



CITY COUNCIL REGULAR MEETING AGENDA PACKET

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

MAYOR

Marie Blankley

COUNCIL MEMBERS

Rebeca Armendariz

Dion Bracco

Tom Cline

Zach Hilton

Carol Marques

Fred Tovar

MONDAY, SEPTEMBER 18, 2023 | 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 publiccomment@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 assistance, contact the City Clerk's Office 72 hours before the meeting at (408) 846-0204 or cityclerk@cityofgilroy.org.



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.

Accessing Meeting Translations | *Accediendo a las Traducciones de la Reunión*



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** | *Selecione su lenguaje y haga clic en asistir*

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

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

- 2.1. Proclamation Proclaiming September 17 - 23, 2023 as Constitution Week

3. PRESENTATIONS TO THE COUNCIL

- 3.1. 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 publiccomment@cityofgilroy.org or mail to City Hall, 7351 Rosanna Street, Gilroy, CA 95020, by 1:00 pm 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.

4. REPORTS OF COUNCIL MEMBERS

Council Member Bracco – Cities Association Santa Clara County Board of Directors (*alternate*), Santa Clara County Library Joint Powers Authority, Santa Clara Valley Water Joint Water Resources Committee, SCRWA

Council Member Armendariz – Santa Clara County Library Joint Powers Authority, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, Silicon Valley Clean Energy Authority JPA Board (*alternate*), South County United for Health

Council Member Marques – ABAG, Gilroy Gardens Board of Directors, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, SCRWA (*alternate*)

Council Member Hilton – CalTrain Policy Group (*alternate*), Silicon Valley Clean Energy Authority JPA Board, South County United for Health (*alternate*), VTA Policy Advisory Committee

Council Member Cline – Gilroy Economic Development Partnership (*alternate*), Gilroy Sister Cities Association, Gilroy Youth Task Force, Silicon Valley Regional Interoperability Authority Board, VTA Policy Advisory Committee (*alternate*), VTA Mobility Partnership, Visit Gilroy California Welcome Center Board

Council Member Tovar – Gilroy Youth Task Force (*alternate*), Santa Clara County Expressway Plan 2040 Advisory Board, Santa Clara Valley Water Commission, SCRWA, South County Youth Task Force Policy Team

Mayor Blankley – ABAG (*alternate*), CalTrain Policy Group, Cities Association Santa Clara County Board of Directors, Gilroy Economic Development Partnership, Gilroy Sister Cities Association (*alternate*), Gilroy Youth Task Force, Santa Clara Valley Water Joint Water Resources Committee, SCRWA, South County Youth Task Force Policy Team, VTA Board of Directors, VTA Mobility Partnership

5. COUNCIL CORRESPONDENCE

6. FUTURE COUNCIL INITIATED AGENDA ITEMS

7. BOARD AND COMMISSION INTERVIEWS

7.1. Interviews for Open Seats on Boards, Commissions, and Committees with Future Appointment October 2, 2023

1. Staff Report: Thai Nam Pham, City Clerk
2. Possible Action:

Interview candidates for open seats on City of Gilroy Boards, Commissions, and Committees.

8. CITY COUNCIL TRAINING

8.1. Housing Laws/Public Contracting/Design-Build

9. 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.

9.1. Approval of the Action Minutes of the September 11, 2023 City Council Regular Meeting

9.2. Claim of Cari McCormick (The City Administrator recommends a "yes" vote under the Consent Calendar shall constitute a denial of the claim

10. BIDS AND PROPOSALS

10.1. Award the Purchase and Replacement of the Fire Departments Inventory of Self-Contained Breathing Apparatus (SCBA) for the Total Amount of \$850,003.60 Utilizing Sourcewell's Cooperative Purchasing Contract No. 032620

1. Staff Report: Jim Wyatt, Fire Chief
2. Public Comment
3. Possible Action:

1. Award the purchase and replacement of the Fire Department's Self-Contained Breathing Apparatus Personal Protective Equipment to LN Curtis in the amount of \$850,003.60 utilizing [Sourcewell's Cooperative Purchasing Contract No. 032620](#); and

2. Authorize the City Administrator to execute the purchase contract documents.

11. PUBLIC HEARINGS (NONE)

12. UNFINISHED BUSINESS

12.1. Approval of Consulting and Reimbursement Agreement between the City of Gilroy and Sharks Ice, LLC

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

1. Approve an agreement with Sharks Ice, LLC in the amount of \$270,000 for consulting services for the design and construction of the Gilroy Ice Center; and

2. Authorize the City Administrator to execute the agreement.

13. INTRODUCTION OF NEW BUSINESS

13.1. Report on Measures Taken to Improve the Condition of Las Animas Park, Including Safety and Crime Prevention

1. Staff Report: Bryce Atkins, Assistant to the City Administrator
2. Public Comment
3. Possible Action:
Receive the report.

