - (2) if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, “**Federal Share**” means the sum of the “SS4A Grant Amount” and the “Other Federal Funds” amounts that are listed in section 3.3(a).

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 11.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Standards for Administrative Collection of Claims (31 C.F.R. part 901).

11.5 USDOT Acceptance of Changes. The USDOT may accept or reject amendments requested under this article 11, and in doing so may elect to consider only the interests of the SS4A grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this article 11 does not amend, modify, or supplement this agreement unless the USDOT accepts that amendment request and the parties modify this agreement under section 0.

ARTICLE 12 GENERAL REPORTING TERMS

12.1 Report Submission. The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 4.3. Reports will be added to a central repository maintained by FHWA.

12.2 Alternative Reporting Methods. FHWA may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the FHWA.

12.3 Paperwork Reduction Act Notice.

Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2125-0675.

ARTICLE 13 PROGRESS AND FINANCIAL REPORTING

- 13.1 Quarterly Performance Progress Reports.** Quarterly, on or before the 20th day of the first month of each calendar year (e.g., reports due on or before January 20th, April 20th, July 20th, and October 20th) and until the end of the period of performance, the Recipient shall submit to the USDOT a Quarterly Performance Progress Report in the format and with the content described in Exhibit C. If the date of this agreement is in the final month of a calendar year, then the Recipient shall submit the first Quarterly Performance Progress Report in the second calendar year quarter that begins after the date of this agreement.
- 13.2 Quarterly Financial Status.** Quarterly, on or before the 20th day of the first month of each calendar year (e.g., reports due on or before January 20th, April 20th, July 20th, and October 20th) and until the end of the period of performance, the Recipient shall submit a Federal Financial Report using SF-425.
- 13.3 Final Performance Progress Reports and Financial Status.** No later than 120 days after the end of the period of performance, the Recipient shall submit:
- (1) a Final Performance Progress Report in the format and with the content described in Exhibit C for each Quarterly Performance Progress Report, including a final Federal Financial Report (SF-425); and
 - (2) any other information required under the Administering Operating Administration's award closeout procedures.

ARTICLE 14 PERFORMANCE REPORTING

- 14.1 Baseline Performance Measurement.** Recipients of Implementation Grants or Planning and Demonstration Grants with demonstration activities shall:
- (1) collect data for each performance measure that is identified in the Performance Measure Table in Attachment A, accurate as of the Baseline Measurement Date that is identified in Attachment A; and
 - (2) on or before the Baseline Report Date that is stated in Attachment A, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 14.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in Attachment A.

14.2 SS4A Final Report.

The Recipient shall submit to the USDOT, not later than 120 days after the end of the period of performance, a report in the format specified by FHWA and with the content described in Attachment A that describes, consistent with sections 24112(g)-(h) of BIL:

- (1) the costs of each eligible project and strategy carried out using the grant;
- (2) the roadway safety outcomes and any additional benefits (e.g., increased walking, biking, or transit use without a commensurate increase in serious and fatal crashes, etc.) that each such project and strategy has generated, as—
 - identified in the grant application; and
 - measured by data to the maximum extent practicable;
- (3) the percent of funds spent in, and providing benefits to, underserved communities; and
- (4) the lessons learned, and any recommendations related to future projects or strategies to prevent death and serious injuries on roads and streets.

14.3 Performance Measurement Information.

For each performance measure identified to be submitted annually in the Performance Measure Table in Attachment A, not later than January 31 of each year, the Recipient shall submit to the USDOT a Performance Measurement Report containing the data collected in the previous calendar year and stating the dates when the data was collected.

14.4 Performance Reporting Survival.

The data collection and reporting requirements in this article 14 survive the termination of this agreement which is three years post period of performance.

14.5 Program Evaluation.

As a condition of grant award, the recipient may be required to participate in an evaluation undertaken by USDOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, before/after photographs of the sites, qualitative activities such as videos describing the project and its impact on the community, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3)

in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or USDOT staff.

ARTICLE 15

NONCOMPLIANCE AND REMEDIES

15.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 15.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
 - (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient's compliance.

- (c) The USDOT may make a final determination of noncompliance only:
 - (1) after considering the Recipient's response under section 15.1(b); or
 - (2) if the Recipient fails to respond under section 15.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the basis for that determination.

15.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:
 - (1) additional conditions on the award;

- (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
 - (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
 - (d) In imposing a remedy under this section 15.2 or making a public interest determination under section 15.2(c), the USDOT may elect to consider the interests of only the USDOT.
 - (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Standards for Administrative Collection of Claims (31 C.F.R. part 901).

15.3 Other Oversight Entities.

Nothing in this article [Error! Reference source not found.](#) limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 16 AGREEMENT TERMINATION

16.1 USDOT Termination.

- (a) The USDOT may terminate this agreement and all its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-SS4A Grant contribution (all eligible project costs other than the SS4A Grant Amount, as described in section 3.3(a) of the grant agreement) or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;
 - (2) a construction start date for the project or strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;

- (3) a substantial completion date for the project or strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,
 - (5) the USDOT determines that termination of this agreement is in the public interest.
 - (6) the Recipient fails to expend the funds within 5 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
 - (c) This section 0 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
 - (d) The Recipient may request that the USDOT terminate the agreement under this section 0.

16.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project Closeout should occur no later than one year after the end of the period of performance.

16.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT's authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.

16.4 Non-Terminating Events.

- (a) The end of the period of performance described under section 10.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The liquidation of funds under section **Error! Reference source not found.** does not terminate this agreement or the Recipient's obligations under this agreement.

16.5 Other Remedies. The termination authority under this article 0 supplements and does not limit the USDOT's remedial authority under article 15 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

ARTICLE 17

MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

17.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
 - (1) that those activities comply with this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(e).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

17.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the project, and the amount or nature of that portion of the cost of the project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 0(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.302–200.307, 2 C.F.R. part 200, subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2024 SS4A grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including “FY 2024” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2024” in column c (“Additional Award Identification”).

17.3 Internal Controls. The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

17.4 USDOT Record Access. The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

ARTICLE 18 CONTRACTING AND SUBAWARDS

18.1 Build America, Buy America. This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021), 2 CFR part 184, and Office of Management and Budget (OMB) Memorandum M-24-02, “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.

The Recipient shall not use funds provided under this award for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards for each construction material are provided at 2 CFR 184.6.

Inapplicability.

The domestic content procurement preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a domestic content procurement preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies.

An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) manufactured products; (iii) construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as

falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated. An article, material, or supply incorporated into an infrastructure project must meet the requirements for only the single category in which it is classified.

Waivers.

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the USDOT determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

Definitions

“**Construction materials**” means articles, materials, or supplies that consist of only one of the items listed in paragraph (21) of this definition, except as provided in paragraph (2) of this definition. To the extent that one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

- (1) The listed items are:
 - non-ferrous metals;

- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- fiber optic cable (including drop cable)
- lumber;
- engineered wood; and
- drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means

(1) Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forging utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Project” means the development of a safety action plan (including supplemental and topical plans) or the temporary or permanent construction, alteration, maintenance, or repair of infrastructure in the United States.

“Section 70917(c) materials” cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

18.2 Small and Disadvantaged Business Requirements. The Recipient shall expend all funds under this award in compliance with the requirements at 2 C.F.R. 200.321

(“Contracting with small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms”).

18.3 Engineering and Design Services. The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under 2 C.F.R. 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.

18.4 Foreign Market Restrictions. The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

18.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2 C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

18.6 Recipient Responsibilities for Subawards.

If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.

18.7 Subaward and Contract Authorization.

If the USDOT Office for Subaward Authorization identified in section 5.1 is “FHWA Office of Acquisition and Grants Management,” then the Recipient must follow the requirements in 2 C.F.R. 200.308 (f) (6) and 2 C.F.R. 200.333, as applicable, for the subaward of any SS4A Grant work under the Project-Specific Agreement. Approvals under 2 CFR 200.308(f)(6) do not apply to the procurement acquisition of goods and services.

ARTICLE 19

COSTS, PAYMENTS, AND UNEXPENDED FUNDS

19.1 Limitation of Federal Award Amount. Under this award, the USDOT shall not provide funding greater than the amount obligated on the SS4A Grant cover page, Item 11, Federal Funds Obligated. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.

19.2 Projects Costs. This award is subject to the cost principles at 2 C.F.R. part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

19.3 Timing of Project Costs.

- (a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
- (b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement unless there has been an approval of pre-award costs under 2 C.F.R. 200.458.

19.4 Recipient Recovery of Federal Funds. The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.

19.5 Unexpended Federal Funds. Any Federal funds that are awarded at section 10.1 but not expended on allocable, allowable costs remain the property of the United States.

19.6 Timing of Payments to the Recipient. When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.

19.7 Payment Method. The USDOT may deny a payment request that is not submitted using the method identified in section 5.2.

19.8 Information Supporting Expenditures.

(a) If the USDOT Payment System identified in section 5.2 is “DELPHI iSupplier,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.

(b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

19.9 Reimbursement Frequency. If the USDOT Payment System identified in section 5.2 is “DELPHI iSupplier,” then the Recipient shall not request reimbursement more frequently than monthly.

19.10 Match. The recipient should show on each request for reimbursement that at least 20 percent of the incurred costs will count towards match. If the recipient intends to vary the match percentage over the life of the project, it must communicate its plan to USDOT. The recipient is responsible for tracking match according to the plan. At the completion of the grant award, the cost share requirement must be met, and Federal funds must not exceed the project's Federal share.

ARTICLE 20

LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

20.1 Liquidation of Recipient Obligations.

(a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory availability to eligible entities date, which shall be 5 years after the date on which the grant is provided.

(b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

ARTICLE 21

AGREEMENT MODIFICATIONS

21.1 Bilateral Amendments. The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.

21.2 Unilateral Contact Modifications. The USDOT may update the contacts who are listed in section 4.3 by written notice to all the Recipient contacts who are listed in sections 4.1 and 4.2.

21.3 USDOT Unilateral Modifications.

(a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.

(b) To unilaterally modify this agreement under this section 20.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

21.4 Other Modifications. The parties shall not amend, modify, or supplement this agreement except as permitted under sections 0, 0, or 0. If an amendment, modification, or supplement is not permitted under section 0, not permitted under section 0, and not permitted under section 0, it is void.

ARTICLE 22 CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

22.1 Climate Change and Environmental Justice. Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), Attachment D documents the consideration of climate change and environmental justice impacts of the Project.

ARTICLE 23 RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

23.1 Racial Equity and Barriers to Opportunity. Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Attachment C documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

ARTICLE 24 LABOR AND WORK

24.1 Labor and Work. Consistent with Executive Order 14025, “Worker Organizing and Empowerment” (Apr. 26, 2021), and Executive Order 14052, “Implementation of the Infrastructure Investment and Jobs Act” (Nov. 15, 2021), Attachment E documents the consideration of job quality and labor rights, standards, and protections related to the Project.

24.2 OFCCP Mega Construction Project Program. If the total eligible project costs that are listed in section 3.3 of Article 3 are greater than \$35,000,000 and the Department of Labor’s Office of Federal Contract Compliance Programs (the “OFCCP”) selects this award for participation in the Mega Construction Project Program, then the Recipient shall partner with OFCCP, as requested by OFCCP.

ARTICLE 25 CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

25.1 Critical Infrastructure Security and Resilience.

Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cyber security and resilience in planning, design, and oversight of the Project. Attachment F documents the consideration of critical security infrastructure for projects that include the purchase of information technology and/or operational technology.

ARTICLE 26 CIVIL RIGHTS AND TITLE VI

26.1 Civil Rights and Title VI

- (a) Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Feb. 16, 2023), and DOT Order 1000.12C, “The U.S. Department of Transportation Title VI Program” (June 11, 2021), the purpose of sections 26.1(b)–26.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 C.F.R. part 21.
- (b) If the Recipient Type Designation in section 1 of Attachment G is “Existing,” then the Recipient shall submit to the USDOT either:
 - (1) not later than one month after the date of this agreement, documentation showing that the Recipient has complied with all reporting requirements under the Administering Operating Administration’s implementation of Title VI; or
 - (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Recipient Type Designation in section 1 of Attachment G is “New,” then the Administering Operating Administration completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C, before entering this agreement, as documented in section 2 of Attachment G.
- (d) In this section 26.1, “**Title VI**” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a).

ARTICLE 27
FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL
POLICY REQUIREMENTS

27.1 Uniform Administrative Requirements for Federal Awards. The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

27.2 Federal Law and Public Policy Requirements.

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

27.3 Federal Freedom of Information Act.

- (a) The USDOT is subject to the Freedom of Information Act, 5 U.S.C. 552.
- (b) The Recipient acknowledges that the Technical Application and materials submitted to the USDOT by the Recipient related to this agreement may become USDOT records subject to public release under 5 U.S.C. 552.

27.4 History of Performance. Under 2 C.F.R. 200.206, any Federal agency may consider the Recipient's performance under this agreement when evaluating the risks of making a future Federal financial assistance award to the Recipient.

27.5 Whistleblower Protection.

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.
- (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

27.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 32, this agreement includes the following additional terms as integral parts:
 - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. part 175: Award term for Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

27.7 Incorporated Certifications. The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (1) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

ARTICLE 28 ASSIGNMENT

28.1 Assignment Prohibited. The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

ARTICLE 29 WAIVER

29.1 Waivers.

- (a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT.
- (b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.

- (c) If USDOT fails to require strict performance of a provision of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that provision or breach.

ARTICLE 30

ADDITIONAL TERMS AND CONDITIONS

30.1 Effect of Planning and Demonstration or Implementation Award. Based on information that the Recipient provided to the USDOT, including the Grant Application, as indicated in section 2.5, this agreement designates this award as a Planning and Demonstration award or an Implementation award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation as listed in the FY 2024 Notice of Funding Opportunity for Safe Streets and Roads for All.

30.2 Disclaimer of Federal Liability. The USDOT shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.

30.3 Environmental Review

(a) In this section, “**Environmental Review Entity**” means:

(1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and

(2) for all other cases, the FHWA.

(b) Except as authorized under section 30.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:

(1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and

(2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.

(c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).

(d) The Recipient acknowledges that:

- (1) the Environmental Review Entity's actions under section 30.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
 - (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
- (1) the parties may amend this agreement under section 21.1 for consistency with the selected build alternative; or
 - (2) if the USDOT determines that the condition at section 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 16.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

30.4 Railroad Coordination. If the agreement includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

30.5 Relocation and Real Property Acquisition.

- (a) The Recipient shall comply with the land acquisition policies in 49 C.F.R. part 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.
- (b) The Recipient shall provide a relocation assistance program offering the services described in 49 C.F.R. part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, , comparable replacement dwellings in accordance with 49 C.F.R. part 24.

30.6 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 30.6 for all tiers of subawards under this award.

ARTICLE 31 MANDATORY AWARD INFORMATION

31.1 Information Contained in a Federal Award. For 2 C.F.R. 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 0;
- (2) the “Assistance Listings Number” is 20.939 and the “Assistance Listings Title” is “Safe Streets and Roads for All Grant Program”; and
- (3) this award is not for research and development.

ARTICLE 32 CONSTRUCTION AND DEFINITIONS

32.1 Attachments. This agreement includes the following attachments as integral parts unless Attachments F is not required for certain SS4A Grants:

Attachment A	Performance Measurement Information
Attachment B	Changes from Application
Attachment C	Racial Equity and Barriers to Opportunity
Attachment D	Climate Change and Environmental Justice Impacts
Attachment E	Labor and Workforce
Attachment F	Critical Infrastructure Security and Resilience
Attachment G	Civil Rights and Title VI

32.2 Exhibits. The following exhibits, which are in the document titled “Exhibits to FHWA Grant Agreements Under the Fiscal Year 2024 SS4A Grant Program”, dated June 13, 2024, and available at <https://www.transportation.gov/grants/ss4a/grant-agreements>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms
Exhibit C	Quarterly Performance Progress Reports: Format and Content
Exhibit D	Form for Subsequent Obligation of Funds

32.3 Construction. If a provision in the exhibits or the attachments conflicts with a provision in articles 1–0, then the provision in articles 1–0 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

32.4 Integration. This agreement constitutes the entire agreement of the parties relating to the SS4A grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the SS4A grant program and awards under that program.

32.5 Definitions. In this agreement, the following definitions apply:

“**Program Statute**” means the BIL section 24112 and statutory text under the heading “Safe Streets and Roads for All Grants” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.

“**Project**” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement.

“**SS4A Grant**” means an award of funds that were made available under the SS4A NOFO.

“**Grant Application**” means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

ARTICLE 33 AGREEMENT EXECUTION AND EFFECTIVE DATE

33.1 Counterparts. This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

33.2 Effective Date. The agreement will become effective when all parties have signed it. The effective date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a SS4A Grant when the USDOT’s authorized representative signs it.

U.S. DEPARTMENT OF TRANSPORTATION

EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2024 SAFE STREETS AND ROADS FOR ALL (SS4A) GRANT
PROGRAM

June 13, 2024

EXHIBIT A

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement for a FY 2024 Safe Streets and Roads for All Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.
- b. Hatch Act – 5 U.S.C. 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.
- d. National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108
- e. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.
- f. Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.
- g. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. 7401, et seq.
- h. Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344
- i. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. 1536
- j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. 1451, et seq.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) – 42 U.S.C. 4012a
- l. Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.
- m. American Indian Religious Freedom Act, P.L. 95-341, as amended
- n. Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.
- o. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended – 42 U.S.C. 4541, et seq.
- p. Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2
- q. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- r. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 – 42 U.S.C. 8373
- s. Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.
- t. Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145
- u. National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.
- w. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x. Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.
- y. Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794
- bb. Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C.

- 1101 -1104, 541, et seq.
- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- ee. Freedom of Information Act – 5 U.S.C. 552, as amended
- ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.
- hh. Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.
- ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.
- jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525
- kk. Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303
- ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.
- mm. Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26
- nn. Wilderness Act – 16 U.S.C. 1131-1136
- oo. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
- pp. Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.
- qq. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- rr. Cargo Preference Act of 1954 – 46 U.S.C. 55305
- ss. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

Executive Orders

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- j. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad
- k. Executive Order 14025 – Worker Organizing and Empowerment
- l. Executive Order 14052 – Implementation of the Infrastructure Investment and Jobs Act

Presidential Policy Directives and Memorandums

- a. Presidential Policy Directive 21 – Critical Infrastructure Security and Resilience
- b. National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Systems

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

Office of Management and Budget Circulars

- a. Any applicable OMB Circular based upon the specific FY 2024 Safe Streets and Roads for All Grant Recipient.

Highway Federal Legislation

- a. Agreements relating to the use of an access to rights-of-way—Interstate System, 23 U.S.C. 111
- b. Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- c. Tolls, 23 U.S.C. 301 (to the extent the recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
- d. Efficient Environmental Reviews - 23 U.S.C. 139
- e. Policy on lands, wildlife and waterfowl refuges, and historic sites - 49 U.S.C. 303

Federal Highway Regulations

- a. Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- b. National Highway System Design Standards – 23 C.F.R. Part 625
- c. Location and Hydraulic Design of Encroachments on Flood Plains – 23 C.F.R. Part 650 Subpart A
- d. Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- e. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- f. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) – 23 C.F.R. Part 774
- g. Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122

Specific assurances required to be included in the FY 2024 Safe Streets and Roads for All Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
ADDITIONAL STANDARD TERMS

TERM B.1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY ASSISTED
PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL
FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37, and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2024 Safe Streets and Roads for All (SS4A) grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- 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);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2024 SS4A grant program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2024 SS4A Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2024 SS4A grant program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2024 SS4A grant program.

(Name of Recipient)

by _____
(Signature of Authorized Official)

Dated _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant

thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), the Consolidated Appropriations Act, 2024, Pub. L. No. 118-122 (Mar. 9, 2024), the Regulations for the Administration of FY 2024 SS4A grant program, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the

absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- 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 C.F.R. 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);
- 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 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the 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, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

TERM B.2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2024 SS4A grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2024 SS4A Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first 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 first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of

Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not 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 lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is 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 this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, 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;

(3) 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 (a)(2) of this certification; and

(4) 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.

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. 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 and/or debarment.

c. 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 by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered

transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. 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 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.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “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 exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not 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 lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters a lower tier covered transaction with a person who is 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 and/or debarment.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are 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.

TERM B.3
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
 - (1) Certify whether the entity has a Tax Delinquency; and
 - (2) Certify whether the entity has a Felony Conviction.
4. **Prohibition.** If
 - (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
 - (2) an entity provides an affirmative response to either certification in section 3; or
 - (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made
 then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
5. **Mandatory Notice to the USDOT.**
 - (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
 - (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
 - (c) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
 - (1) require the SAM check in section 2;
 - (2) require the certifications in section 3;
 - (3) include the prohibition in section 4; and

- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

TERM B.4

RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

- (1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
 - (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts*. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

EXHIBIT C

QUARTERLY PERFORMANCE PROGRESS REPORTS: FORMAT AND CONTENT

1. Purpose. The purpose of the Quarterly Performance Progress Reports under this agreement for the FY 2024 SS4A grant program is to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.

2. Format and Content. The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. The first Quarterly Performance Progress Report should include a detailed description of the items funded.

(a) Project Information. This section provides the name of the project, the State, the federal agency to which the report is submitted, submission date, award number, name of the recipient, report year and quarter and NOFO funding year.

(b) Project Overall Status. This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any significant activities and issues, action items and outstanding issues.

i. **Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable BIL or NOFO requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

ii. **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(c) Milestones. This section documents progress of the milestones outlined in Section 3.2. The Recipient should include the baseline date (when the project is projected to begin) of each milestone, amendments to those dates (if applicable) and the actual/expected date of completion. There are Milestone charts for action plans, supplemental planning activities, demonstration activity projects and implementation (both construction and non-construction) projects.

EXHIBIT D
FORM FOR SUBSEQUENT OBLIGATION OF FUNDS

The USDOT and **[recipient name]** entered a grant agreement for the **[project name]** that was executed by the USDOT on **[date of USDOT signature on original agreement]** (the “Agreement”).

This instrument obligates **[\$XXX]** for **[insert portion of project listed in the Agreement]**.

[Recipient name] states that:

- (1) the Agreement accurately describe the Project’s activities;
- (2) for each completion date listed in the Agreement, the Recipient’s estimate for that milestone is not more than six months after the date listed in the Agreement;
- (3) comparing the Project’s current budget with the amounts listed in the Agreement, the “Non-Federal Funds” amount has not decreased and the total eligible project costs amount has not decreased; and
- (4) under the terms of article 21 of the General Terms and Conditions, the Recipient is not presently required to request a modification to the Agreement.

[Recipient name] acknowledges that USDOT is acting in reliance on the Recipient’s statements above.

Date	_____By:	Signature of Recipient’s Authorized Representative
		[insert name]
		Name
		[insert title]
		Title

The USDOT has determined that all applicable Federal requirements for obligating these funds are satisfied.

Date	_____	By:	_____
			Signature of USDOT's Authorized Representative
			[insert name]

			Name
			[insert title]

			Title



City of Gilroy

STAFF REPORT

Agenda Item Title: Adopt a Resolution Approving the City to Enter into the Joint Powers Agreement with the Cities Association of Santa Clara County and Authorizing the City Administrator to Execute the Agreement

Meeting Date: February 3, 2025
 From: Jimmy Forbis, City Administrator
 Department: Administration
 Submitted By: Bryce Atkins, Assistant to the City Administrator
 Prepared By: Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Council adopt the proposed resolution approving the entrance into the Cities Association of Santa Clara County and authorizing the City Administrator to execute the agreement.

BACKGROUND

The City of Gilroy withdrew from the Cities Association of Santa Clara County (CASCC) in 2022, after issues with actions taken by the CASCC regarding the nature of employees hired by CASCC, as well as liability exposure to the City as a result, and the general focus on the San Jose region regarding CASCC's activities and positions. On December 20, 2024, the CASCC issued a letter to the City of Gilroy asking the City to rejoin. At its January 6, 2025 regular meeting, the Gilroy City Council discussed the invitation letter which identified changes that had been made, addressing many of the issues that had caused the City to separate from the association. Council issued direction to re-join the CASCC, which now is a Joint Powers Agency (JPA).

ANALYSIS

In order to effectuate the reinstatement of Gilroy as a member agency, a resolution must be adopted to approve the agreement. This item is ministerial in nature to meet the requirements of the CASC for membership. Attached to this staff report is the subject resolution and the JPA to which the City will be joining.

ALTERNATIVES

Council may amend or reject the resolution. The agreement is required for membership, and without joining the JPA agreement, the City would not become a member.

FISCAL IMPACT/FUNDING SOURCE

To rejoin, the City is required to issue a payment for Fiscal Year 2024-25 in the amount of \$14,609. Although not specifically included in the budget, there is sufficient appropriations that may be used for this purpose in the General Fund. Future year payments will be included in the budget process, but are not currently known at this time. The fees have remained flat over the past three years, so it is anticipated that the amount for the next fiscal year may be slightly above the total, but not expected by staff to deviate significantly based on assertions made by the CASC.

PUBLIC OUTREACH

This item has been included on the publicly posted agenda for this meeting, and was discussed previously in a public meeting with Council on January 6, 2025.

NEXT STEPS

Once approved, the resolution will be submitted to the Mayor for signature, and the JPA agreement will be submitted to the City Administrator to sign. Both will then be transmitted to the CASC along with the dues payment to complete the process of rejoining.

Attachments:

1. Proposed Resolution
2. Attachment A - Joint Powers Agency Agreement for Cities Association of Santa Clara County

RESOLUTION NO. 2025-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY APPROVING THE CITIES ASSOCIATION OF SANTA CLARA COUNTY JOINT POWERS AGENCY AGREEMENT AND AUTHORIZING ITS EXECUTION BY THE CITY ADMINISTRATOR

WHEREAS, the City of Gilroy (“City”), acting pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Law”), may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS, the City and the Cities Association of Santa Clara County (“CASCC”) mutually desire for the City to join the CASCC as a member agency; and

WHEREAS, pursuant to JPA Law and the requirements of the CASCC, the City Council must approve the City to enter into the joint powers agreement (Attached as Attachment A and incorporated herein) and authorize the City Administrator to execute the agreement; and

WHEREAS, under California law and the Joint Powers Agency Agreement (“JPA Agreement”), the CASCC is a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CASCC will not constitute debts, liabilities and obligations of the City or any representative of the City serving on the governing body or other boards of CASCC.

NOW, THEREFORE, the City Council of the City of Gilroy does hereby resolve, determine, and order as follows:

Section 1. The City hereby approves becoming a member agency and enters into the JPA Agreement for the CASCC.

Section 2. The City Administrator is hereby authorized to execute the agreement and any associated documents required to effectuate the above.

PASSED AND ADOPTED this 3rd day of February 2025 by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Greg Bozzo, Mayor

ATTEST:

Beth Minor, Interim City Clerk

CERTIFICATE OF THE CLERK

I, **BETH MINOR**, Interim City Clerk of the City of Gilroy, do hereby certify that the attached **Resolution No. 2025-XX** is an original resolution, or true and correct copy of a City Resolution, duly adopted by the Council of the City of Gilroy at a Regular Meeting of said held on Council held **Monday, February 3, 2025**, with a quorum present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this **Date**.

Beth Minor
Interim City Clerk of the City of Gilroy

(Seal)

ATTACHMENT A

JOINT POWERS AGENCY AGREEMENT FOR CITIES ASSOCIATION OF SANTA CLARA COUNTY

JOINT POWERS AGENCY AGREEMENT FOR CITIES ASSOCIATION OF SANTA CLARA COUNTY

This Joint Powers Agreement (“Agreement” or “JPA”) for the Cities Association of Santa Clara County is entered into by and among the cities (“Members”), which are organized and existing under the Constitution and laws of the State of California in which public agencies are located in the County of Santa Clara, and upon approval and full execution of the Agreement, creates the Cities Association of Santa Clara County Joint Powers Agency (“Agency”).

RECITALS

WHEREAS, Articles 1 and 2, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 *et seq.*) permit two or more public agencies by agreement to jointly exercise powers common to the Members; and

WHEREAS, the public agency Members executing this JPA are cities or towns within the jurisdiction of the County of Santa Clara (“County”); and

WHEREAS, the Cities Association of Santa Clara County has existed as an unincorporated association since 1990 and desires to formalize the relationship between its City and Town members and form a Joint Powers Agency in order to carry out activities for the good of all its Members; and

WHEREAS, the Members executing this Agreement, desire to join together to create a separate Joint Powers Agency for the purpose of promoting cooperation among the Members; advocating for positive action; enhancing the quality of life for the residents of the County and their individual cities; and encouraging other joint and cooperative endeavors among the public agencies for their mutual benefit.

NOW, THEREFORE, the Parties agree to the following:

AGREEMENT

ARTICLE 1 - DEFINITIONS

- 1.1 “Associate Member” shall mean any non-city local agency, located within jurisdictional authority of the County of Santa Clara, and shall have duly executed and delivered to the Agency an Associate Membership Agreement in the form of and as further provided in the Bylaws of the Agency, as further provided in Article 32 herein.
- 1.2 “Agency” shall mean the Cities Association of Santa Clara County Joint Powers Agency created by this Agreement.
- 1.3 “Board of Directors” or “Board” shall mean the governing body of the Agency.
- 1.4 “Executive Committee” shall mean the Executive Committee of the Board of Directors of the Agency.

- 1.5 “Fiscal Year” shall mean that period of twelve (12) months which is established by the Board of Directors or the Bylaws as the fiscal year of the Agency, which shall run from July 1 to June 30 of each year.
- 1.6 “Government Code” shall mean the California Government Code, as amended.
- 1.7 “Joint Powers Law” shall mean Articles 1 and 2, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code, known as the Joint Exercise of Powers Act, as amended.
- 1.8 “Legislative Body” shall mean the legislative board of each Public Agency that is a Member of the Agency.
- 1.9 “Member” shall mean any city which has executed this Agreement and has become a member of the Agency. The complete list of Members is set forth in Exhibit “A” attached hereto and incorporated herein by this reference.
- 1.10 “Parties” shall mean Members or Associate Members who are party to this Agreement.
- 1.11 “Public Agency” shall mean public agency as defined in Government Code Section 6500, as amended.
- 1.12 Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neutral gender shall be construed to include each other gender, when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions herein shall be construed to effectuate the purposes set forth and to sustain the validity of those purposes.

ARTICLE 2 - CREATION AND PURPOSES

- 2.1 This Agreement is entered into by the Members in order to:
 - 2.1.1 Review, study, develop consensus positions, and take action on issues of interest to Members;
 - 2.1.2 Focus on local and regional matters that are important to our future;
 - 2.1.3 Develop a common agenda for Santa Clara County cities;
 - 2.1.4 Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
 - 2.1.5 Establish and administer the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
 - 2.1.6 Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;

- 2.1.7 Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
- 2.1.8 Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
- 2.1.9 Strengthen the Members' and Agency's standing at the regional, State and Federal level;
- 2.1.10 Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;
- 2.1.11 Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
- 2.1.12 Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
- 2.1.13 Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

ARTICLE 3 - PARTIES TO AGREEMENT

Each Member, as a Party to this Agreement, intends to and does contract with all other Members as Parties to this Agreement and, with other Public Agencies as may later be added as Parties to this Agreement pursuant to the Joint Powers Law. The withdrawal of any party from this Agreement, pursuant to Article 20, shall not affect this Agreement or the remaining Members' obligations.

ARTICLE 4 – FORMATION; TERM

This Agreement shall become effective when fully executed and returned to the Agency by at least eight (8) Members, but only as to those Members that have executed the Agreement. The Agency shall promptly notify all Members in writing of the effective date. After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar joint powers authority, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

ARTICLE 5 - CREATION OF THE AGENCY

Pursuant to the Joint Powers Law, there is hereby created a public entity, separate and apart from the Parties hereto, to be known as the "Cities Association of Santa Clara County Joint Powers

Agency” with powers as are set forth herein. Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist.

ARTICLE 6 - POWERS OF THE AGENCY

6.1 Subject to the terms of this agreement, the Agency shall have all of the powers of a public agency as defined in the Government Code Section 6500 as amended and all additional powers set forth in the Joint Powers Law and other statutes applicable to the Joint Powers Agency created hereby and is authorized to do all acts necessary for the exercise of these powers on behalf of its Members. Powers include, but are not limited to, the following, in the Agency’s own name:

- 6.1.1 To make and enter into contracts;
- 6.1.2 To incur debts, liabilities, and obligations and to encumber personal property;
- 6.1.3 To acquire, hold, or dispose of personal property, contributions, and donations of personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;
- 6.1.4 To sue and be sued in its own name, and to settle any claim against it;
- 6.1.5 To receive and use contributions and advances from Members as provided in Government Code Section 6504, as amended including contributions or advances of personnel and equipment;
- 6.1.6 To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5, as amended;
- 6.1.7 To acquire, construct, manage, maintain, or operate title to personal property, or rights, or any interest therein;
- 6.1.8 To retain the services of agents, contractors, and consultants;
- 6.1.9 To receive, collect, and disburse monies;
- 6.1.10 To conduct studies, tests, evaluations, and similar activities;
- 6.1.11 To contract for services from Members, including in-kind services;
- 6.1.12 To conduct public outreach and education;
- 6.1.13 To participate in pilot and demonstration projects;
- 6.1.14 To charge for services, programs, and/or systems;
- 6.1.15 To work with elected officials and local, regional, state, and federal agencies, including other joint powers agencies and unincorporated associations to pursue funding, enter agreements and otherwise carry out the purposes of the Agency; and

- 6.1.16 Subject to this Agreement or the Bylaws of the Agency, and only as authorized by the Joint Powers Law, to exercise other reasonable and necessary powers in furtherance or support of any purpose of the Agency.

ARTICLE 7 - RESTRICTIONS ON POWERS

- 7.1 Pursuant to and to the extent required by Government Code Section 6509, as amended, the Agency shall be restricted in the exercise of its powers and shall exercise its powers in the same manner as the Town of Los Gatos is restricted in its exercise of similar powers; provided that, if the Town of Los Gatos shall cease to be a Member, then the Agency shall be restricted in the exercise of its power in the same manner as another Member agreed to by the majority of the Board of Directors. Unless expressly provided for, the Agency does not, by virtue of this Section or this Agreement, subject itself to the internal policies or ordinances of any Member.
- 7.2 The Agency shall not have the power of eminent domain.
- 7.3 The Agency shall not have the power of taxation. The Agency may not impose taxes but may receive the proceeds of taxes imposed by other entities or public funds from other entities.
- 7.4 The Agency shall not have the power to acquire, purchase, hold or dispose of real property.
- 7.5 The Agency shall not have the power to hire employees.
- 7.6 The Agency shall not have the power to issue debt.

ARTICLE 8 - BOARD OF DIRECTORS

- 8.1 The Agency shall be governed by the Board of Directors, which shall be composed of one Director representing each Member. Each Member's Legislative Body, according to its own procedures, shall appoint a Member of the Legislative Body as a Director to represent the Member on the Board of Directors. The Director shall serve at the pleasure of their respective Legislative Body. The Legislative Body of each Member shall also appoint one alternate Director ("Alternate") who shall participate in and vote at any meeting of the Board when the primary Director is absent. Any vacancy in a Director or Alternate position shall be filled by the appointing Member's Legislative Body, subject to the provisions of this Article. Immediately upon admission of a new Member, the new Member shall be entitled and required to appoint a Director and one alternate Director. Every Director or Alternate shall be a Council Member or Mayor of their individual Member city.
- 8.2 A Director and/or Alternate shall be removed from the Board of Directors upon the occurrence of any one of the following events: (1) the Agency receives written notice from the appointing Member of the removal and/or replacement of the Director or Alternate; (2) the withdrawal of the Member from this Agreement; (3) the death or resignation of the Director or Alternate; (4) the Agency receives written notice from the Member that the Director or Alternate is no longer qualified as provided in the first paragraph of this Article 8; or as set forth in Article 21.

- 8.3 The Board of Directors shall have the following powers and functions:
- 8.3.1 Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Agency, either directly or by delegation to other bodies or persons;
 - 8.3.2 The Board shall elect an Executive Committee, as provided in Article 11;
 - 8.3.3 The Board shall be the policy setting body of the Agency;
 - 8.3.4 The Board shall appoint or retain the services of necessary agents, consultants, or independent contractors in accordance with Article 14;
 - 8.3.5 The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Agency. Adoption of the budget may not be delegated. The Board shall adopt their budget no later than the first April 30th following formation and then subsequently by April 30th of each successive year. The Board shall review, set, and adopt annual dues to be funded by Agency Members;
 - 8.3.6 The Board shall receive, review and act upon periodic reports and audits of the funds of the Agency, as required under Article 16 of this Agreement;
 - 8.3.7 The Board may adopt policies regarding personnel, conflicts of interest and other matters necessary or convenient for the efficient operation of the Agency;
 - 8.3.8 The Board shall adopt a set of priorities and work plan for each fiscal year; and
 - 8.3.9 Subject to the terms of this Agreement, the Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Agency.

ARTICLE 9 – MEETINGS OF THE BOARD OF DIRECTORS

- 9.1 The Board of Directors shall hold at least one regular meeting each year. The Board of Directors shall fix by resolution, or in the Bylaws, the date, time, and location of each regular meeting. The Board or Executive Director, in consultation with the President of the Board as provided in Article 10 below, may call special meetings.
- 9.2 Each meeting of the Board of Directors, including without limitation, regular, adjourned regular and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.
- 9.3 The Agency shall require the Secretary/Treasurer or designee to take and maintain minutes of all regular, adjourned regular and special meetings. As soon as practicable after each meeting, the Secretary/Treasurer or designee shall forward to each Board Member, a copy of the minutes of the meeting.
- 9.4 A majority of the Members of the Board shall constitute a quorum for the transaction of business. Unless otherwise required by law, a vote of the majority of a quorum of the members

present at a meeting is sufficient to take any action, unless otherwise specified in this Agreement. However, less than a quorum may adjourn the meeting to a future date.

9.5 Each Member of the Board shall have one vote.

ARTICLE 10 - OFFICERS

The Board shall elect as Officers of the Agency President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President at its first meeting. Thereafter, except as may be otherwise provided in the Bylaws of the Agency, the Board shall elect the President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President, at the November Board of Directors meeting, or the first meeting held on or after November 1 of each year. Of the Officers, the President, and at least two other Officers, must also be members of the Board of Directors. The remaining Officers may be the elected or appointed Mayor or Council Member of any Member of the Agency regardless of whether they are on the Board of Directors. Each Officer shall assume the duties of his or her office upon election. If the President ceases to be a Member of the Board, the resulting vacancy shall be filled at the next meeting of the Board held after the vacancy occurs, or at a special meeting of the Board called to fill the vacancy. The President shall preside at and conduct all meetings of the Board. Should the Board President not be available then the highest-level Officer, who is a member of the Board of Directors, shall preside. If that individual is unavailable, then any Director appointed by the President may preside. The Board may appoint other officers as it considers necessary. The duties of the Secretary/Treasurer are set forth in Articles 16 and 17 of this Agreement. The Secretary/Treasurer shall be appointed by the Board of Directors and shall be eligible to serve as Secretary/Treasurer, as provided in the Joint Powers Law.

ARTICLE 11 - EXECUTIVE COMMITTEE

At such time as there are nine Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of three (3) Officers consisting of the President, First Vice President, and Secretary/Treasurer, which shall exist thereafter. At such time as there are 11 Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of five (5) Officers, with the addition of the Immediate Past President, which shall exist thereafter. Should the Immediate Past President no longer hold elected office then a Member at Large may be appointed by the Board to serve on the Executive Committee. The qualifications of the Member at Large are that they must be an elected or appointed Mayor or Council Member of a Member of the Agency but need not be on the Board of Directors. The terms of office of the Members of the Executive Committee shall be one year. The Executive Committee shall conduct the business of the Agency between meetings of the Board, exercising all those powers as provided for in this Article, or as otherwise delegated to it by the Board.

The Executive Committee, subject to approval by the Board of Directors, shall exercise all powers or duties of the Board relating to the entering, approval and execution of agreements, leases, and other instruments of or relating to the finances of the Joint Powers Agency within the previously

approved annual budget or amended budget. The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency's annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall obtain approval from the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee. Each meeting of the Executive Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 12 - COMMITTEES

The Board may establish committees, as it deems appropriate to conduct the business of the Agency or it may, in the Bylaws or by resolution, delegate this power to the Executive Committee by Resolution. Members of committees, except as otherwise stated in this Agreement, shall be appointed by the President. Each committee shall have those duties as determined by whichever Agency body created it or as otherwise set forth in the Bylaws. Each committee shall meet on the call of its chairperson and shall report to and be directed by whichever entity created it. No more than one representative from each jurisdiction shall serve on each committee. Membership of any committee may consist in whole or in part of persons who are not members of the Board; provided that the Board may delegate decision-making powers and duties only to a committee, a majority of the members of which are Board Members. Any committee, except the City Selection Committee, in which a majority of the members are not Board Members may function only in an advisory capacity. The Legislative Action Committee shall be a permanent Committee of the Agency chaired by the Second Vice President and whose members shall be appointed by the Agency Members. Should there be no Second Vice President, the Legislative Action Committee shall be chaired by the First Vice President. All standing committees shall abide by the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 13 – CITY SELECTION COMMITTEE

The City Selection Committee is established pursuant to State law and the Agency shall administer the City Selection Committee as follows: The City Selection Committee shall be a permanent committee of the Agency, consisting of the Mayor of each City or Town, consistent with Government Code 50270, as amended. The Agency shall allow all cities in the County to participate in the City Selection Committee, whether or not they are members of the Agency.

ARTICLE 14 – PROFESSIONAL SERVICES

14.1 The Board of Directors may contract with individuals or companies to provide the following services at the pleasure of the Board of Directors:

- 14.1.1 Executive Director. The Board shall contract with a consultant or independent contractor to fulfill the following duties of an Executive Director: manage the affairs of the Agency, subject to the general supervision and policy direction of the Board and the Executive Committee; oversee the day-to-day activities of the Agency; select and manage the activities of all consultants and independent contractors to the Agency; be responsible for required filings by the Agency with the State of California; prepare or delegate the preparation of all meeting notices, minutes, and required documentation of the Agency; prepare and propose an annual budget; prepare reports and recommendations for consideration by the Executive Committee or Board; be responsible for billing and collection of annual dues; maintain the records of the Agency; assist Local Agencies in the preparation and filing of applications for participation in the financing programs of the Agency; expedite the processing of these applications; pay all invoices, taxes and amounts due; and perform other duties as are assigned by the Board and Executive Committee. The Executive Director may have the authority to sign agreements, applications, and other documents on behalf the Agency, if authorized by the Board or Executive Committee. The Executive Director shall have the Authority to enter into individual Agreements with a single vendor over the course of a fiscal year, on behalf of the Agency, up to the amount set by the Bylaws.
- 14.1.2 General Counsel. The Board shall contract with a consultant, independent contractor, or law firm to fulfill the duties of General Legal Counsel. The General Counsel shall take direction from the majority of the Board of Directors. The General Counsel shall be a member in good standing of the California State Bar. The General Counsel shall be responsible for the legal affairs of the Agency;
- 14.1.3 Auditor. The Auditor shall be a Certified Public Accountant licensed to practice in the State of California. The Auditor will conduct annual financial audits of the Agency;
- 14.1.4 Other services. The Executive Director may hire additional consultants and independent contractors, as appropriate, based upon a previously approved budget;
- 14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any agent, consultant or independent contractor of the Agency become a member of PERS or be entitled to a pension or retirement from PERS as a result of service to the Agency; and
- 14.1.6 The consultants and independent contractors fulfilling the duties of Executive Director, the Auditor, the General Counsel and any other consultants or independent contractors who provide services to the Agency shall be compensated in such manner as shall be approved by the Board and as permitted by applicable law.

ARTICLE 15 - SIGNIFICANT PROGRAMS

If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. If the Board deems it necessary, it may

appoint a working committee to study the significant program or activity and provide input to the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$10,000 or more in annual expenditures; this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into a specific program or project Agreement that includes relevant terms regarding the particular affected Members, and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These limited scope Agreements shall be subject to approval by the Board by a two-thirds vote of the Members.

ARTICLE 16 - ACCOUNTS AND RECORDS

- 16.1 The Agency shall adopt an operating budget pursuant to Section 8.3.5 of Article 8 of this Agreement.
- 16.2 The Secretary/Treasurer of the Agency or the Executive Director shall establish and maintain funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Agency shall be open to and made available for inspection at all reasonable times upon request by authorized representatives of the Members.
- 16.3 The Agency shall adhere to the standard of strict accountability for funds and report all receipts and disbursements as set forth in the Joint Powers Law.
- 16.4 Auditor's Report. The Auditor, within one hundred and twenty (120) days after the close of each Fiscal Year, shall give a complete written report of all financial activities for the prior Fiscal Year to the Board.
- 16.5 The Agency shall either make or contract with a Certified Public Accountant to make an annual Fiscal Year audit of all accounts and records of the Agency, conforming in all respects with the requirements of the Joint Powers Law. A report of the audit shall be filed as a public record and be provided to each of the Members, and with the County Auditor of the County of Santa Clara. Costs of the audit shall be considered a general expense of the Agency. Any costs of the audit shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for this purpose.

ARTICLE 17 - RESPONSIBILITIES FOR FUNDS AND PROPERTY

- 17.1 The Secretary/Treasurer, or his or her designee, shall have the custody of and disburse the Agency's funds. Proceeds of similar obligations of the Agency may be deposited with a trustee, agent or other depository and shall not be considered the Agency's funds for purposes of this Article. The Secretary/Treasurer may delegate disbursements to persons as may be authorized by the Board or the Executive Committee to perform that function, subject to the requirements of Section 17.2 below.

- 17.2 The Secretary/Treasurer or designee shall perform all functions then required to be performed by the Treasurer under the Joint Powers Law. The Secretary/Treasurer shall review the financial statements and the annual audit of the Agency.
- 17.3 Pursuant to Government Code Section 6505.1, as amended, the Executive Director, the Secretary/Treasurer, and other persons as the Board may designate, shall have charge of, handle, and have access to the property of the Agency. The Agency shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in a form specified by the Board of Directors, covering any officers or agents of the Agency who are authorized to hold or disburse funds of the Agency and any officers or agents who are authorized to have charge of, handle and have access to property of the Agency.