13.2. Sidewalk Vending Permit Fee and Supervising Code Enforcement Officer

1. Staff Report: Sharon Goei, Community Development Director
2. Public Comment
3. Possible Action:
 1. Adopt a resolution establishing a permit application fee and annual renewal fee for sidewalk vending;
 2. Approve the addition of a Supervising Code Enforcement Officer position in the Community Development Department; and
 3. Adopt a resolution approving the updated Position Control List for FY 24.

14. CITY ADMINISTRATOR'S REPORTS

14.1. 2023 Aquatics Center Season Recap

15. CITY ATTORNEY'S REPORTS

16. ADJOURNMENT

FUTURE MEETING DATES

October 2023

- 2 Regular Meeting - 6:00 p.m
16 Regular Meeting - 6:00 p.m

November 2023

- 6 Regular Meeting - 6:00 p.m
20 Regular Meeting - 6:00 p.m

December 2023

- 4 Regular Meeting - 6:00 p.m
11 Special Meeting - 6:00 p.m
~~18 Regular Meeting - 6:00 p.m~~ **-CANCELED-**

Meetings are webstreamed on the City of Gilroy's website at gilroy.city/meetings.

2.1. Proclamation Proclaiming September 17 - 23, 2023 as Constitution Week

City of Gilroy Proclamation



WHEREAS, September 17, 2023, marks the two hundred and thirty-sixth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, American democracy requires our constant care, vigilance, and full participation to determine the course and conscience of the Union; and

WHEREAS, for more than two centuries, women and men have struggled and strived to make good on the promise of America by amending our Constitution in accordance with the growth and progress as a Nation; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary and to the patriotic celebrations that will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as "Constitution Week".

NOW, THEREFORE, I, Marie Blankley, Mayor of the City of Gilroy, on this 18th day of September 2023, together with the City Council, do hereby proclaim the week of September 17 through September 23, 2023 as

CONSTITUTION WEEK

and ask our citizens to recognize the protections and freedom guaranteed to us through this guardian of our liberties.

Attested to by:


Marie Blankley
MAYOR




Thai Nam Pham
City Clerk

**7.1. Interviews for Open Seats on Boards, Commissions, and Committees
with Future Appointment October 2, 2023**

1. Staff Report:
2. Possible Action:

Interview candidates for open seats on City of Gilroy Boards,
Commissions, and Committees.



City of Gilroy

STAFF REPORT

Agenda Item Title: Interviews for Open Seats on Boards, Commissions, and Committees with Future Appointment October 2, 2023

Meeting Date: September 18, 2023
 From: Jimmy Forbis, City Administrator
 Department: City Clerk
 Submitted By: Thai Nam Pham, City Clerk
 Prepared By: Thai Nam Pham, City Clerk

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Interview candidates for open seats on City of Gilroy Boards, Commissions, and Committees.

EXECUTIVE SUMMARY

The City of Gilroy aims to appoint members to several vacant seats across six Boards, Commissions, and Committees. While efforts have been made to fill these vacancies throughout 2023 and publicize them extensively, multiple seats remain unfilled. Out of the vacancies, ten applications were received by the end of the application period on September 8, 2023. Interviews are scheduled for today, with final decisions by October 2, 2023.

BACKGROUND

The annual recruitment to fill seats on six boards was initiated by the City Council, ending on November 30, 2022. The vacancies are as follows:

Arts and Culture Commission	One (1) seat with a term expiring 12/31/2024
Library Commission	One (1) seat with a term expiring 12/31/2026

Open Government Commission	One (1) seat with terms expiring 12/31/2024
Parks and Recreation Commission	One (1) seat with a term expiring 12/31/2025
Personnel Commission	Two (2) seats with terms expiring 12/31/2026
Physically Challenged Board of Appeals	Two (2) seats with terms expiring 12/31/2025 One (1) seat with term expiring 12/31/2026

To ensure a broad applicant base, staff used the City's website, social media, and direct outreach to past applicants.