ARTICLE 18 - MEMBER RESPONSIBILITIES

- 18.1 Each Member shall have the following responsibilities:
 - 18.1.1 To appoint its Director and Alternate to, or remove its Director and Alternate, from the Board, as set forth in Article 8;
 - 18.1.2 To consider proposed amendments to this Agreement as set forth in Article 29;
 - 18.1.3 To make contributions in the form of annual membership assessments and fees, if any, determined by the Board for the purpose of defraying the costs of providing the annual benefits accruing directly to each party from this Agreement; and
 - 18.1.4 If a Member provides written notice to the Agency of its election to relinquish its status as a Member, or if a Member fails to be represented at four (4) or more consecutive regular meetings of the Board of Directors, then that Member may be deemed to be a suspended Member, with all the rights and duties of an Associate Member, upon action of the Board of Directors duly adopted. Prior to the suspension, the President shall contact the Mayor and request that another Council Member be appointed or that reinstatement for the current Member be requested. The suspension shall be approved by the Board of Directors. Promptly following that action by the Board of Directors, the Member may be reinstated by informing the Board of its intent to be reinstated within thirty (30) days and to attend all future meetings either via the Director or Alternate. Removal of a Member for failure of the Director to attend meetings shall not relieve the Member from its obligations under any outstanding agreements relating to the Agency's financial obligations, except in accordance with this Agreement.

ARTICLE 19 - NEW MEMBERS

With the approval of the Board, any city located within the County of Santa Clara may become a party as a Member to this Agreement. A city requesting membership shall apply by presenting to the Agency, a resolution of the Legislative Body of the City, evidencing its approval of this Agreement. The date that the applying city will become a Member will be determined by the Board. The Agency shall

accept new Members upon a majority affirmative vote of the entire Board and upon payment of any Board determined assessments and fees.

ARTICLE 20 - WITHDRAWAL

A Member may terminate its membership in the Agency at any time upon giving one hundred and eighty (180) days written notice of withdrawal to the Agency. The notice shall be given to the Board of Directors. The effective date shall be the conclusion of the first Board Meeting which occurs after the one hundred and eighty (180) day notice period has passed. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued through the end of the current fiscal year of the Agency. The withdrawal does not in any way impair any contracts, resolutions, indentures, or other obligations of the Agency then in effect. In the event of a disagreement between the Agency and the withdrawing Member as to whether the withdrawal shall cause the impairment of any contracts, resolutions, indentures, or other obligations of the Agency, the determination shall be made by a majority vote of the Board of Directors. Any Member that withdraws and later seeks reinstatement to the Agency shall provide funds to the Agency, proportionate to their responsibility for the current fiscal year, as if the Member had never left the Agency. A withdrawing Member shall, in all events, remain liable for its proportionate share of: (i) its full amount of its proportionate share of the adopted fiscal year budget; (ii) any call for funds or assessment levied by the Agency prior to the date it provides its notice of withdrawal; (iii) any contribution in existence at the time of the notice of withdrawal.

ARTICLE 21 - REMOVAL

If the Board of Directors determines that reasonable cause exists to remove a Director from the Board, it can remove the Director and request that the Member who appointed the Director appoint a new Director. The Board may, by two-thirds majority vote of the entire Board, remove a Member based on a Member's breach of any material term of this Agreement, and the failure to cure that breach within sixty (60) days written notice. A terminated Member shall remain liable for any obligation under this Agreement as described above. Failure to pay dues within 60 days following notice shall result in a Member becoming suspended with all the rights of an Associate Member. A suspended Member shall immediately have its voting rights restored upon full payment of dues.

ARTICLE 22 - OBLIGATIONS OF AGENCY

The debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Members. Any Member may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Agency. Nothing in this Agreement shall be interpreted to limit the applicability of the provisions of Government Code Section 895.6.

ARTICLE 23 - TERMINATION AND DISTRIBUTION OF ASSETS

This Agreement may be terminated at any time that no financial obligations of the Agency are outstanding, with the approval of two-thirds of the Members. Upon termination of this Agreement, all assets of the Agency shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the parties to this Agreement, in accordance with the respective contributions of each of the Parties.

ARTICLE 24 - LIABILITY OF BOARD OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

- 24.1 The Members of the Board of Directors, Officers, and Committee Members of the Agency shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be individually liable for any mistake of judgment, or any other action made, taken, or omitted by them in good faith, nor for any act or omission by any agent, consultant or independent contractor selected with reasonable care, nor for loss incurred, resulting from any action made, taken, or omitted by them in good faith and with reasonable care through investment of Agency funds, or failure to invest.
- 24.2 No Director, Officer, or Committee Member shall be responsible for any act or omission of any other Director, Officer, or Committee Member. Unless otherwise required by law, no Director, Officer, or Committee Member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.
- 24.3 The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency for any Director, Officer, or Committee Member, for their actions taken within the scope of the Agency. Nothing herein shall limit the right of the Agency to purchase insurance to provide coverage for these types of losses.
- 24.4 These indemnification and defense obligations shall survive the termination of the Agreement as to any acts or omissions occurring before such termination.

ARTICLE 25 - INDEMNIFICATION

To the fullest extent allowed by law, the Agency shall defend, indemnify, and save harmless the Members and their governing bodies, officers, agents and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Agency or the activities undertaken pursuant to this Agreement.

ARTICLE 26 - BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Agency. The provisions of the Bylaws, as modified from time to time, shall establish the operating procedures and standards for the Agency.

ARTICLE 27 - NOTICES

The Agency shall address notices, billings, and other communications to a Member as directed by that Member. Each Member shall provide the Agency with the email and physical address to which communications are to be sent. Members shall address notices and other communications to the Agency, at the office address of the Agency, or the email address of the Agency as directed by the Member and as set forth in the Bylaws.

ARTICLE 28 - CODES

The Agency shall adopt and observe a Code of Conduct and Conflict of Interest Policy. The Agency shall comply with all requirements of the Fair Political Practices Commission as required by law or regulation.

ARTICLE 29 - AMENDMENT

This Agreement may be amended at any time by vote of the Members, acting through their Legislative Bodies. Any amendment of this Agreement shall become effective upon receipt by the Agency of notice of the approval of the amendment by two thirds of the Legislative Bodies of the Members.

ARTICLE 30 - SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected.

ARTICLE 31 - PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, or asset of the Agency. This Agreement shall be binding upon and shall inure to the benefit of successors of the Members. This Agreement is intended solely for the benefit of the

Agency and its Members. No third party shall be deemed a beneficiary of this Agreement or have any rights against the Agency or its Members.

ARTICLE 32 - ASSOCIATE MEMBERS

Any Public Agency located within the jurisdictional authority of the County of Santa Clara may, with the approval of the Board of Directors, become an Associate Member of the Agency by executing and delivering to the Agency an Associate Membership Agreement and providing an Associate Membership fee and as further provided in the Bylaws. An Associate Member shall not be entitled to representation on the Board of Directors, or to vote on any matter coming before the Board of Directors or the Agency, unless a separate written agreement is entered into between the Associate Member and the Agency.

ARTICLE 33 - LIBERAL CONSTRUCTION

The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Agency.

ARTICLE 34 - NON-WAIVER

No waiver of the breach of default of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Member shall be construed to be a waiver of any succeeding breach of the same or other covenants, restrictions, or conditions of this Agreement. No delay or omission of exercising any right, power, or remedy in the event of a breach or default shall be construed as a waiver or a variation of any of the terms of this Agreement or any applicable agreement.

ARTICLE 35 - REMEDIES FOR BREACH

If any Member shall default on any obligation contained in this Agreement, the default shall not excuse any other Member from fulfilling its respective obligations under this Agreement. Any Member shall be entitled to pursue all legal and equitable remedies against another Member in response to any alleged default under this Agreement. Any and all of the remedies provided to the Members, hereunder or by law now or hereafter enacted, are cumulative and the exercise of one right or remedy shall not impair the Members to any other remedy.

ARTICLE 36 - ARTICLE HEADINGS

All article headings are for reference only and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 37 - DISPUTE RESOLUTION

- 37.1 The Members agree that any dispute regarding the enforcement or interpretation of any term, covenant, or condition of this Agreement ("Dispute") may first, for a period of not less than thirty (30) days, be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation, or any other binding arbitration or adjudicative dispute resolution process. The Members shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in the Dispute; (iii) exchange written position papers stating their position on the Dispute and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the Dispute; and (iv) engage and cooperate in such further discovery as the Members agree or mediator suggests may be necessary to facilitate effective mediation.
- 37.2 Each Member shall bear its own costs, attorney's fees, and expenses of the mediation. Venue of the mediation shall be a mutually agreeable city within Santa Clara County, California.

ARTICLE 38 – INSURANCE

If available, the Agency shall obtain insurance for all Members, appointed Members, and Committee Members, including, but not limited to, Directors and Officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall deem will be necessary to adequately insure against the risks of liability that may be incurred by the Agency. Insurance under this provision may include an insurance pool program.

ARTICLE 39 - FILING WITH SECRETARY OF STATE

The Executive Director of the Agency shall file a notice of this Agreement with the office of the California Secretary of State within thirty (30) days of its effective date, as required by Government Code Section 6503.5, as amended and within seventy (70) days of its effective date as required by Government Code Section 53051, as amended.

ARTICLE 40 - COUNTERPARTS

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto. Facsimile and electronic signatures shall be binding.

ARTICLE 41 - AGREEMENT COMPLETE

This Agreement constitutes the full and complete Agreement of the parties and supersedes any prior written Agreement between the Members on the same topic.

CITY OF CAMPBELL

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

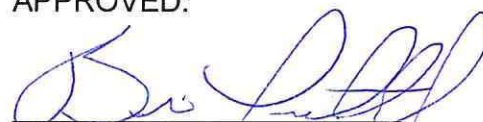
APPROVED AS TO FORM:



Bill Seligmann, City Attorney1/25/24

Date

APPROVED:



Brian Loventhal, City Manager1/25/24

Date

CITY OF CUPERTINO

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

Christopher Jensen

Christopher Jensen, City Attorney

Jan 17, 2024

Date

APPROVED:

Pamela Wu

Pamela Wu, City Manager

Jan 17, 2024

Date

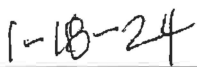
CITY OF LOS ALTOS

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:



Jolie Houston, City Attorney



Date

APPROVED:



Gabriel Engeland, City Manager



Date

TOWN OF LOS ALTOS HILLS

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

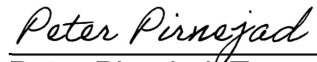


Steven Mattas, Town Attorney

1/23/2024

Date

APPROVED:



Peter Pirnejad, Town Manager

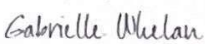
01/24/2024

Date

TOWN OF LOS GATOS

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

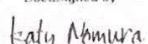
DocuSigned by


Gabrielle Whelan, Town Attorney

1/26/2024

Date

APPROVED:

DocuSigned by


Katy Nomura, Assistant Town Manager
For Laurel Prevetti, Town Manager

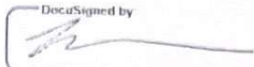
1/30/2024

Date

CITY OF MILPITAS

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

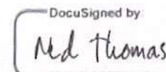
DocuSigned by

2138587A568C9479

Michael Mutalipassi, City Attorney

Jan-24-2024

Date

APPROVED:

DocuSigned by

2138587A568C9479

Ned Thomas, City Manager

Jan-24-2024

Date

CITY OF MONTE SERENO

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

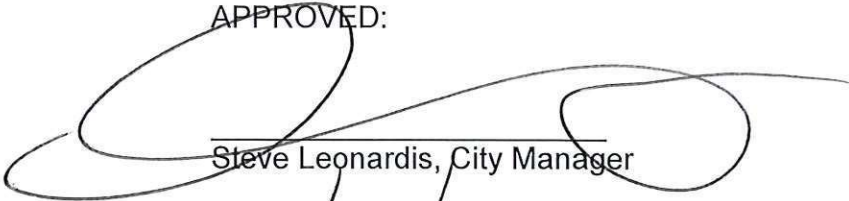


Kristen Powell, City Attorney
Kristen

1-30-24

Date

APPROVED:



Steve Leonardis, City Manager

1/29/24

Date

CITY OF MORGAN HILL

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

Donald Larkin, City Attorney1/19/2024

Date

APPROVED:

Christina Turner, City Manager1/19/2024

Date

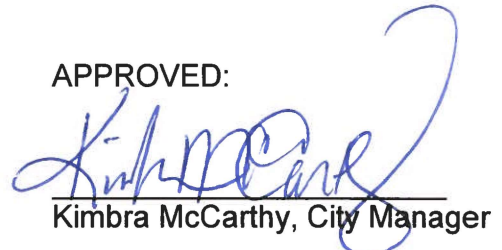
CITY OF MOUNTAIN VIEW

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:


Jennifer Logue, City Attorney1/17/24
Date

APPROVED:


Kimbra McCarthy, City Manager1/17/24
Date

CITY OF PALO ALTO

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

DocuSigned by
Molly Stump

Molly Stump, City Attorney

2/1/2024

Date

APPROVED:

DocuSigned by
Ed Shikada

Ed Shikada, City Manager

1/31/2024

Date

CITY OF SAN JOSÉ

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

*Kevin Fisher*Kevin Fisher, Assistant City AttorneyFeb 16, 2024

Date

APPROVED:

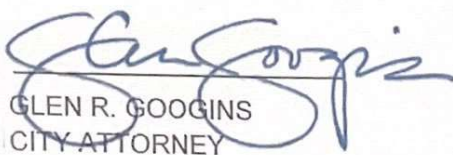
Toni J. Taber, City Clerk16 February 2024

Date

CITY OF SANTA CLARA

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:



GLEN R. GOOGINS
CITY ATTORNEY

1/30/24

Date

APPROVED:



Jovan Grogan, City Manager

1/30/24

Date

CITY OF SARATOGA

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

DocuSigned by:

580E8DD2F4F84C3
Richard Taylor, City Attorney

1/26/2024

Date

APPROVED:

DocuSigned by:

9689EA1BA9682B1
James Lindsay, City Manager

1/26/2024

Date

CITY OF SUNNYVALE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:



Rebecca Moon, Interim
City Attorney1/29/24

Date

APPROVED:



Larry Klein, MayorJanuary 29, 2024

Date

CITY OF GILROY

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Cities Association of Santa Clara County Joint Powers Agency

APPROVED AS TO FORM:

APPROVED:

Andy Faber, City Attorney

Jimmy Forbis, Administrator

Date

Date



City of Gilroy

STAFF REPORT

Agenda Item Title: Award a Three-Year Contract to Swimming Swan LLC in the Amount of \$816,492.42 to Serve as the Christopher High School Aquatics Center Operator Beginning in 2025 through 2027, with Two, One-Year Extension Options

Meeting Date: February 3, 2025

From: Jimmy Forbis, City Administrator

Department: Recreation

Submitted By: Bryce Atkins, Assistant to the City Administrator

Prepared By: Adam Henig, Recreation Manager

STRATEGIC PLAN GOALS

Ensure Neighborhood Equity from City Services

RECOMMENDATION

1. Award a three-year contract with two, one-year extension options to Swimming Swan LLC to serve as the Christopher High School Aquatics Center Operator from 2025 through 2027 in the total amount of \$816,492.42:

\$258,998.39 (Year 1)

\$271,948.31 (Year 2)

\$285,545.72 (Year 3)

\$816,492.42 (3-Year Total)

2. Authorize the City Administrator to execute the contract and associated documents.

EXECUTIVE SUMMARY

Due to the pandemic-related reduction of recreational services, the City's aquatics program at Christopher High School (CHS) was eliminated in 2020. To provide public swim lessons and recreational swimming in 2022, a request for proposals (RFP) was distributed, seeking the services of an aquatics operator to

manage the CHS Aquatics Center. Council approved the vendor Swimming Swan LLC, who operated CHS Aquatics Center from 2022 through 2024. A second RFP for this project was issued and Swimming Swan LLC was selected by City staff among the two submissions received. Staff recommends that the City Council approve Swimming Swan LLC to serve as the aquatics operator for the next three years, with two, one-year extension options. Their management fee of \$816,492.42 will cover insurance, certifications, equipment and any additional administrative expenditures from 2025 through 2027.

BACKGROUND

The Christopher High School Aquatics Center was built in partnership with the Gilroy Unified School District (GUSD) and opened to the public in the summer of 2012. Through 2019, the Gilroy Recreation Department operated a seasonal aquatics program at Christopher High School, with swimming lessons, recreation swim, certification classes, water aerobics and a private party reservation program.

During the pandemic the pool was closed to the public. To reopen the Aquatics Center and offer residents swim lessons and recreation swim, an RFP was initiated for the services of an aquatics operator. Prospective vendors were asked about their qualifications, aquatic operation experience, program plans, registration process, its communication process, references, quality assurance, risk management and insurance. Among the submissions received was Swimming Swan LLC, who was ultimately selected by the City Council.

Three years later, a new RFP was issued on November 26, 2024. Vendors had three weeks to submit their proposal, during which time there were opportunities to submit questions and schedule an optional site visit. There were only two proposals submitted. The RFP selection committee was comprised of three City staff: the Facilities Superintendent, Recreation Manager and Recreation Supervisor.

ANALYSIS

The two proposals submitted were from USA Management and Swimming Swan LLC. The average scoring and proposed management fees are provided below:

Proposing Firm	Average Evaluator Score	Proposed Fee Amount
Swimming Swan	91	\$258,894.41
USA Management	33	\$197,370.00

The committee scored and selected Swimming Swan, the current operator, to recommend to the City Council to operate the Christopher High School Aquatics Center from 2025 to 2027 with two, one-year extension options. The key points, but not an exhaustive list, of the scoring difference between the two firms is that USA Management’s proposal:

- Overall did not propose a scope of services consistent with what was asked for in the RFP;
- The management fee listed above does not include certifications, on call team responses, nor uniforms for each team member, each with additional costs that could not be determined in totality, despite being listed in their scope of services. Only the fee for the first year was included, without mention of any increase over the remaining years. The management fee was also listed as a “silver package” and was not really reflective of the services asked for;
- Proposed their own form of agreement to sign, which was not consistent with the RFP terms of using the City’s form of agreement;
- Information about the assigned staff qualifications was severely lacking,
- Did not demonstrate an understanding of the scope of work in the RFP
- No substantive content about the programs or services proposed, nor a proposed schedule, that informs the City of exactly what and how they would provide recreational swimming services to the community
- Proposed contract from USA Management appears to only be contracting for the pool manager, and ambiguous about if they are including other personnel in the agreement, or if the City is required to pay staff members directly, increasing the cost.

Based in San Diego, Swimming Swan LLC was established in 2014. They offer individual and group swim lessons for all ages and all levels as well as provide lifeguard training and management for community recreation swim. In addition to their experience working with homeowner associations and hotels in California and Nevada, Swimming Swan has operated as the City of Gilroy’s contracted aquatics operator since 2022. Swimming Swan is also contracted with other government agencies such as Clark County in Nevada, the City of Delano, and the City of Riverside.

Since they began operating at the CHS Aquatics Center, they have served thousands of Gilroy residents every summer, with the numbers increasing each year, as indicated in the table below.

	Recreation Swimmers	Swim Lessons (group & private)	Total number served
2022	4,820	1,347	6,167

Award of Contract to Swimming Swan, LLC in the Amount of \$816,492.42 to Serve as the Christopher High School Aquatics Center Operator in 2025 through 2027 (Project No.25-RFP-AD-513)

	Recreation Swimmers	Swim Lessons (group & private)	Total number served
2023	5,107	1,448	6,555
2024	6,880	1,883	8,763

Services Provided

During their tenure in Gilroy, Swimming Swan provided several services and opportunities to residents. They hired local residents to serve as lifeguards, pool managers, instructors and cashiers and offered lifeguarding certification, CPR, and junior lifeguarding classes. Even though they can only operate from Memorial Day to Labor Day, Swimming Swan has done an excellent job of maximizing their time at the Center, establishing their presence as the only public aquatic center operator in Gilroy. In addition to offering swim lessons and recreation swim, they provide aqua yoga classes, opportunities to rent a party area or lap lanes, and swimming lesson scholarships for economically disadvantaged Gilroy youth. In 2024, Swimming Swan provided free admission to the City's summer day camp program, which was located at Christopher High School's Auxiliary Gym.

The management fee that Swimming Swan LLC would receive would cover the following services and expenses:

- Administrative
- Insurance
- Technology Platform
- Red Cross audit
- Custodial cleaning
- Additional equipment
- Staff uniforms

Per the facility usage agreement with Gilroy Unified School District, the City is required to seek permission if it hires a third party to operate the Aquatics Center. The District has approved the request.

Responsibilities

The operator will be in charge of recruiting, hiring, on-boarding, and training its lifeguards and cashiers as well as providing janitorial support. The City will be responsible for all building maintenance (not janitorial), capital improvement(s), utilities, water slide waxing and maintenance, and serve as the liaison between the School District and the operator. The City will also provide marketing support. The facility responsibilities are already in the existing budget.

Fees

Swimming Swan has proposed offering services to the public that are similar to what they offered in 2024. This includes group swim lessons for youth and adults, private lessons, aquatic classes (Aqua Yoga), lap swim, lap lane rentals, a junior lifeguard program, party rental area, and recreation swim. They will continue to offer scholarships to economically disadvantaged youth.

The proposed 2025 fees are the following:

- **Swim Lessons (8 days):** \$122 per resident or \$132 per nonresident (a 2% increase from 2024)
- **Recreation Swim** (daily entrance):
 - Open Swimming Fees Children under age 2 are free
 - Weekdays/Weekends (fees are the same as 2024)
 - Seniors Resident \$8/\$9
 - Military Resident \$8/\$9
 - Youth Resident \$8/\$10
 - Adult Resident \$10/\$12

None of the admission or registration fees will be received by the City of Gilroy.

ALTERNATIVES

There are a few options available to Council, though staff's recommended action is provided above, and is not recommending the below alternatives.

1. Reject proposals and reissue the RFP. The Council could identify any changes in services, or targeted changes in cost, and attempt to procure revised proposals. There could be cost savings if re-issued with reductions in services consistent to meet any specified target. This process would not be completed in time to offer an aquatics program for the 2025 season, and if a targeted management fee is set, may result in lessened aquatics services during the terms of the potential alternative contract.
2. Award the contract for a lesser length of time and study the City providing the service directly. The Council could choose to award the contract for only one or two years, providing time to conduct an analysis of providing the service in-house. A detailed analysis can be conducted to compare the costs and operational impacts to determine if taking the service provision in-house is best, while at the same time preserving aquatics services for the community during the study. However, evaluating the options of bringing the aquatics program in-house will have staffing impacts, consuming staff time that might be spent on other mandated, core, and potential work plan items to meet the City's strategic goals during the term of the evaluation. An evaluation of such an operation is not a small task, nor can a cookie cutter approach be taken by looking at other cities'

programs. This is mainly due to the high-risk nature of aquatics programs, particularly to children, that such programs present.

3. Reject proposals and direct staff to provide the service directly. Council could simply reject the bids. There would be cost savings from non-payment of the management fee. However, there is insufficient time to conduct recruiting, training, and acquisition of materials in time to provide the services effectively before this summer begins. No analysis is yet available to determine if this would actually present a cost savings in the future. Additional expenditures in the form of personnel costs, materials, self-insurance payments, and other associated costs would be present in currently unknown amounts. Additionally, there will be operational costs in multiple divisions of the City to support internalized aquatics, including human resources, risk management and finance/payroll.

FISCAL IMPACT/FUNDING SOURCE

The proposed agreement is for three years and requires a management fee paid to the operator from 2025 through 2027. The first year would be in the amount of \$258,998.39 with year two increased by the lesser of 5% or the percentage increase between December 2024 and December 2025 in the Consumer Price Index for all Urban Consumers, San Francisco – Oakland – San Jose Metropolitan Area, as published by the U.S. Department of Labor (“CPI”) for a total not to exceed \$816,492.42 for the term of the agreement. Costs for FY25 (half of the first full season - \$129,499.20) will be absorbed within the Recreation Division’s existing budget for FY25.

The Recreation budget receives \$1.5 million as a transfer from the General Fund to help pay for Recreation Division services. It is from this transfer that the pool management fee is paid. There is no cost recovery of this amount, as pool use fees are all retained by the pool operator. In the first RFP process, it was revealed that the revenue from fees was insufficient to garner enough interest in operating the pool from service providing firms. As such, the management fee was added which then attracted bidder interest in providing the service. This second RFP process has proceeded similarly with the inclusion of a management fee.

The cost for future fiscal years will be included in the proposed budget for Council consideration as part of the budget process. The annual costs are shown below, assuming the maximum CPI of 5% is reached.

Calendar Year	Total
2025	\$258,998.39
2026	\$271,948.31
2027	\$285,545.72
TOTAL FEES	\$816,492.42

PUBLIC OUTREACH

The RFP was distributed to over one hundred professionals in the aquatics and recreation field. This included professional associations such as the Bay Area Pool Operators Association and the California Parks and Recreation Society Aquatics Section. In addition, private aquatic operators were also contacted such as the Gilroy Gators, Team Sheepen, and YMCA of Silicon Valley. The RFP was also posted on the City's bid/proposal webpage.

Attachments:

1. Attachment A - Request for Proposals for CHS Aquatics Center Operator No.25-RFP-AD-513.
2. Attachment B - Swimming Swan, LLC Proposal
3. Attachment C - USA Management Proposal
4. Attachment E - Proposed Contract

AGREEMENT FOR SERVICES

(For contracts over \$5,000 – NON-DESIGN, NON-ENGINEERING TYPE CONTRACTOR)

This AGREEMENT made this 04 day of February, 2025, between:

CITY: City of Gilroy, having a principal place of business at
7351 Rosanna Street, Gilroy, California

and CONTRACTOR: Swimming Swan, LLC, having a principal place of business at 903 Paseo Del Lago, Fallbrook, CA 92028.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on February 15, 2025 and will continue in effect through September 30, 2027 unless terminated in accordance with the provisions of **Article 7** of this Agreement.

Any lapse in insurance coverage as required by Article 5, Section D of this Agreement shall terminate this Agreement regardless of any other provision stated herein.

Initial

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONTRACTOR is an independent contractor and not an employee, agent, joint venturer or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR or any employee or agent of CONTRACTOR. Both parties acknowledge that CONTRACTOR is not an employee for state or federal tax purposes. CONTRACTOR shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONTRACTOR shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

A. **Specific Services**

CONTRACTOR agrees to: Perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services"), within the time periods described in **Exhibit "C"** ("Milestone Schedule").

B. **Method of Performing Services**

CONTRACTOR shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONTRACTOR'S services.

C. Employment of Assistants

CONTRACTOR may, at the CONTRACTOR'S own expense, employ such assistants as CONTRACTOR deems necessary to perform the services required of CONTRACTOR by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONTRACTOR'S assistants in the performance of those services. CONTRACTOR assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

CONTRACTOR shall perform the services required by this Agreement at any place or location and at such times as CONTRACTOR shall determine is necessary to properly and timely perform CONTRACTOR'S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONTRACTOR, CITY agrees to pay CONTRACTOR the amounts set forth in **Exhibit "D"** ("Payment Schedule"). In no event however shall the total compensation paid to CONTRACTOR exceed \$816,492.42.

B. Invoices

CONTRACTOR shall submit invoices for all services rendered.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONTRACTOR has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit "A"**, **Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONTRACTOR of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

D. Expenses

CONTRACTOR shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONTRACTOR, all fees, fines, licenses, bonds or taxes required of or imposed against CONTRACTOR and all other of CONTRACTOR'S costs of doing business. CITY shall not be responsible for any expenses incurred by CONTRACTOR in performing services for CITY, except for those expenses constituting "direct expenses" referenced on **Exhibit "A."**

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

A. Tools and Instrumentalities

CONTRACTOR shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONTRACTOR is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers' Compensation

CONTRACTOR agrees to provide workers' compensation insurance for CONTRACTOR'S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, arising out of any injury, disability, or death of any of CONTRACTOR'S employees.

C. Indemnification of Liability, Duty to Defend

As to all liability, to the fullest extent permitted by law, CONTRACTOR shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising or resulting directly or indirectly from any act or omission of CONTRACTOR or CONTRACTOR'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

D. Insurance

In addition to any other obligations under this Agreement, CONTRACTOR shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof. As a condition precedent to CITY'S obligations under this Agreement, CONTRACTOR shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONTRACTOR under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

As CONTRACTOR is not CITY'S employee, CONTRACTOR shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONTRACTOR acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONTRACTOR'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONTRACTOR'S behalf;
- CITY will not withhold state or federal income tax from payment to CONTRACTOR;
- CITY will not make disability insurance contributions on behalf of CONTRACTOR;
- CITY will not obtain workers' compensation insurance on behalf of CONTRACTOR.

ARTICLE 6. OBLIGATIONS OF CITY**A. Cooperation of City**

CITY agrees to respond to all reasonable requests of CONTRACTOR and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONTRACTOR'S duties under this Agreement.

B. Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONTRACTOR. Such assignment shall not release CONTRACTOR from any of CONTRACTOR'S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT**A. Sale of CONTRACTOR's Business/ Death of CONTRACTOR.**

CONTRACTOR shall notify CITY of the proposed sale of CONTRACTOR's business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONTRACTOR set forth in **Exhibit A, Subsection V.H.**, no later than thirty (30) days after CITY's receipt of such notice of sale.

If CONTRACTOR is an individual, this Agreement shall be deemed automatically terminated upon death of CONTRACTOR.

B. Termination by City for Default of CONTRACTOR

Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY'S option, may terminate this Agreement by giving written notification to CONTRACTOR. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONTRACTOR'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.
2. CONTRACTOR'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONTRACTOR shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONTRACTOR. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONTRACTOR'S default in the performance of this Agreement or material breach by CONTRACTOR of any of its provisions, then in addition to any other rights and remedies CITY may have, CONTRACTOR shall reimburse CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONTRACTOR for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONTRACTOR all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONTRACTOR, at the CONTRACTOR'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONTRACTOR to CITY.

D. Transition after Termination

Upon termination, CONTRACTOR shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONTRACTOR shall cease such work as soon as it is safe to do so. CONTRACTOR shall incur no further expenses in connection with this Agreement. CONTRACTOR shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONTRACTOR's duties by any new CONTRACTOR hired by the CITY to complete such services.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONTRACTOR shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONTRACTOR shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above. The CONTRACTOR shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation reasonable attorneys' fees, that may arise out of any violations of the Act by the CONTRACTOR, its subcontractors, or the officers, employees, agents or representatives of either.

C. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Compliance with Laws

The CONTRACTOR shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONTRACTOR agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

F. Conflict of Interest

CONTRACTOR certifies that to the best of its knowledge, no CITY employee or office of any public agency interested in this Agreement has any pecuniary interest in the business of CONTRACTOR and that no person associated with CONTRACTOR has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

G. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONTRACTOR for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

H. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

I. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A", Section V.H.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

J. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

K. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

L. Waiver

CONTRACTOR agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

CONTRACTOR:**CITY:**

Swimming Swan, LLC

CITY OF GILROY

By: _____

Name: Melissa Swanson Musil

Title: President

By: _____

Name: Jimmy Forbis

Title: City Administrator

Social Security or Taxpayer

Identification Number 47-1754638

Approved as to Form

ATTEST:

City Attorney

City Clerk

EXHIBIT “A”

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONTRACTOR shall provide the services indicated on the attached **Exhibit “B”**, Scope of Services (“Services”). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONTRACTOR agrees to assign Melissa Swanson Musil, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONTRACTOR shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONTRACTOR shall commence the Services upon delivery to CONTRACTOR of a written “Notice to Proceed”, which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Adam Henig, Recreation Manager shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONTRACTOR or if otherwise delivered as provided in the **Section V.H.** (“Notices”) of this **Exhibit “A”**.

B. COMPLETION OF SERVICES

When CITY determines that CONTRACTOR has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONTRACTOR written Notice of Final Acceptance, and CONTRACTOR shall not incur any further costs hereunder. CONTRACTOR may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONTRACTOR has not completed all of such Services as required by this Agreement, CITY shall so inform CONTRACTOR within this two (2) week period.

III. PROGRESS SCHEDULE

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit “C”**.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONTRACTOR as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit “B”**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONTRACTOR shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

CONTRACTOR represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONTRACTOR’S representations and warranties regarding its skills, qualifications and licenses. CONTRACTOR shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

B. RESPONSIBILITY OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. CONTRACTOR shall not be responsible for the accuracy of any project or technical information provided by the CITY. The CITY’S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR’S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONTRACTOR for the purpose of verifying any and all charges made by CONTRACTOR in connection with this Agreement. CONTRACTOR shall maintain for a minimum period of three (3) years (from the date of final payment to CONTRACTOR), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONTRACTOR, all of which shall be made available to CITY at the CITY’s offices within five (5) business days after CITY’s request.

D. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or other information developed or received by or for CONTRACTOR and all other written and oral information developed or received by or for CONTRACTOR and all other written and oral information submitted to CONTRACTOR in connection with the performance of this Agreement shall be held confidential by CONTRACTOR and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONTRACTOR'S disclosure thereof) shall be deemed confidential. CONTRACTOR shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

E. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONTRACTOR have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

F. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONTRACTOR may retain and use copies thereof subject to **Section V.D** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed. However, CONTRACTOR shall not be responsible for, and City shall indemnify CONTRACTOR from, damages resulting from the use of said material for work other than PROJECT, including, but not limited to, the release of this material to third parties for work other than on PROJECT.

G. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

H. NOTICES.

Notices are to be sent as follows:

CITY: Adam Henig, Recreation Manager
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

CONTRACTOR: Melissa Swanson Musil
903 Paseo Del Lago
Fallbrook, CA 92028

I. FEDERAL FUNDING REQUIREMENTS.

- ☐ If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.I.** apply.
- ☒ If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.I.** do not apply.

1. DBE Program

CONTRACTOR shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONTRACTOR, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

EXHIBIT “B”

SCOPE OF SERVICES

Christopher High School Aquatics Center Operations

A. PROJECT DESCRIPTION AND STATEMENT OF PURPOSE

The Christopher High School Aquatics Center was built in partnership with the Gilroy Unified School District (GUSD) and opened to the public the summer of 2012. The facility is designed as an Activity Pool with waterslides and a competition pool with two diving boards. The Activity Pool is a zero-entry pool which gradually increases in depth to three and a half feet. There is a play structure with two waterslides that is geared towards toddlers and young children and two elevated waterslides that drop into water that is three and a half feet deep. Height requirements must be met to utilize the waterslides.

The Activity Pool, bathrooms, and offices are owned by the City of Gilroy and the competition pool is owned by the school district. There are permanent shade structures on the Activity Pool side and picnic tables. In addition, there is a private party area with a permanent shade structure and picnic tables. There are bleachers on the competition pool side. Showers are located outdoors on the competition and activity sides of the building.

The buildings at the Christopher High School Aquatics Center are owned by the City of Gilroy and consist of a men’s bathroom, women’s bathroom, a break room, a storage closet, and an adjoining two-room office space. The pump room is only accessible by school district staff as pool maintenance is overseen by GUSD. The available parking lot for Aquatics Center patrons is located on the north side of the school campus.

The waterslides are regulated by California/Occupational Safety and Health Administration (Cal/OSHA) Amusement Ride and Tramway Unit. The County of Santa Clara Health Department inspects the pool. Permits are issued by both entities to operate the pool and waterslides on an annual basis.

Services Provided

The City is seeking an independent pool Contractor to manage swim lessons and recreation swim at Christopher High School Aquatic Center in Gilroy, California. Christopher High School Aquatics Center Operations involves aquatic programming during from Memorial Day weekend through Labor Day weekend for the Gilroy community. The primary need is for the instruction of swim lessons for youth and adults as well as daily recreation swim. Additional aquatic programs may be added including, but not limited to, water aerobics, lap swim, and pool parties.

The term of the Lease Agreement shall be commencing on approximately February 15, 2025, and ending September 30, 2027. An optional year-to-year extension may be granted if all quality standards and other contract requirements are met. The evaluation to determine if an extension should be considered will commence two months prior to the end of the Lease Agreement.

B. GENERAL REQUIREMENTS

The Aquatic Service CONTRACTOR (“CONTRACTOR”) shall deliver the following scope of services and meet the following minimum requirements:

1. **Facility:** The CONTRACTOR shall operate the facility commonly known as the Christopher High School Aquatics Center (“CHS Aquatics Center”), which consists of two pools: the activity pool with a play structure and four waterslides and a 50-meter competition pool with two diving boards, which will not be in operation. The facility also includes outdoor showers, a men’s bathroom, a women’s bathroom, lifeguard office, concrete pool decks with shade structures and picnic tables, bleachers, storage closet, storage shed, a triage room and an adjoining office with a ticket window. Pool maintenance is handled by Gilroy Unified School District staff (“GUSD”) and they have sole access to the pump room.
2. **Services:** The CONTRACTOR must provide the following aquatic services: swim lessons and recreation swim. Additional services may include: lap swim, master swim, water aerobics/exercise classes, swim team partnership, lifeguard certification classes, pool parties/rental program, aquatics-focused summer camp, and/or food and non-alcoholic drink concession operations. Other programs or services outside of the intended use of the facility or from the list mentioned above will require prior approval by the City and may require approval from GUSD.
3. **Hours of Operation:** When school is not in session, the CONTRACTOR may use the Activity Pool. During the summer, the Activity Pool is available between 8:00am to 8:00pm, six days a week (not available on Mondays due to weekly maintenance). The CONTRACTOR may use the competition pool when school is not in session and is not being used by a GUSD program. The City will negotiate the schedule on behalf of the CONTRACTOR.
4. **Program Fees:** The fees charged by the CONTRACTOR for aquatic services shall be comparable rates and fees charged by other public aquatic facilities in surrounding communities and reviewed by the CITY prior to being publicly released. The CONTRACTOR shall provide an option for low-cost swim lessons for income eligible youth (17 years old and under) living in the incorporated areas of Gilroy.
5. **Community Access & Scheduling:** The CONTRACTOR will be solely responsible for the operation and schedule of the facility. The CONTRACTOR shall provide reasonable public access and community use of the facility which shall be determined by the City and CONTRACTOR. The CONTRACTOR will not reduce the public access and community use without prior approval of the City.
6. **Program Administration:** The CONTRACTOR shall have a method for the public to register, pay, and receive adequate customer service in an easy and effective manner. Administrative staff and assistance should be provided to support all hours of operation. Policies and procedures for handling registration, refunds, and complaints are required. The CONTRACTOR shall provide sufficient communication and marketing in order to inform the public of its programs and services. The CONTRACTOR shall take appropriate steps to maintain a high level of customer service and overall satisfaction at all times.

7. Program Equipment and Supplies: The CONTRACTOR is responsible for providing all the equipment and supplies needed to operate the facility. The current City aquatics equipment and supplies are available for use, however, the City will not replace any damaged or missing items. These include:

- o Spinal boards
- o Rescue tubes
- o Swim lesson equipment
- o AED
- o Lifeguard chairs and umbrellas

The City will not provide the following:

- o Office supplies (e.g., computers, printer, pens, paper, and electronic devices)
- o First Aid supplies
- o Janitorial supplies
- o Paper products and soap for the restrooms

8. Reporting and Meeting Requirements: The CONTRACTOR shall meet on a regular basis with the Recreation Division's Designated Representative. Once registration begins for that season, the CONTRACTOR shall provide a monthly report to the representative that includes the following items:

- o Participation statistics by program area that includes swimming lessons, recreation swimming and any other program offered to the public.
- o Resident v. non-resident participants
- o Current challenges (e.g., need 3 more lifeguards; more cool days than warm days)
- o The number of seasonal passes and party rentals.
- o Monthly and yearly comparison tables

In addition, seasonal audits and reviews demonstrating standards of care are met (required by OSHA) should be shared with the designated representative. Risk management documentation (required by OSHA) must be always readily available. The CONTRACTOR will maintain reasonable evidence and documentation of these statistics and results (listed above) and make

these records accessible to the City upon request.

9. School and Neighborhood Impacts: To minimize impacts on residents of the surrounding neighborhood, the CONTRACTOR will notify the City (through the submission of their program calendar) of swim meets and any other large group events that exceed the normal day-to-day operations. The City reserves the right to limit the number of major events at CHS Aquatics Center that may conflict with GUSD events. Amplified sound must be maintained at a reasonable level, as determined by the City.

10. Staff Qualifications: The CONTRACTOR will always be expected to provide reasonable and adequate staffing to maintain operations. The CONTRACTOR shall maintain adequate layers of protection including active supervision. The staff will have the required qualifications and certifications for each position. The CONTRACTOR will maintain appropriate and safe ratios for lifeguards on deck to pool users at all times. Certifications and training records must be accessible by the City and/or OSHA at any time following proper notice (OSHA conducts unannounced visits for the waterslides).

11. Compliance with Laws & Regulations: The CONTRACTOR must remain in compliance with all City, county, state and federal laws and regulations as well as industry standards related to pool and aquatic program operations. These regulators include but are not limited to:

- o City of Gilroy
- o Gilroy Unified School District
- o Santa Clara County Health Department
- o California Department of Health Services
- o Cal/OSHA Amusement Ride and Tramway Unit
- o California Department of Labor
- o Emergency Medical Services Authority (EMSA)
- o Consumer Product Safety Commission & Virginia Graeme Baker Act
- o Americans With Disabilities Act
- o California Department of Fair Employment and Housing
- o Centers for Disease Control and Prevention
- o American Red Cross
- o WhiteWater (waterslides manufacturer) - The CONTRACTOR shall:
- ☐ Comply with Cal/OSHA's rules and regulations for operating waterslides

- ☐ Be present and participate in OSHA inspections (scheduled and unannounced visits)
- ☐ Maintain daily records for water slide inspections and make these records accessible to the City
- ☐ Maintain staff lifeguard certification records and training records for OSHA inspections and make these records accessible to the City

The City and GUSD reserves the right to conduct periodic and regular site inspections and operational audits to ensure CONTRACTOR is compliant with City, county, state, and federal regulations. City staff will follow up with the CONTRACTOR on specific safety issues it identifies, but does not relieve the CONTRACTOR of its duty to inspect and maintain the facility in safe working order and notify CITY of safety issues it identifies, nor does it transfer responsibility for identifying safety issues or mitigating them to the CITY. The CONTRACTOR will be required to comply with the City's requests in a timely manner. In addition, documentation demonstrating compliance with all regulators/regulations will be required to be kept up to date and reviewed as deemed necessary by the City.

12. Health & Safety: The CONTRACTOR will be required to maintain health and safety standards and associated training records in a reasonable and acceptable manner for the facility, participants, and its employees that comply with City standards and other regulatory agencies listed above. The CONTRACTOR is responsible for keeping up to date with all changes, additions, or amendments to the laws, regulations, and codes related to pool operations and aquatic programs. These standards include but are not limited to:

- o Employee Injury and Illness Prevention Plan
- o Hazardous Materials Communications and Business Plan
- o Bloodborne Pathogens and Biohazardous Exposure Control Plan
- o Hazard Communications (labeling & MSDS management)
- o Hearing Conservation
- o Lifting and Fall Prevention/Protection (Equipment)
- o Electrical Safety Plan
- o Lock Out, Tag Out Equipment Specific Procedures
- o Emergency Action Planning/Drills
- o First Aid/CPR/AED
- o Oxygen Administration
- o Heat Illness and Sun Protection

- o Confined Spaces/Entry Equipment
- o Chemical Storage/Spill Response/Cleanup
- o Fire Extinguisher
- o Personal Protective Equipment
- o Recreational Waterborne Illnesses (RWI's)
- o Signage/Labeling

13. Standard of Care: The CONTRACTOR will be expected to provide aquatic programs and manage the facility in a manner that is comparable to or above the Standard of Care (e.g., Red Cross, Public Health Department, OSHA, etc.) that is reasonable and acceptable for a public pool. This Standard of Care should be demonstrated in all areas including operations, staff training, record keeping, maintenance and janitorial, safety and risk management. The CONTRACTOR is expected to ensure that they are maintaining this Standard of Care by conducting seasonal audits and reviews by qualified external experts and including this information in the report to the City.

14. Risk Management: The CONTRACTOR shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by the CONTRACTOR. In addition to maintaining an acceptable Standard of Care, the CONTRACTOR shall manage their risk by demonstrating proficiency in the following areas:

- o Facilities & equipment
- o Supervision
- o Documentation (staff manuals, certifications, and training records)

The CONTRACTOR is expected to ensure they are maintaining and performing adequate risk management planning and practices by conducting annual audits and reviews by qualified external experts. This information will also be included in an annual report to the City mentioned above.

15. Emergency Action Plan & Procedures: The CONTRACTOR shall create and maintain all emergency procedures and EAPs for the Facility. An EAP is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of Regulations, Sections 3220 and 3221. The EAP covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all the CONTRACTOR's employees including administration and line level employees, which shall use the plan in order to reduce the severity of emergency situations and minimize the risk to life and property.

16. Facility Maintenance & Records: The CONTRACTOR shall maintain the facility in an orderly, clean, and professional condition at all times. GUSD will provide maintenance services on the pool and pool equipment to ensure that the pool is operating per health standards. The CONTRACTOR will be responsible for the hourly chlorine checks and will notify the GUSD Pool Technicians if the water chemistry is out of the normal operating range per Santa Clara County

Health Department and California Code of Regulations (Title 22) section 65529, Public Pool Disinfection. The CONTRACTOR will ensure that the facility is maintained in a clean, safe, and professional manner (the CONTRACTOR will perform general cleaning and custodial duties) in the following areas:

- o Offices
- o Restrooms
- o Outdoor shower areas
- o Supply storage areas
- o Private party area
- o Picnic table areas
- o Equipment/mechanical rooms
- o Disposing of garbage to nearby GUSD dumpster
- o Lights in Facility
- o Personal Protection Equipment (PPE)
- o Slip and fall protection equipment

The CONTRACTOR shall maintain standard operation procedure manuals and maintenance records and logs. These records should include:

- o Daily Pool and Chemical Log
- o Daily Water Slide Inspection Log
- o Checklist for routine maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annual, and annual)

The CITY shall maintain the Annual Water Slide Inspection.