Following the conclusion of the application period on September 8, 2023, at 5 p.m., staff received a total of ten (10) applications to the following boards, commissions, and committees:

Arts & Culture Commission Applicants

No applications

Library Commission

No applications

Open Government Commission

1. Diego Martinez
2. Sandra Ramirez
3. Rebecca Garcia
4. Akur Varadarajan
5. Appolonia Salinas
6. Ann Marie McCauley

Parks and Recreation Commission

1. Roselynn Bowers
2. Appolonia Salinas
3. Dale Davis

Personnel Commission

1. Akur Varadarajan

Physically Challenged Board of Appeals

No applications

CONCLUSION

The recruitment process continues for seats with insufficient applications. Interviews are planned for this evening, and appointments will be concluded in the upcoming City Council meeting on October 2, 2023.

Attachments:

Interviews for Open Seats on Boards, Commissions and Committees with Future Appointment
October 2, 2023

- 1) Open Government Commission Application – Diego Martinez
- 2) Open Government Commission Application – Sandra Ramirez
- 3) Open Government Commission Application – Rebecca Garcia
- 4) Open Government Commission Application – Akur Varadarajan
- 5) Open Government Commission Application – Appolonia Salinas
- 6) Open Government Commission Application – Ann Marie McCauley
- 7) Parks and Recreation Commission Application – Roselynn Bowers
- 8) Parks and Recreation Commission Application – Appolonia Salinas
- 9) Parks and Recreation Commission Application – Dale Davis
- 10) Personnel Commission Application – Akur Varadarajan

From: noreply@civicplus.com
To: [City Clerk](#)
Subject: EXTERNAL - Online Form Submittal: City of Gilroy Application for Board, Commission and Committee Appointment
Date: Tuesday, May 3, 2022 1:56:45 PM

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

City of Gilroy Application for Board, Commission and Committee Appointment

City of Gilroy Application for Board, Commission, and Committee Appointment

** All Commission, Board and Committee applications are a public record.*

First Name	Diego
Last Name	Martinez
Board/Commission/Committee of Interest	Open Government Commission
Are you a registered voter within the City limits?	Yes
Physical Address 1	[REDACTED]
City, State, Zip	[REDACTED]
Phone Number	[REDACTED]
E-mail Address	[REDACTED]
Alternate Phone Number	<i>Field not completed.</i>
List your qualifications for this appointment:	I am currently in my sophomore year at Gavilan College where I am majoring in political science. I have great computer literacy, leadership, dependability, research skills, communication and teamwork, and I am also fluent in Spanish as my second language.
List any service to the community including any prior appointments.	I have volunteered at goodwill and at St. Mary's food pantry back in 2016-2017. I have also helped create petitions for action at the apartments that I live at.
What are you goals while serving on this Board/Commission/Committee?	I hope to help the community grow as this is where I have lived all of my life. I aim to gain experience in my field of study, which is political science, and to use that experience to come back in the future to run for office

in Gilroy. I wish to serve with complete eloquence.

Why are you the most qualified
to serve on this
Board/Commission/Committee?

I am the most qualified to serve, as I believe I will be
the most passionate about serving my city and to help
the people of this great community. I will be the most
dependable out of everyone, and will strive to create a
great experience for myself and my peers.

Declaration of Residency

I Understand

Email not displaying correctly? [View it in your browser.](#)



City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:			
Name:	Sandra Ramirez		
Phone number(s):	[REDACTED]	email address*:	[REDACTED]
Are you a registered voter within the City limits?			
		Yes	
Physical Address*:	[REDACTED]		
Driver's License or ID No.:	[REDACTED]	Date of Birth*:	
		Last 4 of SSN:	[REDACTED]
List your qualifications for this appointment:			
I am currently on three board at my work and have been involved in many of the decision.			
List any service to the community including any prior appointments:			
At the moment I have no service to the community unless you count me bring items from NASA to the library for kids to get in involved in Science and Math.			
What are your goals while serving on this Board/Commission/Committee?			
My goal is to understand and help my community in which I feel it affect me. By being able to see how things work in the city office I can address issues in a proper way.			
Why are you the most qualified to serve on this Board/Commission/Committee?			
I am qualified to serve on the boards is because I want to make sure our city is well plan and get the community involved to better Gilroy as a city.			