GUSD shall maintain the following:

- o Daily Pool and Chemical Log
- o Equipment Log for each piece of major equipment with maintenance schedule, maintenance contracts, record of work or repairs conducted, manufacturer guidelines, and specifications
- o Training Log for GUSD Pool Technicians

The CONTRACTOR will also be responsible for any damage that is outside the normal wear and tear of the facility. If the damage is beyond normal wear and tear of the facility (e.g. due to misuse, poor maintenance or damage caused by the CONTRACTOR and/or the CONTRACTOR's employees, agents, and service users) as determined by the City, the CONTRACTOR will be required to make the appropriate repairs within 30 days of a written notice (or reimburse the City the cost of the repairs within 30 days). Any fines or fees incurred by the City for OSHA or health inspector violations issued when the CONTRACTOR is operating the pool shall be reimbursed by the CONTRACTOR within 30 days of receiving notice.

17. Signage: The CONTRACTOR will be required to maintain and provide program specific signage for the facility. These signs shall include pool rules and other signs as needed or required. Please note, the City and GUSD are not responsible for lost or stolen items. Per the County Health Code, the City and GUSD will maintain the following signage for the facility:

- o Shallow Water Diving Warnings
- o Maximum Pool Capacity
- o Chemical Storage
- o 911 Emergency
- o First Aid/CPR
- o AED
- o Depth Markers

18. Custodial Costs: The CONTRACTOR will assume sole financial responsibility for the custodial services and shall operate and maintain the facility at no cost to the City.

19. Insurance: The CONTRACTOR will be required to acquire and maintain Workers' Compensation, Employer Liability, Commercial General Liability, Sexual Abuse Molestation, and owned/non-owned/hired automobile liability insurance coverage relating to the CONTRACTOR's use of the Facility, including coverage of the activity pool's play structure and four waterslides. The insurance coverage will need to be approved by the City. The CONTRACTOR will need to provide the City with 30 days' notice of any changes, cancellations, or non-renewals. In addition to any other obligations under this Agreement, CONTRACTOR shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, with a minimum combined single limit coverage of \$10,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; (b) Insurance coverage for owned and non-owned automobiles with a minimum combined single limit coverage of \$1,000,000 per occurrence; Insurance coverage for Sexual Abuse Molestation with a minimum combined single limit coverage of \$1,000,000 per occurrence. As a condition precedent to CITY'S obligations under this Agreement, CONTRACTOR shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy

referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

20. CONTRACTOR shall provide free admission for recreation swimming to City of Gilroy Recreation-sponsored programs that serve youth and vulnerable populations such as summer day camp and adaptive programs. City staff will coordinate in advance with CONTRACTOR on an agreed upon schedule.

C. CITY REQUIREMENTS

City will provide access to the CHS Aquatics Center during the agreed upon assigned hours. The City will be responsible for all building maintenance (not janitorial), capital improvement(s), utilities, and water slide waxing. City will serve as the liaison between GUSD and CONTRACTOR (beyond water-chemistry related issues). City will provide the following advertisement opportunities:

- Featured in the monthly recreation e-newsletter
- An announcements to current participants through our CivicRec database
- A one-page advertisement prepared by the CONTRACTOR to be published in the recreation seasonal guide

In addition, the City will assume sole responsibility for the following:

* Utilities and pool maintenance services for the Facility billed to the City from GUSD for the use of the facility occupied by the CONTRACTOR

*Annual, structural, and operational inspection of the waterslides conducted by a qualified safety inspector (QSI) who is employed by either the Division or by the owner or Contractor.

* Facility and building maintenance expenses.

*The City shall maintain the Water Slide and be responsible for the Annual Water Slide Inspection

Additional Services: Any services not identified in the Scope of Services will be considered additional services. Additional services will be provided only as authorized in writing by the City prior to commencement of the particular task and/or activity.

EXHIBIT “C”

MILESTONE SCHEDULE

2025 - Year 1

- February: Recruitment and hiring of lifeguards, pool managers, and cashiers.
- February to March: Finalize program and fee schedule. A draft program and fee schedule are appended to this Exhibit as Exhibit C-1. The final program schedule shall be negotiated between CITY and CONTRACTOR in good faith and shall reflect substantially the same level of service as in the draft schedule attached as Exhibit C-1. The final fee schedule shall be negotiated as set forth in Paragraph B.4 of the Scope of Services (Exhibit B).
- March: Open registration for summer swim lessons
- March & April: Begin offering lifeguarding and/or water safety certification courses
- Memorial Day weekend through Labor Day weekend: Open Aquatics Center for swimming lessons and recreation swimming based on agreed upon schedule between City of Gilroy and Gilroy Unified School District.

September or October: Meet with City staff to debrief aquatic programs and facility operations

2026 (Year 2) and 2027 (Year 3)

Same schedule as 2025/Year 1 with opportunity to expand programming options.

EXHIBIT “D”**PAYMENT SCHEDULE**

A management fee of \$ 258,998.39, which will cover insurance, certifications, equipment, and any additional administrative expenditures, will be paid over the course of a calendar year and will be issued in semi-annual installments of \$129,499.19 and \$129,499.20 on the following dates: June 1 and October 15. In year two (2026), the management fee shall be increased by the lesser of 5% or the percentage increase between December 2024 and December 2025 in the Consumer Price Index for all Urban Consumers, San Francisco – Oakland – San Jose Metropolitan Area, as published by the U.S. Department of Labor (“CPI”). Thus, for example, if CPI increases 2.2% between December 2024 and December 2025, then the CONTRACTOR fee would then be \$266,768.34 (i.e., an increase of \$7,769.95 from 2025); however, if CPI increases 5.2% during that time, then the CONTRACTOR fee would be \$271,948.31 (i.e., an increase of \$13,597.42 from 2025, or 5%).

On the first of every month, beginning April 1, through October 1, contractor will provide a a monthly report to City staff representative as explained in Exhibit "B," Scope of Services (Secton B, #8). Failure to provide monthly status reports will result in delay of payment.



REQUEST FOR PROPOSAL

GILROY CHS 2025



SWAN AQUATICS
water safety services

A Message from Our Founder

To The City of Gilroy

Decades of experience in the Aquatics Industry have paved the way for our company to provide pool management services to the City of Gilroy. What began as a company formed to battle drownings has transformed and grown into a multi-faceted pool management company that currently services two states with 10 management staff and around 250 employees.

We love what we do. We help municipalities bring aquatic programming to communities that may otherwise not be afforded the opportunity to learn-to-swim or bathe at the pool during a regular, consistent operating schedule.

Our focus over the last decade has been on improving our systems and infrastructure so that we can correctly operate the facilities while providing all that goes into running a smooth operation. From obtaining wholesale vendor items, concessions, running technology, providing insurance, training and certifying qualified staff members to a very robust Human Resources and Management Team - we know what we are doing and have fun doing it.

We would be honored to continue to partner with the Christopher High School Aquatic Center, to ensure safety, satisfied residents and a comprehensive aquatic experience. We would strive to maintain current relationships that the City has already established, and our goal would be to seamlessly transition the management of the Aquatic Center to limit any disruption in operations.

Thank you very much for your time and consideration,

Sincerely,

Melissa Swanson

Founder and President of The Swimming Swan, LLC

903 Paseo Del Lago, Fallbrook CA 92028

858-242-9974 www.theswimmingswan.com Melissa@theswimmingswan.com

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QUALIFICATIONS

History

Swan Aquatics' history began in 1990 when Melissa was put in swim lessons as a small child in South Florida. Those lessons would become the catalyst for a career as an athlete and business professional.

This background would lead to an easy transition into working at pools which started by teaching swimming lessons and lifeguarding. Then, furthering up the ranks to coaching swim team and developing junior lifeguard programs, managing facilities and obtaining pool operator certifications at the city level and within private clubs.

Always returning to teaching swimming at the private level, Melissa had a full schedule of clients during the year of 2014. On May 20, 2014, a near drowning occurred at a pool where there was no lifeguard on duty. Melissa, in the pool teaching a swim lesson, was able to respond and resuscitate a 4 year old child with the help of one of her swimmers, age 3 who was the first person to grab the victim from the bottom of the pool. This event was life changing and transformative for Melissa. At a time when she questioned her path in the Real Estate industry, she always found herself coming back to what she loved. Melissa then decided to come up with a plan to bring on more instructors and create more awareness of the importance of learn to swim programs.

On August 26, 2014, The Swimming Swan LLC was established in San Diego, CA. For the first three years, the business would ebb and flow while going through the growing pains. Our primary focus was to provide an alternative approach to the traditional, recreational programming. Many families either couldn't make it to the pool for their designated swim lessons or the classes were too full. The old school approach was no longer working and families were suffering because of it.

After eleven years in business, we have found that it's the combination of private services and traditional, recreational programming that helps the most people. Overcrowded or overpriced swim lessons, limited access to pools and outdated facilities hinder the safety of families and communities. At Swan Aquatics, we aim to expand access to aquatic programs through our community partnerships.

Professional Certifications and Industry Partnerships

Swan Aquatics is proud to be a licensed training provider for both the **American Red Cross** and a recognized **Training Site for Starguard**. This enables us to offer comprehensive training programs through these reputable agencies, ensuring our staff and programs meet the highest safety and industry standards.

Our Affiliations and Certifications Include:

1. **American Red Cross**
2. **Starguard**
3. **Association of Aquatic Professionals (AOAP)**
4. **USA Swimming**
5. **United States Swim School Association (USSSA)**
6. **National Recreation & Park Association (NRPA)**
7. **American Camp Association (ACA)**
8. **Community Associations Institute (CAI)**
9. **San Diego Aquatic Council**
10. **Southern California Public Pool Operator Association (SCPPOA)**
11. **Bay Area Public Pool Operator Association (BAPPOA)**

Our extensive network of industry partnerships guarantees that we remain at the forefront of aquatic safety, training, and operational excellence.



**American
Red Cross**

Our Clientele

At **Swan Aquatics**, we cater to a diverse range of clients across the aquatics industry, ensuring that each facility is managed by highly trained professionals. Our expertise spans multiple sectors, allowing us to provide tailored solutions for any type of aquatic facility. With a proven track record, we deliver peace of mind, knowing that your facility is in the hands of experts.

Who We Work With:

- **Municipalities:** Supporting public pool operations and community programming for cities and local governments.
- **Hotels, Resorts, and Casinos:** Ensuring luxury aquatic experiences with top-tier safety and service standards.
- **Homeowners Associations (HOAs):** Managing residential community pools with a focus on safety, maintenance, and resident satisfaction.
- **Schools:** Providing swim programs, facility management, and lifeguard services for school pools.
- **Camps:** Offering aquatic supervision, programming, and safety at summer camps and recreational camps.
- **Gyms and Health Clubs:** Delivering expert facility management and swim programming for fitness centers and health clubs.

By partnering with us, you can trust that your aquatic facility will be operated to the highest standards of safety, efficiency, and excellence.



Christopher High School Aquatics Center

Gilroy, California



Located just south of the San Francisco Bay Area, Gilroy is a rapidly growing city with a population of over 58,000. The **Christopher High School Aquatic Center** is the city's only aquatic facility featuring waterslides, an aqua play structure, and two pools, making it a unique and vital resource for the community.

In 2021, **Swan Aquatics** was awarded the contract for Operations and Management after the facility had been closed for several years due to the pandemic. Our team successfully revived the center, beginning with strategic planning and operational development to ensure a smooth and effective relaunch.

Project Highlights:

- **Competition Pool:** 14 lanes, 25 yards, with 2 diving boards and 4-13 feet deep.
- **Activity Pool:** Provided safe and enjoyable recreational opportunities.
- **Waterslides & Aqua Play Structure**
- **Zero Depth Entry**
- **Concession**

Swan Aquatics Services:

- **Strategic Planning:** Developed a comprehensive plan to reopen and operate the aquatic center efficiently post-pandemic.
- **Operational Development**
- **Facility Operations**
- **Brand Development & Marketing**
- **Safety Training**

With **Swan Aquatics** at the helm, the Christopher High School Aquatic Center has become a key recreational destination in Gilroy, offering a safe and enjoyable aquatic experience for residents of all ages.

Islander Aquatic Center - Riverside, California

Situated in the heart of the Inland Empire, the **Islander Aquatic Center** serves as a vital summer destination for the 2.4 million residents of Riverside County. This vibrant facility offers a wide range of activities, including swimming lessons, aqua play, concessions, a volleyball court, and open picnic areas, making it a central hub for recreation and community engagement.

Project Highlights:

- **2 Pools:** Featuring a main swimming pool with diving board and an activity pool designed for both recreational use and swim lessons.
- **Volleyball Court:** Managed and maintained the facility's volleyball court, providing a fun and active space for patrons.
- **Picnic Areas:** Supervised the use of picnic areas to ensure a clean and enjoyable experience for families and visitors.

Swan Aquatics Services:

- **Facility Operations:** Oversee all daily operations to ensure a smooth, safe, and enjoyable environment for all visitors.
- **Concessions:** Managed food and beverage services, providing a variety of healthy and convenient options for patrons.
- **Program Management:** Coordinated swim lessons, aquatic programs, and recreational activities to engage the community.
- **Safety Training:** Provided comprehensive safety and lifeguard training to ensure the highest standards of care and emergency preparedness.

With **Swan Aquatics** leading operations, the Islander Aquatic Center has become a cornerstone of community recreation in Riverside, offering safe, family-friendly aquatic activities and enhancing the overall visitor experience.



Eastlake HOA

San Diego, California

Located in the heart of San Diego, Eastlake Community encompasses over 4,000 families, offering a vibrant and active neighborhood setting. **Swan Aquatics** is proud to have been awarded the contract for Operations and Management of Eastlake's aquatic facilities, ensuring safe and seamless experiences for all residents.

Project Highlights and Swan Aquatics Services:

Community Pool Facility Operations: Full management of daily operations, including staffing, maintenance, and safety protocols to ensure the pool is always ready for use.

- **Lakefront Operations:** Overseeing the safe and enjoyable use of Eastlake's lakefront amenities.
- **Safety Training:** Providing comprehensive training for lifeguards and staff, ensuring safety is the top priority for all water-based activities.

By partnering with **Swan Aquatics**, Eastlake HOA ensures that its aquatic facilities are maintained to the highest standards of safety, efficiency, and resident satisfaction.



Vista Murrieta High School Aquatic Program

Located in Murrieta, California, Vista Murrieta High School is part of the Murrieta Valley Unified School District and features an impressive 8-lane, 25-yard pool. This facility supports both athletic training and community aquatic programs, making it a valuable resource for students and residents alike.

Project Highlights:

- **8-Lane, 25-Yard Pool:** Ideal for swimming training, lessons, and competitive meets, this pool is equipped to serve a broad range of aquatic needs.

Swan Aquatics' Key Services:

- **Swim Programs and Lessons for All Ages:** From beginner lessons to advanced training, our programs are designed to develop water skills, foster confidence, and encourage a lifelong love of swimming.

2024 Swim Program Metrics:

Type of Programming	Ages	# of Participants Registered
Parent/Tot Swim	6mos-3years	34
Preschool Level 1	3-4 years	61
Preschool Level 2	3-4 years	25
Level 1 Beginner	5-12 years	105
Level 2 Advanced Beginner	5-12 years	57
Level 3 Intermediate	5-12 years	43
Level 4 Advanced	5-12 years	23
Adult Beginner	13+	0
Private Swim Lessons		84
TOTAL # of Swim Lesson Participants		432



The Delano Aquatic Center

The Delano Aquatic Center, located in Delano, Kern County, serves as a vital recreational hub for both the city's 52,046 residents and the greater Bakersfield area. Swan Aquatics was awarded the Operations and Management contract in 2024, marking a highly successful inaugural season filled with community engagement and operational excellence.

Project Highlights:

- **Competition Pool:** A four-lane competition pool, designed for training and community events.
- **Size & Capacity:** 151,758 gallons and 6,324 square feet, accommodating swimmers of all ages.
- **Aqua Play Structure:** Interactive water play area to entertain and engage families.
- **Zero Depth Entry Pool**
- **Concessions Area**

Swan Aquatics' Key Services:

- **Planning:** Tailoring programs and schedules
- **Operational Development:** Workflows and resource allocation.
- **Facility Operations**
- **Brand Development & Marketing**
- **Safety Training:** Certifications
- **Retail:** Swimwear, accessories, and essentials for a complete visitor experience.
- **Scholarship Programs**

2024 Program Metrics:

Type of Programming	Ages	June	July	August	September
Parent/Tot Swim	6mos-3years	51	56	56	
Preschool Level 1	3-4 years	73	96	96	
Preschool Level 2	3-4 years	9	27	29	
Level 1 Beginner	5-12 years	190	261	266	
Level 2 Advanced Beginner	5-12 years	73	162	166	
Level 3 Intermediate	5-12 years	29	73	74	
Level 4 Advanced	5-12 years	10	20	20	
Adult Beginner	13+	0	24	27	
Recreation Swimmers		800	6750	7750	1582



References

Adam Henig

Recreation Manager, City of Gilroy

Email: Adam.Henig@ci.gilroy.ca.us

Adam has overseen various recreational programs in Gilroy and can speak to Swan Aquatics' effectiveness and commitment to community engagement.

Ebony Perkins

Parks & Recreation Manager, City of Riverside

Email: EPerkins@riversideca.gov

Ebony manages a variety of parks and recreational services and can provide insights into Swan Aquatics' operational excellence and service quality.

Jamie Kim

General Manager, Eastlake 1 HOA

Email: jkim@waltersmanagement.com

Jamie has firsthand experience working with Swan Aquatics and can discuss the impact of our programming on community wellness and engagement.

Tom Hadjis

Director of EVS and Recreation Services, Circus Circus

Email: Thadjis@circuscircus.com

Tom oversees recreation services and can provide a perspective on Swan Aquatics' approach to risk management and operational standards.

Jessica Laguna

Program Administrator, Clark County

Email: JRalles@clarkcountynv.gov

Jessica manages various recreational programs and can speak to Swan Aquatics' commitment to safety and community engagement.

Aquatics Programming Overview

Lap Swimming/Open Swim/Family Swim:

We provide year-round lap swimming, open swim, and family swim, supporting healthy lifestyles and meeting public demand. Lap swimming is available daily, seven days a week, with shared lanes and circle swimming for two or more swimmers. Designated shallow-water areas ensure enjoyable recreational swimming for all.

Private Swim Lessons:

Tailored one-on-one instruction designed to fit individual needs. Each session is 30 minutes, with options to extend to 45, 60, or 90 minutes for more focused learning and minimal distractions.

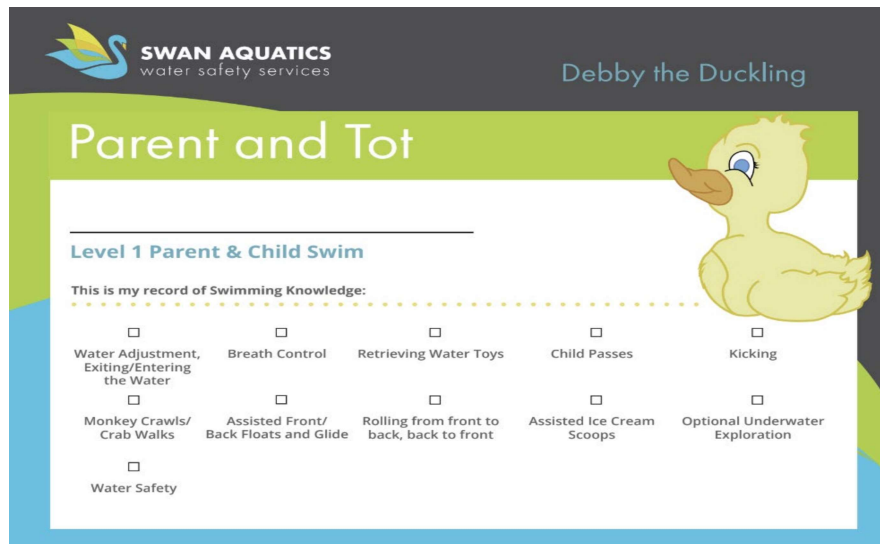
Swan Aquatics is working on implementing **special adaptive** swim lessons and classes for those students with different types of disabilities from Intellectual and Developmental Disabilities, Congenital Disorders, Neurological System Disorders, Orthopedic Impairments as well as Sensory Impairments, where parents and caregivers will be able to participate in-water during swimming lessons if desired.

Group Swim Lessons:

We offer 8-lesson sessions (4 days per week for 2 weeks). The reason we schedule this way is because these are the requirements needed to participate in grant funding through USA Swimming, AOAP and the American Red Cross. However, we are exploring more flexible scheduling options to accommodate families with varied availability.



Swim Lesson Levels



(Above is an example of a Certificate of Achievement)

Parent and Tot (6 months to 3 years):

- Max of 8 families per session; one parent/guardian must be in the water
- Focus on familiarizing children with water and teaching parents' safety techniques
- Key Goals: safe water entry/exit, alligator walks, face in water, assisted front/back floats, retrieving water toys, child passes, and monkey/crab walks.

Preschool Level 1 (Ages 3 to 5):

- Maximum of 5 swimmers per lesson
- Focus on water safety and basic aquatic skills
- Key goals: safe water entry/exit, face in water, blowing bubbles, retrieving underwater toys, kicking with support, assisted floats, jumps and recovery, front/back glides, supported front/back crawls and basic water safety skills.

Preschool Level 2 (Ages 3 to 4):

- Maximum of 5 swimmers per lesson
- Focus on advancing water safety and swimming independence
- Key Goals: safe entry/exit, open eyes underwater, front/back floats, rolling between front and back, finning arms, bobbing, retrieving objects, front/back glides, combining arm and leg movements, treading water for 5-15 seconds, and general water safety.

Level 1 Beginners (Ages 5 and up):

- Maximum of 5 swimmers per lesson
- Focus on water safety and basic swimming skills
- Key Goals: safe water entry/exit, breath control, bubble blowing, rhythmic breathing, bobbing, front/back float, retrieving submerged objects, rolling between front and back, treading water, and working towards independent front and back crawl.

Level 2 Advanced Beginners (Ages 5 and up):

- Focus on advancing water safety and swimming skills
- Key Goals: safe water entry/exit, submersion and breath-holding, bobbing, underwater retrieval, rotary breathing, front/back floats and glides, rolling between front and back, treading water for 15 seconds to 1 minute, changing swimming direction, combined arm/leg actions, finning arm action on back, and general water safety.
Focuses on rotary breathing, coordinated arm/leg movements, and extended floating and treading.

Level 3 Intermediate (Ages 5 and up):

- Focus on water safety and developing swimming skills
- Key Goals: jump into deep water, headfirst entry (seated/kneeling), bobbing while moving, rotary breathing, survival/back float (30 seconds to 1 minute), tread water for 1 minute, streamline kicking, front/back crawl (15-25 yards), elementary backstroke (15 yards), various kicks (flutter, scissors, breaststroke, dolphin), introduction to sidestroke, and general water safety.

Level 4 Advanced (Ages 5 and up):

- Maximum of 5 swimmers per lesson
- Focus on stroke development and endurance
- Key Goals: headfirst entries, surface dives, swimming underwater 10 yards, treading water with two kicks, survival swimming for 1-minute, continuous swimming for 25+ yards using primary strokes, elementary backstroke, sidestroke, open turns, flutter/dolphin kicks with a board, and water safety.

Adult Beginner (Ages 18 and up):

- Focus on water safety, comfort, and staying calm
- Lessons held in shallow water; teens 14+ may join
- Key Goals: improve comfort, breath control, front/back float, flutter kicking, front/back glides, introduction to front/back crawl, rotary breathing, sidestroke, elementary backstroke, and treading water.

Bitty Lifeguard Programs (Ages 8-10)

The Itty Bitty Lifeguard Camp is provides a safe and fun environment for kids ages 8 to 10 years old. The camp will involve stroke development, introduction of basic rescue assists from the pool deck, and games. Our camp leaders will also discuss water safety tips at the beginning of each day. Snack breaks will be provided each day.

Jr. Lifeguard Programs (Ages 11-14)

The American Red Cross Jr. Lifeguard course is designed to teach water safety skills as well as introduce youth to the duties and responsibilities of a lifeguard. This course will not certify anyone as a lifeguard, only build a foundation of knowledge, attitude, and skills in preparation of the American Red Cross Lifeguarding Course.

Low Income Scholarship Assistance

Our goal is to offer fee assistance of 40% off the purchase price for certain services to low-income individuals. Historically, we've provided this "scholarship" to 10% of our participants in group swim lessons, private swim lessons, aqua fitness, or summer passes, with a maximum award of \$100 per calendar year. To qualify for this scholarship, applicants must complete an application and submit one of the following documents for verification: proof of food stamp eligibility, a Medi-Cal eligibility letter, enrollment in a free or reduced meal program at school, proof of foster care, or documentation from the Women, Infants, and Children (WIC) Program. Approved participants must pay 60% of the service cost, up to a maximum of \$100. This funding level is aligned with our partnership and will be reassessed based on the demographic and economic factors of the City of Gilroy.

Aqua Fitness Classes

Aqua Fitness is a perfect way to stay healthy for those who enjoy the water. This program is designed to be low impact, improve joint stability, coordination, heart health, mental health, and overall strength. Participants will use water dumbbells and various flotation devices to help with coordination and exercise techniques.

Aqua Fit Class Options

Swan Fit (60 Minutes)

Proactive arthritis/overall fitness class. Work on balance and coordination, while increasing range of motion, joint flexibility, muscle strength, and cardiovascular fitness, without causing strain.

Swan Lake (60 Minutes)

High energy dance format. Hitting the water with your favorite dance moves and grooves while cushioning your knees, feet and back. Creating one fun pool party you won't want to miss!

Swan Strength (60 Minute)

Strength and endurance workout. Deep water and floating belts optional. Challenge your stamina with exercises targeted at full body strength from the core to out.

APPROACH, PHILOSOPHY AND GOALS

1. Implementing the required safety program and training documentation

Following what has been in place for the previous years with the Christopher Aquatic Center and the City of Gilroy, for recreational swim hours there will be an estimated 13-15 lifeguards, 2 cashiers and 1-2 supervisors. Staffing shifts will begin 30 minutes prior to any programming to ensure daily facility and equipment safety checks are completed and documented. Programming such as swim lessons will have set staff to student ratios with lifeguards on duty during the duration of all lessons until the facility is clear of all patrons.

Documentation of staff training on slide dispatch, safety inspections and certifications will be on-site and available for state requirements with Cal-OSHA. All lifeguards are required to complete in-service training on location to practice Emergency Action Plans associated with the facility and the operational needs, including but not limited to CPR, rapid extrications, surveillance and first aid.

2. Approach to providing aquatic programs for participants with special needs and/or requiring ADA accommodation

Our private one-on-one swimming lessons are catered for the student who needs extra attention. We work with people that have all types of disabilities from Intellectual and Developmental Disabilities, Congenital Disorders, Neurological System Disorders, Orthopedic Impairments as well as Sensory Impairments. Parents and caregivers are able to participate in-water during swimming lessons if desired. We continue to grow our adaptive swim lesson training programs with our swim instructors.

Along with the regular recreation swim times we intend to include additional open swim times for adaptive swimmers. These adaptive swim times will be held with less noise on the deck, few patrons and a special time for swimmers and their caregivers to enjoy the water safely.

3. Handling community access and outside organization rental requests.

We have built out an online registration system for our swim lessons, party rentals, safety course registrations, memberships and youth programs like our junior guard program. With our comprehensive website designated specifically for the facility registering for classes, signing waivers and booking reservations is a simple process for our patrons.

2025 Hours of Operation:

- Spring:** Saturday, May 24 - Sunday, June 15, 2025 (Closed Mondays)
- Weekdays: 4:30 - 7:30 PM
 - Weekends: 12:00 - 5:00 PM
- Summer:** Tuesday, June 17 - Sunday, August 17, 2025 (Closed Mondays)
- Weekdays: 8:30 AM - 7:00 PM
 - Weekends: 8:30 AM - 5:00 PM
- Fall:** Saturday, August 23 - Sunday, August 31, 2025
- Weekends: 12:00 - 5:00 PM

Special Events

Sunset Swims with Themes - 1 Event per month

- 6:30 - 8:30 PM

Programming Schedule

Spring: May 24 - June 15, 2025 (Closed Mondays)

WEEKDAYS (4:30 - 7:30 PM)

- Group Swim Lessons: 4:30 - 7:30 (Weekdays)
- Aqua Fitness - ZUMBA T/Th, 6PM -7PM

WEEKENDS (8:30 AM - 7 PM)

- Recreational/Lap Swim: 12:00 - 5:00 PM (Weekends)
- Private & Semi-Private Swim Lessons (Weekends) 12:30 - 5:00 PM
- Private Party Rentals: 12:00PM - 4:30 PM

Summer: June 16 - August 18, 2024 (Closed Mondays)

WEEKDAYS (8 AM - 7 PM)

- Recreational Swim/Slides Open: 12:00 - 4:30 PM
- Group Swim Lessons (30-minute lessons): 8:30-11:00AM & 5:00 - 7:00PM
- Private & Semi-Private Swim Lessons: 12:10 PM - 4:40 PM
- Aqua Aerobics
 - Aqua Zumba 6:00 - 7 :00 PM (T/Th)
 - With Heidi 10:00 - 11:00 AM (W/F)
- SUP Yoga: 10:00 - 11:00 AM (T/Th/Sat)
- Lap Swim: 8:30 AM - 7:00PM
- Jr. Lifeguard (11 - 14 yrs):
 - Session 1 - June 17-27 (T/W/Th/F), 9:00 AM-12:00 PM
 - Session 2 - July 8-18 (T/W/Th/F), 9:00 AM-12:00 PM
- Itty Bitty Camp:
 - June 25-27 (W/Th/F), 9:00 AM-12:00 PM
- Private Party Rentals: 12:00PM - 4:30 PM
- Youth Swim Fitness
- Youth Swim Camp (Tuesday-Friday)
 - Session 1 - August 12-15 (T-F), 9:00 AM - 2:00 PM

WEEKENDS (8 AM - 5 PM)

- Group Swim Lessons - 8:30 - 11:00AM
- Private Swim Lessons - 12:10 - 4:40PM
- Recreational Swim/Slides Open - 12:00PM - 5:00PM
- Lap Swim - 8:30 AM - 5:00PM
- SUP Yoga - 10:00 - 11:00AM (Saturday)
- Private Party Rentals - 12:00PM - 4:30PM

Fall: August 24 - September 1, 2024 (Weekends Only)

- Recreational/Lap Swim - 12:00 - 5:00 PM (Weekends)
- Group Swim Lessons (30-minute lessons): 8:30 - 11:00AM
- Private & Semi-Private Swim Lessons: 12:10 PM - 4:40 PM
- Private Party Rentals: 12:00PM - 4:30 PM

FEE STRUCTURE

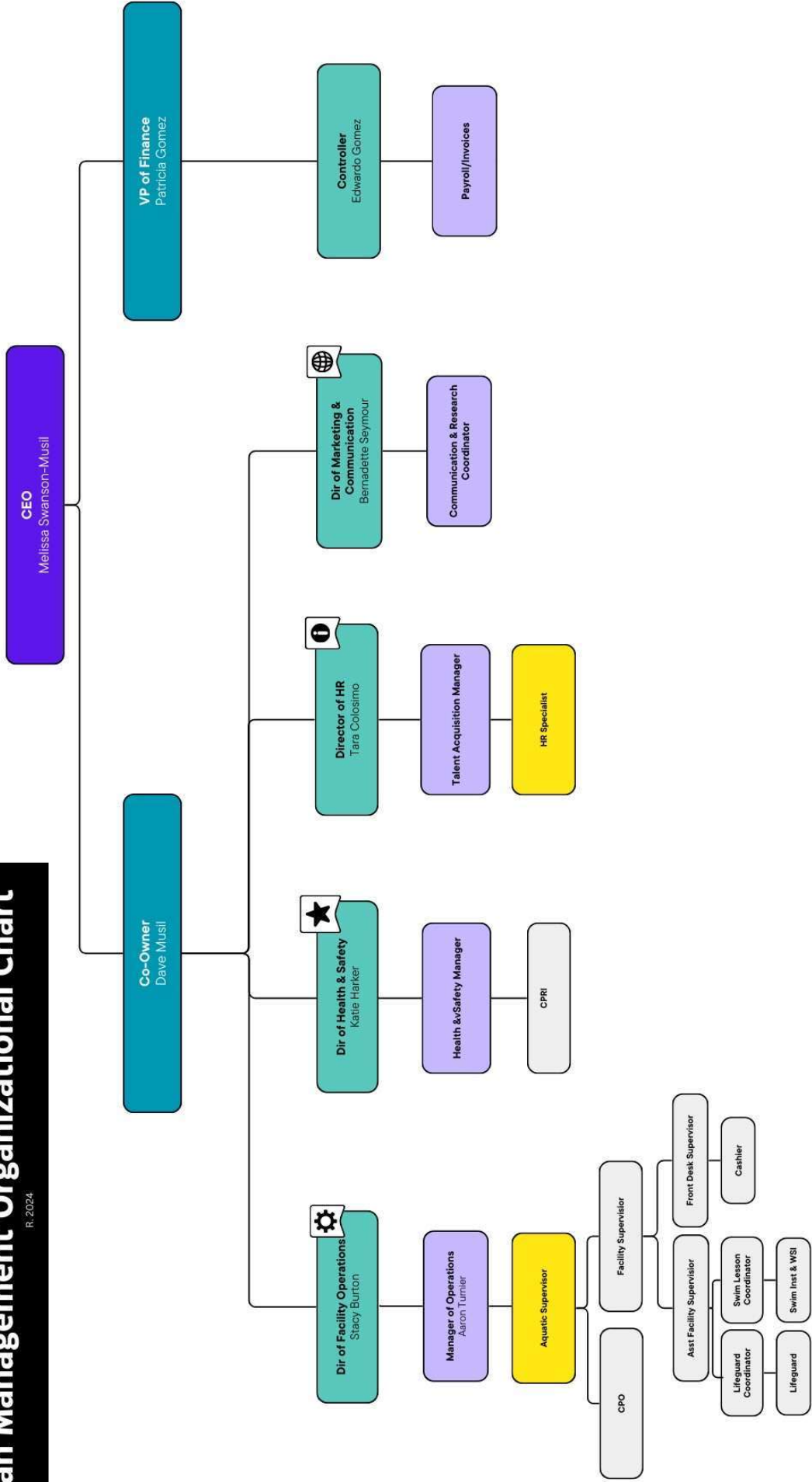
Swim Lessons Fees 2% increase from 2023	2 Week Sessions	\$122 per resident swimmer/session \$132 per non-resident swimmer/session
Open Swimming Fees	Children under age 2 are free	
	Weekdays/Weekends	
	Seniors Resident	\$8/\$9
	Military Resident	\$8/\$9
	Youth Resident	\$8/\$10
	Adult Resident	\$10/\$12
SUP Yoga Rates	Sup Yoga	\$45
Aqua Fitness and Aqua Rates	Aqua Fitness - per class	\$15
Swim Camp	Age 6-12	\$200
	2 staff minimum, 5 participant minimum, 20 max enrolled	
Certification Courses	Variable Fees, courses might be included as a part of job placement	
	Shallow Lifeguard Certification Course	\$225
	Water Safety Instructor Course	\$300
	First Aid/CPR Course	\$75

Junior Lifeguard Camp		\$260
Itty Bitty Lifeguard Camp		\$125
Lane Rental Rates 3% increase from 2023	Per Hour/Per Lane	\$15
	Instructional Pool Quadrants Per Hour	\$40
	Swim Meet (2.5 Hours) 6 lanes	\$300
Monthly Passes		\$85 per resident \$100 per non resident
Summer Passes		\$275 per resident \$300 per non resident
Family Passes	Must live in same household	\$325 residents \$350 non residents



Swan Management Organizational Chart

R. 2024



Full-Time Management Team

At **Swan Aquatics**, we have been deliberate and methodical in selecting the individuals who represent our management team. Our approach to management is based on collaboration and efficiency, ensuring that each team member plays a critical role in the smooth operation of our facilities. Together, the management team is responsible for delivering a comprehensive and well-coordinated aquatic service, driven by expertise and strategic planning.

Key Functions of Our Management Team:

- **Network of Managers and Instructor Trainers:**
We have established a robust network of **experienced managers** and **certified instructor trainers** who collaborate to provide consistent leadership and ensure the quality of programming across all facilities.
- **Human Resources:**
Our dedicated **HR team** works closely with pool managers to ensure the effective recruitment, onboarding, and training of staff. This includes maintaining a clear chain of command, from pool managers to the **Aquatics Director**, promoting transparency and accountability at every level.
- **Daily Operations & Scheduling:**
The management team is responsible for overseeing **daily operations** and ensuring that pools are staffed, scheduled, and maintained efficiently. Our meticulous approach ensures that all elements of operation run smoothly, from lifeguard shifts to event scheduling.
- **Monthly Financial & User Reporting:**
We produce comprehensive **monthly financial reports** and **user statistics**, including bather loads and program participation. This transparency allows us to assess performance and adjust operations in real-time to meet the needs of the community and stakeholders.
- **Legal Advisory and Risk Management:**
Swan Aquatics partners with third-party services for **legal advisory** and **risk management**, ensuring all policies and procedures comply with local regulations and industry standards. We also leverage legal expertise to mitigate risks and ensure the highest standards of safety and accountability.
- **Bookkeeping & Financial Oversight:**
Our management team ensures that all financial aspects, including **bookkeeping**, **ticket sales**, and **concessions**, are monitored and reported accurately. We use an integrated technology platform that provides real-time financial overviews for immediate insight into our operations.
- **Program Development & Management:**
We are continually developing and refining our programs to meet the diverse needs of the communities we serve. This includes **pre-service training**, **orientation for new staff**, and **on-going monthly in-service training** sessions to maintain high standards in aquatic safety and management.

Melissa Swanson



Melissa Swanson

Chief Executive Officer

Swan Aquatics, National Aquatic Services Provider

Professional Summary:

CEO of Swan Aquatics, a national company delivering comprehensive aquatic services to communities, businesses, and individuals since 2014. Oversee all facets of business growth, development, and operations, including compliance, risk management, technology integration, logistics, and financial planning. With a career spanning over 23 years in the aquatics industry, leverage extensive experience and deep-rooted commitment to ensure organizational success and client satisfaction. Passionate leader recognized for advancing operational excellence in diverse aquatic facilities, including waterfronts, water parks, and indoor/outdoor pools.

Key Qualifications:

- **Leadership & Business Development:** Proven track record in scaling operations and maximizing growth opportunities across multi-facility locations.
- **Operational Expertise:** Skilled in managing logistics and regulatory compliance for complex aquatic operations.
- **Financial Acumen:** Expertise in budgeting, forecasting, and strategic financial planning.

Professional Credentials:

- **Certified Aquatic Professional (AqP)**
- **Certified Aquatic Facility Operator (AFO)**
- **American Red Cross Lifeguard Instructor**

Aaron Turnier



Aaron Turnier Manager of Operations

Professional Summary:

With over 26 years in the aquatics industry, Aaron brings extensive expertise in personnel management, operations, programming, training, and pool maintenance across both public and private sectors. As the Director of Aquatics at Swan Aquatics, he leads facility operations across California, Nevada, and Arizona, ensuring compliance and efficiency through well-defined policies, procedures, and training programs. Known for his long-standing dedication, Aaron has played a key role in Swan Aquatics' success and expansion by driving innovative programming and budget development.

Key Qualifications:

- **Operations & Program Management:** Skilled in overseeing multi-county aquatic facilities, including staff supervision, operational planning, and program development.
- **Training & Compliance:** Certified Instructor Trainer for Lifeguarding, Water Safety, and First Aid/CPR/AED, contributing to a high standard of safety and preparedness.
- **Budgeting & Strategic Planning:** Experienced in developing budgets and growth strategies for current and future aquatic facilities.

Education:

- Bachelor of Science in Physical Education, University of Nevada, Las Vegas

Certifications:

- Certified Pool Operator (CPO)
- Aquatic Facility Operator (AFO)
- American Red Cross Instructor Trainer: Lifeguard, Water Safety, First Aid/CPR/AED

Jolie Teach



Jolie Teach Talent Acquisition Manager

Professional Summary:

Experienced Aquatic Program Director with 25 years in the aquatics industry, spanning public sector roles to high-profile Las Vegas strip pools. Passionate about water safety and community engagement, Jolie's career is rooted in her own transformative experiences as a youth swimmer. Committed to sharing her love of water and expertise in aquatic safety, Jolie is known for her leadership, program development, and training capabilities. With degrees in Business Administration and Management, she believes that investing in both people and safety is crucial to sustainable business success.

Key Qualifications:

- **Leadership & Training Expertise:** Certified Instructor Trainer for Lifeguarding and Water Safety through the American Red Cross; former Territory Aquatics Specialist representing the Southwest region.
- **Program Management:** Directed a range of programs including open swim, swim lessons, lifeguard training, masters swim, aqua fitness, synchronized swimming, water polo, and community aquatic events.
- **Safety & Compliance:** Holds Certified Pool Operator (CPO) and CPR/BLS Instructor certifications, ensuring safety and operational excellence across all programs.

Education:

- Master's in Management, University of Phoenix
- Bachelor's in Business Administration, University of Nevada, Las Vegas (UNLV)

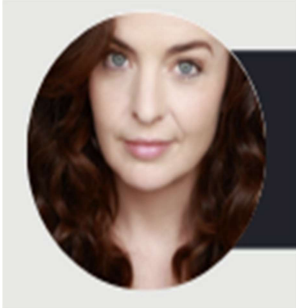
Professional Memberships:

- Nevada Recreation and Park Society
- National Recreation and Park Association
- Certified Park and Recreation Professional (CPRP) In Progress

Certifications:

- American Red Cross Lifeguarding Instructor Trainer
- American Red Cross Water Safety Instructor Trainer
- National Pool Safety Foundation Certified Pool Operator (CPO)
- CPR and BLS Instructor

Katie Harker

**Katie Harker**

Director of Health and Safety

Professional Summary:

Experienced CPR Department Manager with over 18 years in lifesaving instruction, committed to advancing public safety through CPR and first aid training. Certified as an American Red Cross Instructor and Lifeguard, Katie leads the CPR operations at Swan Aquatics, ensuring that training programs align with Red Cross standards and best practices. Her expertise includes managing instructors, organizing classes, developing partnerships with workplaces, and driving community-focused marketing campaigns. Known for her dedication and operational acumen, Katie is a key contributor to Swan Aquatics' growth and community outreach.

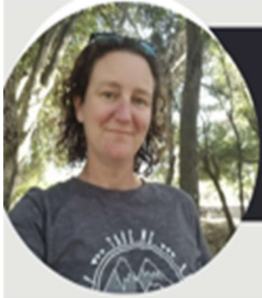
Key Qualifications:

- **Operations Management:** Oversees daily CPR department operations, including instructor management, class scheduling, and public training initiatives.
- **Community Outreach:** Develops marketing campaigns to promote CPR and safety programs, increasing Swan Aquatics' visibility in local communities.
- **Compliance & Training:** Ensures adherence to American Red Cross standards and OSHA compliance, upholding quality and safety in all training programs.

Certifications & Accreditations:

- American Red Cross CPR/First Aid Instructor
- American Red Cross Lifeguard and Lifeguard Instructor
- American Red Cross Wilderness First Aid Instructor
- OSHA Compliance Certification
- Water Fitness Certifications

Stacy Burton



Stacy Burton Director of Facility Operations

Professional Summary:

Accomplished aquatic professional with 25 years of experience in aquatics, including 12 years in public safety and revenue management. As Bay Area Regional Director for The Swimming Swan, Stacy leads facility safety initiatives, fosters team collaboration, and enhances community engagement while prioritizing water safety. Known for her strategic thinking and leadership, she has successfully advanced organizational goals and maintained program continuity through challenges, such as the COVID-19 pandemic. Stacy's commitment to training, safety, and operational excellence makes her a vital member of the management team.

Key Qualifications:

- **Leadership & Safety Management:** Oversees facility safety across multiple locations, ensuring adherence to high safety and training standards.
- **Community Engagement & Growth:** Drives public engagement initiatives and maintains a strong presence in the community, enhancing program outreach and public involvement.
- **Operational Excellence:** Demonstrates a strong track record in achieving revenue growth through diligent safety practices and effective staff training.

Career Highlights:

- Successfully maintained training programs and safety standards during the COVID-19 pandemic.
- Achieved significant revenue increases by upholding stringent safety and training protocols.
- Enhanced employee relations and teamwork through focused organizational initiatives.

Certifications:

- Aquatic Facility Operator (AFO)
- American Red Cross Lifeguard Instructor
- American Red Cross Water Safety Instructor
- American Red Cross Water Safety Instructor Trainer Candidate
- American Red Cross CPR & First Aid Instructor

POOL MAINTENANCE CHEMICAL PROGRAM

Ensuring the longevity and operational efficiency of an aquatic facility requires a robust maintenance program. Without a well-defined maintenance plan, facilities can quickly deteriorate, leading to costly repairs and potential disruptions. Preventative maintenance is crucial in maintaining the integrity of facility systems and components, reducing expenses in the long run. Swan Aquatics will train our staff to handle daily maintenance responsibilities efficiently. Our team will actively monitor facility needs, report issues, and prepare work orders for the designated maintenance provider.

PREVENTATIVE MAINTENANCE PLAN

Swan Aquatics will implement a comprehensive preventative maintenance plan that caters to the facility needs. Our pool operators will assess all equipment and systems to identify specific maintenance requirements, developing a standard operating procedure (SOP) for each item. This SOP will include details on necessary actions needed to facilitate effective and timely maintenance.

MAINTENANCE BUDGET

Swan Aquatics will provide a detailed budget that aligns with the unique characteristics of the facilities that we operate, including pool size, features, and operational needs.

MAINTENANCE STAFFING

Swan Aquatics will provide training to on-site personnel for all essential operations and preventative maintenance protocols. This training will encompass daily, weekly, and monthly equipment inspections, along with record-keeping procedures. Our team will collaborate with the third-party maintenance provider to ensure all training aligns with reporting standards and work order preparation guidelines for necessary repairs.

CHEMICAL APPLICATION

Swan Aquatics will implement the current chemical regimen for the facility that has been designed to meet the specific needs of each chemical delivery system. Our team will ensure that staff is trained in the safe and efficient operation of each system. The following chemicals are anticipated for use in maintaining the facility's water quality:

- **Disinfection:** Chlorine (various forms)
- **pH Control:** Muriatic Acid (lowers total alkalinity), Carbon dioxide, Sodium Carbonate (raises pH)
- **Additional Treatments:**
 - Sodium thiosulfate – chlorine neutralizer
 - Calcium Chloride – raises calcium hardness
 - Sodium Bicarbonate – raises total alkalinity
 - Potassium Monopersulfate – non-chlorine oxidizer

All maintenance personnel will be certified as qualified pool operators and will be thoroughly trained in safe chemical handling.