✓	By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of
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Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.
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City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:					
Name:	Rebecca Garcia				
Phone number(s):	[REDACTED]		email address*:	[REDACTED]	
Are you a registered voter within the City limits?				Yes	
Physical Address*:	[REDACTED]				
Driver's License or ID No.:	[REDACTED]		Date of Birth*:		Last 4 of SSN: [REDACTED]
List your qualifications for this appointment:					
I have 16 years of professional experience in the public sector. I have worked in the affordable housing and homeless realm supporting the City of San Jose, the County of Santa Clara, and currently for the City of Morgan Hill. I know firsthand the importance of communication, community engagement and open government. I value the opportunity to be on the commission. I was born and raised in Gilroy where I currently live with my family. My leadership skills, professional experience, and education make me the ideal candidate for this position; however, it is my passion for this work and what is best for everyone in our community that will facilitate my ability to stay grounded in the values that allow us to thrive as a democracy.					
List any service to the community including any prior appointments:					
I was previously on the City of Gilroy's Housing Commission and currently serve as the Board Chair of the South County Collaborative, composed of local non-profit community-based organizations, schools, hospitals and clinics, and public agencies that serve South Santa Clara County's most vulnerable populations. The Collaborative advocates to increase the quality and quantity of human services in southern Santa Clara County as well as making them more accessible, efficient, and effective.					
What are your goals while serving on this Board/Commission/Committee?					
My goal is to support the implementation of the City of Gilroy's Open Government Ordinance, building upon the great work that has already taken place, and continuing to give the citizens of Gilroy greater access to information in this new era we find ourselves in. I aim to increase and diversify public participation in the City's governmental decisions. Ensuring that we encourage and engage with all generations and residents of diverse backgrounds is at the heart of this work.					
Why are you the most qualified to serve on this Board/Commission/Committee?					

Since 2004, I have worked in local government fostering strong relationships throughout the County of Santa Clara and community. My work ethic, interpersonal skills, responsiveness, and leadership have allowed me to develop a credible reputation for being effective. These relationships and credibility along with my experience in working for cities will support the implementation of the City of Gilroy's Open Government Ordinance. While I am sure you have other fine candidates to consider, I offer my support for this commission. Thank you for your consideration. Rebecca Garcia

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City of Gilroy Board, Committee, & Commission Application

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Board/Committee/Commission of Interest:		Open Government Commission	
Name: Akur Varadarajan			
Phone number(s):	Mobile - [REDACTED]	email address*:	[REDACTED]
Are you a registered voter within the City limits?		Yes	
Physical Address*:		[REDACTED]	
Driver's License or ID No.:	[REDACTED]	Date of Birth*:	[REDACTED]
		Last 4 of SSN:	[REDACTED]
List your qualifications for this appointment:			
Professional Experience: Includes 24 years of experience in public school management with wide-ranging responsibilities : community engagement, culture and climate of the organization, human resource administration with emphasis on employee relations and contract negotiations, work related to professional development, oversight of budget, finance, facilities operations, school food services, school transportation, procurement and public bidding and contract functions. Facilities planning and Construction Management : Administered District's facilities planning from issuance of bonds to construction management : Planned, organized and directed the school facilities and maintenance department. Oversee facilities compliance issues with regards to State Allocation Board, Office of Public School Construction and Division of State Architect programs and regulations regarding eligibility and funding for school construction and modernization.			
List any service to the community including any prior appointments:			
As part of my career I have served in school multiple school insurance authority (JPA's) boards. For example, Alameda county schools insurance group and Monterey county schools insurance group.			
What are your goals while serving on this Board/Commission/Committee?			
I am interested in contributing to the community. I believe I can contribute effectively to the Open Government Commission and or any other Commission based on my background and experience.			
Why are you the most qualified to serve on this Board/Commission/Committee?			

My work experience has been in the public sector. I have served in different positions in school administration and as a Co-Superintendent and Chief Business Officer worked with different City administrations. I believe my qualifications makes me an ideal candidate to serve in the Open Government Commission.