Daily readings of free chlorine, pH, temperature, and ORP (Oxidation Reduction Potential) will be conducted multiple times, with combined chlorine levels checked and recorded at least twice a day. Weekly comprehensive water balance reports will guide necessary chemical adjustments to maintain a safe swimming environment.

Water chemistry controllers will support staff by monitoring ORP and pH levels; however, manual testing remains essential. Maintenance staff will be responsible for reconciling manual test results with controller readings and adjusting chemicals accordingly. Safety Data Sheets (SDS) for each chemical used at the aquatic center will be readily accessible to ensure a safe working environment.



Comprehensive Pool Management and Operations Services

At Swan Aquatics, we implement a multi-channel strategy well in advance of the facility opening. Our dedicated team handles all aspects of marketing, advertising, and market research, while developing a detailed budget to ensure efficient and focused operations.

Our Pool Management Services include:

- **Staffing and Training:** Recruitment, onboarding, and continuous training of staff to maintain the highest standards.
- **Public Training and Certifications:** Offering necessary certifications for public safety.
- **Marketing and Outreach:** Strategically managing marketing campaigns and community outreach.
- **Ongoing Operations Management:** Day-to-day supervision to ensure smooth facility functioning and compliance with safety and health standards.
- **Community Engagement:** Creating and maintaining partnerships with local organizations.
- **Aquatic Programming:** Development and oversight of all pool activities and programming.
- **Facility Maintenance:** Managing daily maintenance of the pool and surrounding facilities, including janitorial and concession services.
- **Customer Service:** Overseeing front desk operations for a seamless visitor experience.
- **Compliance Auditing:** Ensuring all procedures align with regulatory requirements through routine audits.
- **Resident Feedback:** Regularly polling community members to gather input and continuously improve services.
- **Website Management:** Maintaining an informative and user-friendly digital presence for residents.

Our comprehensive approach guarantees a successful, safe, and community-centered pool facility.



Human Resources

Our robust HR services are central to our success, encompassing recruitment, employee onboarding, and continuous professional development. We excel in training and certifying staff, ensuring compliance with safety regulations, and providing mentorship programs to support career growth. Additionally, we offer performance management systems, comprehensive benefits packages, and wellness programs to promote staff retention and satisfaction. Our dedicated HR team works tirelessly to maintain a motivated workforce that is aligned with our high standards of excellence.

In addition, our HR services, listed below, are tailored to meet the diverse needs of our staff and partners.

Market research: We are continually assessing industry trends and the community needs to inform staffing levels, service offerings, and growth strategies.

Advertising and Outreach: Our efforts ensure the right messaging reaches key audiences, including targeted campaigns to attract new customers and employees.

Talent Acquisition and Recruitment: Is a cornerstone of our success. We leverage multiple platforms, from job boards to social media, while conducting thorough candidate assessments to ensure we hire the most qualified professionals.

Staff Training Programs: Include rigorous onboarding processes, safety certifications, and leadership development to foster a knowledgeable and motivated team. We also provide ongoing training to ensure our staff stays up to date with the latest industry practices.

Benefit Packages: We offer employees a full suite of benefits, including **medical, dental, and vision** coverage, along with **401K retirement plans** to ensure long-term financial stability. This robust benefits package helps us attract and retain top-tier talent, while fostering employee satisfaction and retention.

ADP Services: Deliver end-to-end **payroll, HR, and legal services**. This includes timely and accurate payroll processing, compliance with labor laws, and access to legal counsel for any employment-related issues. These services ensure that all aspects of our HR operations are efficient, legally compliant, and aligned with the best practices in human resource management.

Performance Management: Setting performance goals, conducting evaluations and implementing improvement plans.

Employee Relations: Managing workplace culture, resolving conflicts and improving employee engagement and satisfaction.

Health and Safety: Ensuring compliance with occupational health and safety regulations and promoting workplace wellbeing.

Dynamic Communications and Marketing Strategy with Mailchimp

At Swan Aquatics, we understand that effective marketing drives engagement, builds brand awareness, and converts prospects into loyal customers. Our results-driven strategy is centered on a comprehensive annual plan, complemented by Mailchimp's powerful features to elevate our approach.

Our Communications and Marketing Services Include:

- **Day 1 Marketing:** Immediate implementation of strategies for robust community engagement from launch.
- **Custom Campaign Design:** We craft tailored marketing initiatives using Mailchimp's advanced automation to deliver targeted, impactful messages.
- **Brand Awareness:** Through strategic campaigns, we position your brand prominently in the community.
- **Social Media & Email Campaigns:** Engaging content amplified across platforms, with Mailchimp's automation and personalized email marketing nurturing relationships and driving conversions.
- **Website Creative Direction:** We offer visually cohesive web design that reflects your brand identity and integrates seamlessly with Mailchimp's e-commerce features.
- **Promotional Campaigns:** Thoughtfully designed promotions to engage and grow your audience.

Our strategic use of Mailchimp ensures data-driven decisions, custom reporting, and seamless integration with various platforms, helping to deliver results and maximize your marketing impact.



Risk Management and Safety

At **Swan Aquatics**, safety is at the core of everything we do. Unlike typical management companies, we specialize in aquatic operations, making **risk management** our top priority. With years of hands-on experience, we understand the unique safety challenges of running aquatic facilities and have built a comprehensive, multi-layered approach to mitigate these risks.

Multi-Layered Approach to Risk Management:

1. **Training:**
 - **Pre-Service Training and Orientation:** Preparing new hires with the basics of facility operations and safety.
 - **In-Service Training:** Regular training sessions that keep lifeguards up to date on the latest safety protocols and rescue techniques.
 - **Accident Prevention Training:** Focused on identifying and preventing potential hazards before they occur.
2. **Audits:** To ensure that safety standards are consistently met, **Swan Aquatics** partners with a **third-party risk management and auditing service**. These audits are performed unannounced and are videotaped to provide maximum benefit for learning and improvement. Our audits assess several critical areas, including:
 - Facility risk documentation and safety compliance
 - **Zones of Surveillance:** Ensuring lifeguards are effectively monitoring their areas of responsibility
 - Review of **Emergency Action Plans (EAPs)**
 - Certification checks for lifeguards and staff
3. **Insurance:** We carry multiple layers of insurance that not only meet but exceed the standard requirements for aquatic facilities.
 - General Liability
 - Worker's Compensation
 - Auto Insurance
 - Employment Protection Liability
 - Professional Liability
 - Property Insurance
 - Sexual Abuse and Molestation (SAM) coverage.
4. **Policies and Procedures:** These protocols are designed to minimize potential risks, keep operations running smoothly, and maintain the highest level of safety.
 - **Standard Operating Procedures (SOPs)**
 - **Emergency Action Plans (EAPs)**
 - Facility **opening and closing duties**
 - **Daily pool and slide inspections**
 - **First aid and AED protocols**
 - **Incident and accident reporting**



Swan Technology Platform

The **Swan Community Platform** is a robust, commercially proven proprietary software solution designed to meet the diverse needs of our clients. This fully integrated, web-based application offers a wide array of tools and features that streamline operations, improve user experience, and enhance community engagement. Built with flexibility in mind, the platform can be customized to meet the unique requirements of your organization, ensuring a seamless fit with your existing processes.

Key Features:

1. **Customizable URL**
Each client is provided with a dedicated, customizable URL.
2. **Encrypted and Secure Websites**
All websites within the platform are encrypted, ensuring the privacy and protection of resident information and transactions.
3. **Password-Protected Resident Accounts**
Users can create and manage personal, password-protected accounts, giving them access to a personalized dashboard for registrations, payments, and communication.
4. **Inquiry, Registration, and Feedback Management**
The platform allows organizations to solicit, accept, track, and respond to inquiries, program registrations, and feedback submissions.
5. **Comprehensive Scheduling System**
6. **Flexible Payment Processing**
Fully integrated with payment systems like Square Point of Sale, the platform supports processing of membership passes, program fees, concessions, retail purchases, and more.
7. **Multi-Program Management**
The platform supports multiple programs, from classes and events to special activities. Administrators can manage everything from session scheduling to participant lists in one place.
8. **Facility Rentals**
Easily manage and coordinate facility rentals.
9. **Advanced Reporting Tools**
Generate detailed reports on participant data, financial transactions, program performance, and more.
10. **Email and Text Message Communication**

With these features, the Swan Community Platform offers a comprehensive solution that drives efficiency, improves communication, and enhances the overall experience for both administrators and residents.



Pool Information

[Location & Contact](#)

[Day Rates](#)

[Memberships](#)

Retail

Swan Aquatics has partnered with the renowned Australian company **Vorgee** to offer retail services at the aquatic facilities we manage. This partnership brings high-quality swim gear and accessories directly to our poolside locations, providing convenience for the communities we serve. Patrons appreciate the ease of purchasing essential swim items on-site, making it a valuable addition to our facilities.

Available Items Include:

- Goggles
- Pool Buoys
- Ear Plugs
- Swim Caps
- Sunscreen
- Nose Plugs
- Fins
- Bags
- Paddles
- Swimsuits



By integrating **Vorgee's** premium products into our facilities, **Swan Aquatics** ensures that swimmers have access to the gear they need for an enjoyable and safe experience in the water.

Fee Structure 2025

2025 Staffing Schedule (Ability to compare and maintain fees)

Swan Aquatics is proud to provide a dedicated and experienced team for your facility. A thorough cost analysis with other programming within Santa Clara County was completed to determine an appropriate fee. We consider previous pool fees and have done our best to mitigate inflation. Gilroy residents are accounted for with reduced fees and are prioritized in our programs.

The following positions ensure the smooth and efficient operation of your aquatic programs:

Hourly Positions:

- Facility Supervisor
- Assistant Facility Supervisor
- Lifeguard Coordinator
- Lifeguards/Swim Instructor
- Lead Cashier
- Cashiers
- Camp Counsellors
- Aqua Fitness Instructor
- Swim Instructor Coordinator

Fee Schedule

Items	Billable Rate
Management Fee (with a 3% inflation rate from 2024)	\$ 193 894.41
Insurance	\$ 65 000.00
Training and Certifications	Included
Uniforms and Equipment	Included
Administrative Costs (HR, Marketing, Advertising, IT)	Included
Employee Incentives	Included
Risk Management	Included
Other/Travel	Included
Total: \$ 258 894.41	

This total fee encompasses all aspects of lifeguard staff management, including:

- **Administrative and Human Resources:** Payroll, hiring, and staff management.
- **Insurance:** Comprehensive coverage that meets or exceeds industry standards.
- **Scheduling:** Efficient staff scheduling to cover all operational needs.
- **Training:** Pre-service and in-service training and certifications.
- **Daily Operations:** Oversight of daily facility operations and staff coordination.
- **Risk Management Procedures:** Proactive audits and safety protocols to ensure compliance and reduce liability.
- **Labor, Materials, and Equipment:** Complete provision of all necessary staff, uniforms, and equipment to run the facility efficiently.



City of Gilroy

STAFF REPORT

Agenda Item Title: Selection and Appointment of Boards, Commissions, and Committee Members

Meeting Date: February 3, 2025

From: Jimmy Forbis, City Administrator

Department: City Clerk

Submitted By: Beth Minor, Interim City Clerk

Prepared By: Beth Minor, Interim City Clerk

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Review the applications and interviews from the candidates and proceed with the formal appointment of suitable candidates to the vacant positions on the following Boards and Commissions: Art and Culture Commission, Library Commission, Library Bond Oversight Committee, Open Government Commission, Parks and Recreation Commission, Personnel Commission, Physically Challenged Commission, Planning Commission, and Youth Commission.

BACKGROUND

On January 6, 2025 and January 27, 2025, the City Council interviewed candidates for its boards and commissions. During the recruitment period, applications were received from a total of 42 applications for the various boards and commissions. Several applicants applied for multiple positions.

ANALYSIS

Council interviewed a total of 28 applicants during the January 6th and January 27th meetings. The Council is now poised to consider these applicants for the open seats on the boards and commissions.

ALTERNATIVES

Council may choose to reschedule the appointments. Staff is not recommending rescheduling, as it will affect several board and commission upcoming meetings.

FISCAL IMPACT/FUNDING SOURCE

None

PUBLIC OUTREACH

Recruitments were advertised through the City's website and social media. Interviews were held on January 6, 2025 and January 27, 2025. This item was also included in the publicly posted agenda.

NEXT STEPS

Those candidates that were appointed by Council shall be processed and oriented by the appropriate staff.

Attachments:

Arts and Culture Commission

Robert Butler

Kelly Pfeffer

Steven Porter

Steven Taylor

Janette Vecchiarelli

Wendy Zamora

Library Commission

Victoria Coverson-Baxter

Sal Esposito (Withdrew)

Jo Anne Howell

Valarie Lowry

Kay Spencer

Jeannie Stokes

Open Government

Janet Krulee

Ann Marie McCauley

Blanca McMurray

Monikka O'Neal

Sharpy Sandhu

Parks and Recreation

Nathaniel Ayala

Jesse Jimenez

Javier Martinez Jr.

1. Emily Miller
Robert Miller
Stephanie Okada-McCabe
Jorge Vargas
Michael Vizzusi

Personnel Commission
Linda Allen
Catherine Cummins
Norma Hingle Flores
Ann Marie McCauley

Physically Challenged
Marco Machado

Planning Commission
Patricia Bentson
Brian Dauenhauer
Anselmo Guevarra
Alex Larson
Eva Lurker
Stephanie Okada-McCabe

Youth Commission
Sean Ethan Diep
Lolita Hardwicke
Lysandra Jaimes
Zara Owens
Thanmay Sarath

Date	Name	Email	Commission Name	Interviewed/ Choice Rank	Total Openings
45636	Janette Vecchiarelli	janettelv@mac.com	Arts and Culture Commission		4
45639	Kelly Pfeffer	kellymishelle@gmail.com	Arts and Culture Commission		
45614	Robert Butler	rbutler7319@gmail.com	Arts and Culture Commission		
45603	Steven Porter	sporterjames@gmail.com	Arts and Culture Commission	1/27/25	
45632	Steven Taylor	steventaylor@financialguide.com	Arts and Culture Commission	X 2	
45589	Wendy Zamora	wendytzamora@gmail.com	Arts and Culture Commission	X	
45365	Valarie Lowry (Casandra)	valarieklowry@gmail.com	Arts and Culture Commission	X	
45618	Jeannie Stokes	jeannie@stanfordalumni.org	Library Commission		4
45583	Jo Anne Howell	jhowell@gavilan.edu	Library Commission		
45619	Kay Spencer	zinfardel@gmail.com	Library Commission	X	
45641	Sal Esposito	sesposito@intero.com	Library Commission	Withdrew	
45365	Valarie Lowry (Casandra)	valarieklowry@gmail.com	Library Commission	X	
45574	Victoria Coverson-Baxter	coverson1980@gmail.com	Library Commission	X	
45632	Steven Taylor	steventaylor@financialguide.com	Library Commission	X 1	
45633	Blanca McMurray	blanca@svofs.com	Open Government Commission		3
45609	Janet Krulee	jkrulee@hotmail.com	Open Government Commission	X	
45639	Ann Marie McCauley	lazysuzandesigns@hotmail.com	Open Government Commission	X 1	
45646	Monikka O'Neil	akkinom@hotmail.com	Open Government Commission		
45656	Sharpy Sandu	sharpysandhu@gmail.com	Open Government Commission	X	
45629	Jesse Jimenez	jesvjimenez@gmail.com	Parks and Recreation Commission	X	3
45326	Michael Vizzusi	mvizzusi@hotmail.com	Parks and Recreation Commission	X	
45632	Emily Miller	millerec2@gmail.com	Parks and Recreation Commission	X	
45637	Javier Martinez Jr	martinezjav.jr@gmail.com	Parks and Recreation Commission	X	
45489	Stefanie Okada-McCabe	Okadamccabe@gmail.com	Parks and Recreation Commission		
45647	Jorge Vargas	jcvargas21@yahoo.com	Parks and Recreation Commission	1/27/25	
45645	Nathaniel Ayala	nathan.ayala@gmail.com	Parks and Recreation Commission	X	
45646	Robert B. Miller	robert.b.miller@sjsu.edu	Parks and Recreation Commission	X	
45632	Steven Taylor	steventaylor@financialguide.com	Parks and Recreation Commission	X 3	
45603	Steven Porter	sporterjames@gmail.com	Parks and Recreation Commission	X	

45611	Catherine Cummins		C17ramos@gmail.com		Personnel Commission	1/27/25		2
45425	Linda Allen		linda.allen@star-vista.org		Personnel Commission	X		
45646	Ann Marie McCauley		lazysuzandesigns@hotmail.com		Personnel Commission	X 2		
45615	Norma Hingle Flores		Norma.hingle@icloud.com		Personnel Commission			
45656	Sharpy Sandu		sharpysandhu@gmail.com		Personnel Commission	X		
45639	Marco Machado		Bearmachado196@yahoo.com		Physically Challenged			4
45618	Anselmo Guevara		anselmoguevara@yahoo.com		Planning Commission			2
45492	BRIAN DAUENHAUER		gatorpres@gmail.com		Planning Commission	X		
45620	Eva Lurker		ejmarkowska@gmail.com		Planning Commission			
45633	PATRICIA BENTSON		garliccitygal@gmail.com		Planning Commission	X		
45639	Stefanie Okada-McCabe		Okadamccabe@gmail.com		Planning Commission			
45647	Alex Larson		Alarson1961@yahoo.com		Planning Commission	1/27/25		
45609	Janet Krulee		jkrulee@hotmail.com		Planning Commission	X		
45633	Blanca McMurray		blanca@svofs.com		Planning Commission	X		
45619	Kay Spencer		zinfardel@gmail.com		Planning Commission	X		
45645	Nathaniel Ayala		nathan.ayala@gmail.com		Planning Commission	X		
45646	Sean Ethan Diep		seanethandiep@gmail.com		Youth Commission	X		2
45645	Zara Owens		ozara7267@gmail.com		Youth Commission			
45636	Lysandra Jaimes		lysandrajames@gmail.com		Youth Commission			
45650	Lolita Jean Hardwicke		hardwicke@verizon.net		Youth Commission			
45621	Thanmay Sarath		thanmaysarath@gmail.com		Youth Commission	1/27/25		



City of Gilroy

STAFF REPORT

Agenda Item Title:	Review of the City Council Norms
Meeting Date:	February 3, 2025
From:	Jimmy Forbis, City Administrator
Department:	Administration
Submitted By:	Jimmy Forbis, City Administrator
Prepared By:	Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Council review the norms.

BACKGROUND

The City Council adopted its first Council norms as a document called Council Agreements on February 7, 2011. Since then, revisions have been made from time to time, with the most recent update occurring on February 15, 2022 and adopted on February 28, 2022.

ANALYSIS

The Council Norms are intended to establish procedures and expectations for the conduct of Council. It is advisable for a review of the norms intermittently, but especially whenever new members are elected to the City Council, should the will of a new Council be to make changes to the norms.

In preparation for the review, staff conducted a review of the Council Norms, and is recommending Council consideration of making the following updates:

Council Norm Section	Recommended Update
1 – Meeting Guidelines	
1.2	Change to include that any e-mail questions to staff are to add a copy to the City Administrator, and that this is related to staff reports, and not agendas (which are addressed in norm 1.9)
1.7	Amend to read “Follow the most current version of Robert’s Rules of Order”
1.9	Identify that this norm pertains specifically to the agenda itself, and not staff report content (which is in norm 1.2)
1.10	Change to identify that public inquiries at meetings should not be responded to by Council and staff members, only the Mayor as appropriate under the Brown Act
1.12	Update holiday references for rescheduled meetings to reflect recent amendments, including the last Monday in July, and the second meeting in December
1.13	Add December to this norm in addition to July already listed
1.14	Change from “Council Members are encouraged” to “Council Members are expected”, relating to attendance at Council Meetings
1.16	Include digital media platforms in the list, not just the types of devices
1.18	Add that the Mayor will also state the maker and seconder of the motion, as well as the vote on an action.
1.19	Change to “meetings will end at 11:00 p.m...” to “meetings will end no later than 11:00 p.m...”
2 – Adding Agenda Items	
2.1	Revise this section to include the new FAIR Memo process established by Council Policy
3 – Council Interactions	
3	a) Add: Wait for the Mayor to queue a Council Member who wishes to speak b) Add: Do not talk over another Council Member who has the floor
4 – Staff Relations	
4.2	Clarify that project-related questions may be directed to the department head of the department working on the project.
4.3	Change the requirement for a maximum of one (1) hour of research or work on an issue for an individual Council Member to pertain to the City Administrator and all staff, not just the City Attorney
5 – Council Communications	
5.1	Change to “Be mindful of each other’s differences” instead of diversity. Diversity holds different meanings for different individuals
5.4	Amend this norm to reference that proclamation requests should be processed and follow the proclamations policy
5.8	Add that by Charter the Mayor is the default spokesperson for the City. Other Council Members may be asked to fill the position of spokesperson

Council Norm Section	Recommended Update
	on a case-by-case basis, and when so identified, then only they speak on behalf of the Council
5.11	Add at the end "..., unless designated as a spokesperson for the matter in question."
5	Add: Council Member use of social media should be conducted in accordance with the City's Social Media Use Policy.
6 – Council Travel and Training/Participation on Outside Boards and Memberships	
6.6	Review of the policy should be included as part of any new council member onboarding

ALTERNATIVES

Council may choose to retain or modify the currently adopted norms.

FISCAL IMPACT/FUNDING SOURCE

None.

PUBLIC OUTREACH

This item was included on the publicly posted agenda for this meeting.

NEXT STEPS

Staff will proceed to implement changes to the norms, should Council direct to do so.

Attachments:

1. Gilroy City Council Norms

Gilroy City Council Norms

1. Meetings Guidelines:

- 1.1. Three (3) minutes per public comment per agenda item. Five (5) minutes for applicants, with two (2) minute rebuttal for applicant. City Clerk will provide a timer. Staff will make every effort to limit staff reports to five (5) minutes, with opportunity for staff to elaborate based on Council questions. While the Mayor has the discretion to uniformly adjust speaking time, it is the goal of the Council to identify at the beginning of the public comment period the number of speakers present and to set the following time limits per speaker applicable to items on or off the agenda, keeping in mind that public comments may also be submitted in writing (*see Norm #1.24*): Up to ten (10) speakers, three (3) minutes each; eleven to twenty (11-20) speakers, two (2) minutes each; over twenty (20) speakers, one (1) minute each.
- 1.2. Council is encouraged to email questions to staff prior to the meeting. This promotes clear, available and concise answers.
- 1.3. Prepare for meetings by reading meeting materials in advance.
- 1.4. Reveal information gained from contacts.
- 1.5. Stay focused on the present agenda item.
- 1.6. Council reports and presentations should be concise and efficient, with a goal of limiting presentation to three (3) minutes. Council reports are to be focused on the boards on which a Council Member sits. Only designated Council representatives shall report the action of any board.
- 1.7. Follow Robert's Rules of Order.
- 1.8. Start all meetings on time.
- 1.9. Direct questions on the agenda to the City Administrator or the Mayor.
- 1.10. Public inquiries at meetings will be responded to as directed by the Mayor.
- 1.11. When meeting with citizens and receiving information, Council should ask if staff has received and analyzed the new information.
- 1.12. When a Regular City Council meeting falls on a holiday, that meeting will be moved to the following Monday, with the exception of the single meeting in July which shall be held on the first day of the month not a holiday, Friday, Saturday or Sunday.
- 1.13. A single meeting will be held in the month of July.
- 1.14. Council Members are encouraged to attend all meetings of the Council and to set the same attendance example expected of those appointed by the Council to Boards and Commissions. If a Council Member is unable to attend a Council meeting, they will notify the Mayor or the City Administrator as soon as reasonably practicable.
- 1.15. If a Council Member abstains on an item, the Council Member must explain the reason for the abstention.
- 1.16. External communication by Council Members during meetings (whether through cell phones, laptops, or other devices) creates the perception that private communications are influencing the outcome of decisions. This contradicts Gilroy's Open Government Ordinance. If a Council Member must engage in external communication for personal purposes, the Council Member should excuse themselves from the meeting.
- 1.17. Council Members should not view or interact with social media during meetings.
- 1.18. During City Council meetings, the Mayor will summarize the thumbs up/down direction given for the record.

- 1.19. Meetings will end at 11:00 p.m. unless a majority of Council Members present vote to extend the meeting.
- 1.20. Action style minutes will be taken by the City Clerk for all City Council meetings.
- 1.21. Notes will be taken for all City Council study sessions and workshops.
- 1.22. No motion should be made until Public Comment has been closed and Council has had an opportunity to deliberate on the item.
- 1.23. Council Members must be in the queue prior to making a motion on an item.
- 1.24. Written material provided by public members for Council agenda item “public comment on items not on the agenda” will be limited to 10 pages in hard copy. An unlimited amount of electronic material may be provided.
- 1.25. Meetings will be held or adjourned in the name of or in memory of a person only if that person has accomplishments specific to Gilroy.

2. **Adding Agenda Items:**

- 2.1. Any Council Member may propose an item for consideration as an agenda item for a future meeting by oral request during the portion of the Council meeting designated for Future Council Initiated Agenda Items. The Council will decide whether to agendize the item for a future Council meeting.

3. **Council Interactions:**

- 3.1. Show respect for differences and community.
- 3.2. Respect the Open Government process and the majority vote of the Council. Open Government is about the process, not the outcome.
- 3.3. Avoid negative non-verbal, judgmental stances, and personal attacks.
- 3.4. Exercise respect for Council Members, staff, and the public.
- 3.5. Minimize redundancy.
- 3.6. Listen attentively.
- 3.7. Confirm information presented as a rumor.
- 3.8. Keep a positive tone and body language.
- 3.9. Follow the Brown Act, including social media communications restrictions.
- 3.10. Give personal feedback to staff and Council Members privately.
- 3.11. All quasi-judicial ex parte communications (as defined by Council Policy) or conflict of interests will be disclosed by each Council Member.
- 3.12. To respect the independence of our commissions, no Council Member may attempt to influence any commission or regularly attend commission meetings, except with respect to a matter that affects the Council Member individually. Regular attendance may be seen as intimidating or an attempt to use “command influence” even when such is not the Council Member’s intent. However, Council Members are encouraged to watch recorded Commission meetings.
- 3.13. If any Council Member chooses to speak before or to submit written comment to another elected body or Board of elected officials on any item for which they are not a Council-appointed representative or for which they are not speaking from an official position of the Council, such Council Member shall state that they are communicating as an individual constituent only and shall not reference “Gilroy City Council” or “City

Council Member” in any written or verbal communications except to identify themselves. Council Members shall be mindful that no matter how many hats they may wear, they are still perceived by the public as a Council Member.

4. **Staff Relations:**

- 4.1. Council Members should be aware that staff responses to an individual Council Member’s questions may be forwarded to the entire Council.
- 4.2. Direct questions to the City Administrator and Department Heads. Project -related questions may be directed to the staff person working to the project. Responses may also be sent to all City Council Members.
- 4.3. City Attorney – maximum of one (1) hour of research for individual issues. If more time is needed, the majority of the Council must approve this extra time.
- 4.4. Forward any information to the City Administrator as necessary. Do not surprise the City Administrator or City Council with last-minute information.
- 4.5. The Council’s focus is policy. The staff focuses on professional execution and technical knowledge. Council Members shall not provide their own individual technical comments to City partners or other agencies (e.g. VTA, LAFCO, HSR, etc.), unless speaking solely as an individual constituent and not as a Council Member.
- 4.6. Show respect to staff.
- 4.7. Give as much lead-time as possible.
- 4.8. The City Clerk will attend all study sessions and workshops of the City Council.
- 4.9. Council Members, including the Mayor, do not have their own city staff. Council Members wishing to solicit their own volunteers should represent to the public that all oversight and decisions regarding such volunteer positions are at the sole discretion of that Council Member alone.
- 4.10. Council Members should not contact staff directly to attend or otherwise engage in events or causes of individual Council Members without the express permission of the City Administrator.

5. **Council Communications:**

- 5.1. Be mindful of each other’s diversity.
- 5.2. Be supportive and positive with each other.
- 5.3. When sitting as a representative of the City on another body, represent the City’s position and seek Council input as necessary by request of future agenda item or asking the Mayor to agendaize same.
- 5.4. Requests for proclamations should be addressed to the Mayor and the City Clerk.
- 5.5. Task Forces
 - 5.5.1. At the initial meeting, Council Member will be present and explain the Task Force’s goals and objectives. The Council Member will also explain that they are a recommendation body and the Council may revise their final actions.
 - 5.5.2. Staff will create a boiler plate document which will have the place for the goals and objectives of the Task Force, the norms of the group, and any other information Council and Staff feel is important.

5.6. Press Corrections

5.6.1. If City Council sees first, communicate to the City Administrator. The City Administrator will then have staff issue a correction.

5.7. When a Council Member endorses a person/position/issue/etc. separate from a position endorsed by a vote of the City Council, it is a personal endorsement, and not a City endorsement. Any reference or use of the name “Gilroy City Council” in association with the individual should be changed to “Gilroy City Council Member”. If a Council Member wishes a City of Gilroy endorsement, they may request to place the issue on a future agenda. The Council will then decide whether to take action or not.

5.8. When a Council Member is identified as spokesperson, then only they speak on behalf of the City Council.

5.9. Legal communications should go through the Mayor or their designee, following legal review.

5.10. Emergency communications shall follow the Council Emergency Communication document adopted in 2020.

5.11. No Council Member shall communicate in a manner that appears to come from the City or city staff or the City Council, or in a manner that suggests a position associated with the City or with the knowledge of the City Council.

5.12. Council Member elected offices are nonpartisan. No Council Member shall refer to their city council elected position as being associated with a political party.

5.13. Repeated or serious violation of these norms can be addressed by the Council by censure of a Council Member, following notice and an opportunity to be heard. This document formally authorizes the censure remedy to the City Council and allows for the basic due process protections of notice and hearing.

6. **Council Travel and Training / Participation on Outside Boards and Memberships:**

6.1. Council Members will check with the full Council via request under Future Council Initiated Items when they wish to go to meetings outside “normal” (e.g., League, assigned outside organization meetings) travel and training and wish the City to pay for it, such as specialized training and/or meetings of participation groups. If approved for a future agenda, Council Members will submit a short, written explanation of the request to the city clerk prior to publication of the preliminary agenda.

6.2. If a Council Member wishes to apply to participate in an outside government organization that is not part of the current City Council Advisory Committees & Representatives list, the Council Member will let Council know through a future agenda item request. If approved, the Council Member will submit a short, written explanation of the request to the city clerk prior to publication of the preliminary agenda.

6.3. If the primary Council representative to an organization cannot attend, they will contact the alternate.

6.4. The alternate Council representative can attend the outside organization meeting, even if the primary is there, to gain experience and knowledge.

Adopted as Council Agreements: February 7, 2011

Revisions Approved: February 15, 2022

Adopted as Council Norms: February 28, 2022

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- 6.5. If a Council Member must cancel a hotel reservation/registration, or the like, the Council Member will pay all costs associated with that cancellation. The City Clerk will give Council Members the cancellation policy of the event/hotel/etc. in advance if possible.
- 6.6. Any payment for travel and meeting expenses of a Council Member, or reimbursement thereof, shall be in accordance with the City of Gilroy Travel and Meeting Expense Policy, last revised on 3/2/2020.

**CITY COUNCIL REGULAR MEETING AND
GILROY PUBLIC FACILITIES FINANCING AUTHORITY
AGENDA**

MONDAY, MARCH 4, 2024 | 6:00 PM

1. OPENING

1.1. Call to Order

The meeting was called to order by Mayor Blankley at 6:00 PM

1.2. Pledge of Allegiance Council Member Hilton led the Pledge of Allegiance.

1.3. Invocation None

1.4. City Clerk's Report on Posting the Agenda

Interim City Clerk Minor reported the agenda was posted on March 1, 2024 at 2:20 PM.

1.5. Roll Call

Attendance	Attendee Name
Present	Rebeca Armendariz, Council Member Dion Bracco, Council Member Tom Cline, Council Member Zach Hilton, Council Member Carol Marques, Mayor Pro Tempore Fred Tovar, Council Member Marie Blankley, Mayor
Absent	None

1.6. Orders of the Day None

1.7. Employee Introductions

Community Development Director Sharon Goei introduced Erin Freitas and Mariah Maganda who were recent promotions.

2. CEREMONIAL ITEMS - Proclamations and Awards

2.1. Proclamation Proclaiming March 2024 as Youth Arts Month

Mayor Blankley read the proclamation into the record and presented it to Sofia Fojas.

2.2. Proclamation Proclaiming March 2024 as American Red Cross Month

Mayor Blankley read the proclamation into the record and presented it to Camille McCormack.

3. COUNCIL CORRESPONDENCE None

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4. PRESENTATIONS TO THE COUNCIL

4.1. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL

The following speakers spoke on items not on the Agenda;
Jason Pratico spoke regarding the incident at Luigi Aprea Middle School.
Robert Zepeda spoke regarding false news and propaganda.
Tony Maratos spoke regarding the incident at Luigi Aprea Middle School.

5. REPORTS OF COUNCIL MEMBERS

- Council Member Bracco** – None
- Council Member Armendariz** – Acknowledged International Women’s History Month.
- Council Member Marques** – Announced Gilroy Gardens 2024 season would open on March 16, 2024; and spoke about their cyber-attack in February 2024.
- Council Member Hilton** – Spoke regarding Silicon Valley Clean Energy and their EV charging incentives program.
- Council Member Cline** – None
- Council Member Tovar** – None
- Mayor Blankley** – Reported on two events held by the Gilroy Chamber of Commerce.

6. CONSENT CALENDAR

- 6.1. Adopt the Council-Initiated Agenda Item Policy
- 6.2. Approve Final Downtown Parking Management Plan

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Council Member Tovar requested Agenda Item 6.1 be removed from the Consent Calendar.

MOTION: Approve Agenda Item 6.2

RESULTS:	PASS: 6-1
MOVER:	Marie Blankley, Mayor
SECONDER:	Carol Marques, Council Member
AYES:	Council Member Armendariz, Council Member Marques, Council Member Hilton, Council Member Cline, Council Member Tovar, Mayor Blankley
NOES:	Council Member Bracco
ABSENT:	
ABSTAIN:	p. 211 of 221

MOTION: Approve Agenda Item 6.1

RESULTS:	PASS: 4-3
MOVER:	Marie Blankley, Mayor
SECONDER:	Carol Marques, Council Member
AYES:	Council Member Armendariz, Council Member Hilton, Council Member Cline, Mayor Blankley
NOES:	Council Member Bracco, Council Member Marques, Member Tovar
ABSENT:	
ABSTAIN:	

- 7. **BIDS AND PROPOSALS** None
- 8. **PUBLIC HEARINGS** None
- 9. **UNFINISHED BUSINESS** None
- 10. **INTRODUCTION OF NEW BUSINESS**

10.1. Use of City-Owned Property for the Installation and Maintenance of the Highway 152 Tree Row Plaque and Monument

MOTION: Approve the request to install the Highway 152 Tree Row Plaque and Monument on City-owned property located at the southwest corner of Hecker Pass Road and Autumn Drive (APN 810-20-038) in the Hecker Pass Special Use District.

RESULTS:	PASS 7-0
MOVER:	Rebecca Armendariz, Council Member
SECONDER:	Fred Tovar, Council Member
AYES:	Council Member Bracco, Council Member Armendariz, Council Member Marques, Council Member Hilton, Council Member Cline, Council Member Tovar, Mayor Blankley
NOES:	
ABSENT:	
ABSTAIN:	

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment

10.2. Appointment of City Representative for County of Santa Clara Housing and Community Development Advisory Committee

MOTION: Appoint Council Member Armendariz as member and Council Member Marques as an alternate member of the City Council to serve on the County of Santa Clara Housing and Community Development Advisory Committee.

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RESULTS:	PASS: 7-0
MOVER:	Fred Tovar, Council Member
SECONDER:	Tom Cline, Council Member
AYES:	Council Member Bracco, Council Member Armendariz, Council Member Marques, Council Member Hilton, Council Member Cline, Council Member Tovar, Mayor Blankley
NOES:	
ABSENT:	
ABSTAIN:	

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

10.3. Santa Teresa Fire Station Operational and Financial Plan and Adoption of a Resolution Amending the Fiscal Year 2024 Operating Budget by \$350,000 for Fire Department Overtime.

MOTION: Adopt a resolution amending the operating budget for the Fire Department’s overtime budget for Fiscal Year 2024 by \$350,000 and transferring \$200,000 from the Capital Projects fund allocated to the modular fire station to the General Fund for Fire overtime expenditures.

RESULTS:	PASS: 7-0
MOVER:	Rebeca Armendariz, Council Member
SECONDER:	Marie Blankley, Mayor
AYES:	Council Member Bracco, Council Member Armendariz, Council Member Marques, Council Member Hilton, Council Member Cline, Council Member Tovar, Mayor Blankley
NOES:	
ABSENT:	
ABSTAIN:	

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment

Enactment No.: Resolution No. 2024-12

11. ADJOURN TO THE MEETING OF GILROY PUBLIC FACILITIES FINANCING AUTHORITY

The meeting was adjourned at 7:07 P.M.

12. OPENING (GILROY PUBLIC FACILITIES FINANCING AUTHORITY)**12.1. Call to Order**

Chair Blankley called the meeting to order at 7:07 PM

12.2.

Attendance	Attendee Name
Present	Dion Bracco, Board Member Rebeca Armendariz, Board Member Carol Marques, Board Member Zach Hilton, Board Member Tom Cline, Board Member Fred Tovar, Council Member Marie Blankley, Chair
Absent	None

13. CONSENT CALENDAR (GILROY PUBLIC FACILITIES FINANCING AUTHORITY)**13.1. Approval of the Action Minutes of the February 27, 2023 Gilroy Public Financing Authority Regular Meeting****13.2. Adoption of a Resolution Setting the Budget for Fiscal Year 2024-25**

MOTION: Approve the action minutes from February 27, 2023 and adopt a resolution setting the budget for the Fiscal Years 2024-2026.

RESULTS:	PASS: 7-0
MOVER:	Dion Bracco, Board Member
SECONDER:	Carol Marques, Board Member
AYES:	Board Member Bracco, Board Member Armendariz, Board Member Marques, Board Member Hilton, Board Member Cline, Board Member Tovar, Chair Blankley
NOES:	
ABSENT:	
ABSTAIN:	

Chair Blankley opened Public Comment. There being no speakers, Chair Blankley closed Public Comment

Enactment No.: Resolution No. 2024-13**14. ADJOURN TO THE MEETING OF GILROY CITY COUNCIL**

The Gilroy Public Facilities Financing Authority meeting was adjourned at 7:08 P.M. The Council reconvened at the City Council.

15. FUTURE COUNCIL INITIATED AGENDA ITEMS Council Member Armendariz requested Council agendize a study session or town hall regarding the incident at Luigi Aprea Middle School.**16. CITY ADMINISTRATOR'S REPORTS** City Administrator Jimmy Forbis reported on his attendance at the State of the Valley event.**17. CITY ATTORNEY'S REPORTS** None

18. CLOSED SESSION

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Mayor Blankley recessed the Regular Meeting at 7:15 PM.

The Council convened into the Closed Session at 7:15 PM.

A motion was made to stay in Closed Session. The Vote was unanimous.

- 18.1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec. 17A.8**
Properties: 10th Street Bridge: APNs 808-19-007, 799-30-006, 799-30-007, 808-19-020, 808-50-999, Thomas Luchessa Bridge: APNs 808-21-025, 808-21-023, 808-21-021, 808-21-018, New Fire Station: APNs 808-18-003, 808-19-029
Negotiators: Jimmy Forbis, City Administrator
Other Party to Negotiations: John M. Filice Jr., Glen Loma Corporation
Under Negotiation: Price and terms of payment
- 18.2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION;**
Paragraph (1) of Subdivision (d) of GC 54956.9 and Gilroy City Code Section 17A.11(3)(a); Case Names:
1. TIMOTHY GAVIN, Petitioner, vs. CITY OF GILROY, Respondent;
Superior Ct. Case Number 24CV428673; Petition for Writ of Mandamus;
Filed January 5, 2024
2. CITY OF GILROY, Petitioner, vs. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; LAW FOUNDATION OF SILICON VALLEY, Real Party in Interest. LAW FOUNDATION OF SILICON VALLEY, Petitioner, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; CITY OF GILROY, Real Party in Interest; Cal. Supreme Ct. Case Numbers S282937 and S282950; Filed January 22, 2020
- 18.3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec.17A.8 (a) (2)**
Property: Gilroy Gardens Theme Park, 3050 Hecker Pass Highway, Gilroy, CA (APN's: 810-17-024, 810-17-026, 810-17-029, 810-17-030, 810-17-031, 810-18-002, 810-18-013, 810-19-005, 810-19-007, 810-19-010, 810-19-011, 810-19-014)
Negotiators: Jimmy Forbis, City Administrator
Other Party to Negotiations: Gilroy Gardens Family Theme Park, LLC
Under Negotiations: Price and terms of payment for sale or lease.

19. ADJOURN TO OPEN SESSION

Mayor Blankley reported to no reportable action from the Closed Session.

20. ADJOURNMENT

The meeting was adjourned at 7:57 P.M.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the City Council of the City of Gilroy on March 18, 2024.

DocuSigned by:

Beth Minor

/s/ Beth Minor

Interim City Clerk



Gilroy Public Facilities Financing Authority

STAFF REPORT

Agenda Item Title: Adoption of a Resolution Setting the Budget for Fiscal Year 2025-26

Meeting Date: February 3, 2025

From: Jimmy Forbis, City Administrator

Department: Treasurer

Submitted By: Harjot Sangha, Treasurer

Prepared By: Harjot Sangha, Treasurer

STRATEGIC PLAN GOALS

Develop a Financially Resilient Organization
Promote Economic Development Activities

RECOMMENDATION

Staff recommends the Board to adopt a resolution setting the budget for Fiscal Year 2025-26.

BACKGROUND

The “Joint Exercise of Powers Agreement Gilroy Public Facilities Financing Authority” (as amended, the “Agreement”), creating the Authority, requires that the Board of Directors (“Board”) of the Authority adopt a budget for administrative expenses annually. The budget is required to include all administrative expenses not included in any bond issue of the Authority.

ANALYSIS

The Authority does not anticipate any administrative revenue or expenses for Fiscal Year 2025-26. Any administrative expenses related to issuance of the bonds that may be pursued during the fiscal year will be included as part of approval action of such bond issuance by the Board. Therefore, it is recommended that the Board of the Authority adopt an annual budget that anticipates \$0 of revenue and \$0 of administrative expenses in order to satisfy the Agreement’s requirement. The attached draft resolution adopting a budget for the Authority for Fiscal Year 2025-26 reflects this recommendation by the Treasurer of the Authority.

ALTERNATIVES

The Authority may choose not to adopt the resolution. This is not recommended. If the Authority does not adopt the resolution setting the budget for administrative expenses, they will be out of compliance with the Agreement.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact with this action. The recommended action ensures compliance with the JPA agreement.

PUBLIC OUTREACH

This item was included on the publicly posted agenda for this meeting.

Attachments:

1. Draft Resolution – Adopting the Budget for Gilroy Public Facilities Financing Authority for the Fiscal Year 2025-26.

RESOLUTION NO. 2025-XX**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GILROY PUBLIC FACILITIES FINANCING AUTHORITY ADOPTING THE BUDGET FOR SAID AUTHORITY FOR THE FISCAL YEAR 2025-26**

WHEREAS, the Gilroy Public Facilities Financing Authority (“Authority”) was established by the City of Gilroy (“City”) and the Community Development Agency of the City of Gilroy on March 21, 1994, pursuant to a joint powers agreement entitled “Joint Exercise of Powers Agreement Gilroy Public Facilities Financing Authority” (as amended, the “Agreement”) for the purpose, among others, of providing for the financing and refinancing of public capital improvements for the City; and

WHEREAS, the Agreement was amended by the “First Amendment to Joint Powers Agreement” on July 1, 2013, to replace the Community Development Agency of the City of Gilroy with the Industrial Development Authority of the City of Gilroy as a party to the Agreement; and

WHEREAS, Section 3.02 of the Agreement states that the Treasurer of the Authority shall be the depositary for the Authority and have custody of all accounts, funds, and money of the Authority; and

WHEREAS, Section 6.04 of the Agreement states that the Board of Directors (“Board”) shall adopt a budget for administrative expenses annually prior to March 1st of each year; and

WHEREAS, Section 6.04 of the Agreement also states that the annual budget shall include all administrative expenses not included in any bond issue of the Authority; and

WHEREAS, the Treasurer of the Authority anticipates no administrative revenues or expenses for the Fiscal Year 2025-26; and

WHEREAS, the Treasurer of the Authority is proposing that the Board of the Authority adopt a budget for Fiscal Year 2025-26 that provides for anticipated revenue totaling \$0 and anticipated administrative expenses totaling \$0; and

WHEREAS, the said proposed budget for Fiscal Year 2025-26 is now before the Board for adoption and said Board is satisfied with said budget.

NOW, THEREFORE, BE IT RESOLVED that each of the foregoing recitals is true and correct.

BE IT FURTHER RESOLVED that the said proposed budget, including the anticipated revenues and administrative expenses, shall be and hereby is adopted as the budget of the Authority for the Fiscal Year 2025-26.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately.

PASSED AND ADOPTED this 3rd day of February 2025 by the following roll call vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

APPROVED:

Greg Bozzo, Chair

ATTEST:

Beth Minor, Interim Secretary

CERTIFICATE OF THE SECRETARY

I, **BETH MINOR**, Interim Secretary of the Gilroy Public Facilities Financing Authority, do hereby certify that the attached **Resolution No. 2025-XX** is an original resolution, or true and correct copy of the Authority's Resolution, duly adopted by the Gilroy Public Facilities Financing Authority at a Regular Meeting of said held on **Monday, February 3, 2025**, with a quorum present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this **Monday, February 3, 2025**.

Beth Minor
Interim Secretary

(Seal)