School: / Grade: null

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City of Gilroy Board, Committee, & Commission Application

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Board/Committee/Commission of Interest:		Open Government Commission	
Name: Appolonia Salinas			
Phone number(s):	Mobile - [REDACTED]	email address*:	[REDACTED]
Are you a registered voter within the City limits?		Yes	
Physical Address*:	[REDACTED]		
Driver's License or ID No.:	[REDACTED]	Date of Birth*:	[REDACTED]
		Last 4 of SSN:	[REDACTED]
List your qualifications for this appointment: Active Honest Member of MY city Gilroy, people person			
List any service to the community including any prior appointments: MY HONEST KNOWLEDGE and SUPPORT TO MY COMMUNITY			
What are your goals while serving on this Board/Commission/Committee? TO MAKE THIS AN ENJOYABLE FUNCTIONING CITY, and a BEAUTIFUL WELCOMING PLACE TO VISIT			
Why are you the most qualified to serve on this Board/Commission/Committee? BECAUSE I AM MEE OPEN< HONEST< AND WILLING to DEDICATE MY TIME AND ENERGY			
School: / Grade: null			

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Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.
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City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:		Parks and Recreation Commission	
Name: Roselynn Bowers			
Phone number(s):		email address*:	
Are you a registered voter within the City limits? Yes			
Physical Address*:			
Driver's License or ID No.:		Date of Birth*:	Last 4 of SSN:
List your qualifications for this appointment:			
I am a graduate of West Valley College with the field of study being Park Management. I was an environmental interpreter for Big Basin Redwoods State Park for 2 years, as well as completed an internship with Santa Clara County Parks at Stevens Creek and Sanborn Park. I was the Senor Lab Instructor for the Tech Interactive in San Jose where I developed curriculum for grades 2-9 on Earth Science and Engineering. After raising a family here in Gilroy, I shifted my focus to Landscaping and have worked as a landscaper and project manager for the last 3 years. My passion is the outdoors and seeing a community's natural beauty thrive. I have also been an advocate for improvements to dog parks specifically as there was little forethought in the planning process, so it seems. I am uniquely qualified for this position and look forward to the opportunity to serve my community.			
List any service to the community including any prior appointments:			
Pitstop Outreach- Meal Prep and Delivery to unsheltered population No prior city hall service			
What are your goals while serving on this Board/Commission/Committee?			
My goal on this commission is to advocate for best practices for the safety of our community and the health of our environment.			
Why are you the most qualified to serve on this Board/Commission/Committee?			
Like previously stated, I not only have a background in the management of Parks and Recreation itself, but the labor, budget, materials, policies and people it takes to make our parks the best in the county! I have a firm grasp on duties of the parks from daily operations to annual maintenance, including recreational classes and facilities. Please consider me for this appointment.			

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City of Gilroy Board, Committee, & Commission Application

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Board/Committee/Commission of Interest:		Open Government Commission	
Name: Ann Marie McCauley			
Phone number(s):		email address*:	
Are you a registered voter within the City limits?		Yes	
Physical Address*:			
Driver's License or ID No.:		Date of Birth*:	Last 4 of SSN:
List your qualifications for this appointment:			
I am able to attend the four meetings required each year. I have been in the construction industry for 25 year and am effective when working in a group to solve small and large concerns. I am used to reading and following rules and codes. I am open to the opinions of others and look forward to learning something new. I have been a resident since 2004 and will retire in Gilroy. Being on this commission is the first step in my commitment to the City of Gilroy as an active participant.			
List any service to the community including any prior appointments:			
Volunteer at Gilroy Compassion Center. Volunteer at Pit Stop Outreach. Rotary Member. Gilroy Chamber of Commerce. Volunteer at Gilroy Garlic Festival.			
What are your goals while serving on this Board/Commission/Committee?			
Quoting the City Code I believe that my primary goal is to "assure that the people of the city remain in control of the government they have created." I have watched a few of the recorded meetings and would like to make contributions based on the group conscience. I would also like to learn more about our city government and have the opportunity to work with the staff. I would like to better understand the City Codes so that I can represent them in an effective and honest way.			
Why are you the most qualified to serve on this Board/Commission/Committee?			
I am most qualified because I am a very transparent person which is a quality that should resonate into the Open Government Commission as stated in Gilroy City Code 17A Line 1 "Transparency in decision making is a cornerstone of democracy." I am very committed to Gilroy as a resident and would take seriously anything affecting our citizens.			

School: / Grade: null

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City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:		Parks and Recreation Commission	
Name: Appolonia Salinas			
Phone number(s):	Mobile - [REDACTED]	email address*:	[REDACTED]
Are you a registered voter within the City limits?		Yes	
Physical Address*:	[REDACTED]		
Driver's License or ID No.:	[REDACTED]	Date of Birth*:	[REDACTED]
		Last 4 of SSN:	[REDACTED]
List your qualifications for this appointment: Active Honest Member of MY city Gilroy, people person			
List any service to the community including any prior appointments: MY HONEST KNOWLEDGE and SUPPORT TO MY COMMUNITY			
What are your goals while serving on this Board/Commission/Committee? TO MAKE THIS AN ENJOYABLE FUNCTIONING CITY, and a BEAUTIFUL WELCOMING PLACE TO VISIT			
Why are you the most qualified to serve on this Board/Commission/Committee? BECAUSE I AM MEE OPEN< HONEST< AND WILLING to DEDICATE MY TIME AND ENERGY			
School: / Grade: null			

✓	By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of
---	---

Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.
--



City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:		Parks and Recreation Commission	
Name: Dale Davis			
Phone number(s):		email address*:	
Are you a registered voter within the City limits? Yes			
Physical Address*:			
Driver's License or ID No.:		Date of Birth*:	Last 4 of SSN:
List your qualifications for this appointment:			
As a primarily residential project manager and superintendent for 35 years, I have top organizational skills and experience in completing advanced tasks, including design and developing parks within the residential communities that I managed. These skills include grading, drainage as well as design and aesthetics.			
List any service to the community including any prior appointments:			
As a recent retiree, I relocated from my long time home in the West Valley area of San Jose last year, so this is my first attempt to serve the community, which I already love, and plan to stay. Having the extra time as a retiree permits me to devote whatever time I need to be an excellent commissioner.			
What are your goals while serving on this Board/Commission/Committee?			
My goals are simple: to improve the park system to the best of my ability, which includes fighting for each dollar budgeted toward the park system and seeing to it that the money is maximized and well spent.			
Why are you the most qualified to serve on this Board/Commission/Committee?			
In addition to the above-listed qualifications, I bring a fresh set of eyes and a passion for everything I commit myself to. In my experience so far in Gilroy, I've observed the abundance of children, dogs, bicyclists with the best weather in the world. I believe that the best way to serve the City's population and take advantage of the beautiful conditions we've been blessed with is to maintain and advance our park system.			

School: / Grade: null



By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.



City of Gilroy Board, Committee, & Commission Application

**All Commission, Board, and Committee applications are a public record.*

Board/Committee/Commission of Interest:		Personnel Commission	
Name: Akur Varadarajan			
Phone number(s):		email address*:	
Are you a registered voter within the City limits? Yes			
Physical Address*:			
Driver's License or ID No.:		Date of Birth*:	Last 4 of SSN:
List your qualifications for this appointment:			
Professional Experience: Includes 24 years of experience in public school management with wide-ranging responsibilities : community engagement, culture and climate of the organization, human resource administration with emphasis on employee relations and contract negotiations, work related to professional development, oversight of budget, finance, facilities operations, school food services, school transportation, procurement and public bidding and contract functions. Facilities planning and Construction Management : Administered District's facilities planning from issuance of bonds to construction management : Planned, organized and directed the school facilities and maintenance department. Oversee facilities compliance issues with regards to State Allocation Board, Office of Public School Construction and Division of State Architect programs and regulations regarding eligibility and funding for school construction and modernization.			
List any service to the community including any prior appointments:			
As part of my career I have served in school multiple school insurance authority (JPA's) boards. For example, Alameda county schools insurance group and Monterey county schools insurance group.			
What are your goals while serving on this Board/Commission/Committee?			
I am interested in contributing to the community. I believe I can contribute effectively to the Open Government Commission and or any other Commission based on my background and experience.			
Why are you the most qualified to serve on this Board/Commission/Committee?			

My work experience has been in the public sector. I have served in different positions in school administration and as a Co-Superintendent and Chief Business Officer worked with different City administrations. I believe my qualifications makes me an ideal candidate to serve in the Open Government Commission.

School: / Grade: null

✓ By clicking on this box, I declare under penalty of perjury that I am currently a registered voter within the City limits of the City of Gilroy. Furthermore, I understand that this application and any attachments are subject to disclosure under the Public Records Act and must complete mandatory Open Government Ordinance Training. I further understand that members of the Planning Commission, Building Boards of Appeals, and Physically Challenged Board of Appeals are also subject to filing the Fair Political Practice Commission's Statement of Economic Interest Form 700 relating to financial disclosures.

**9.1. Approval of the Action Minutes of the September 11, 2023 City Council
Regular Meeting**

**City of Gilroy
City Council Regular Meeting Minutes
Monday, September 11, 2023 | 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 Marques led the Pledge of Allegiance.

1.3. Invocation

Pastor Malcolm MacPhail from New Hope Community Church led the Invocation.

1.4. City Clerk's Report on Posting the Agenda

City Clerk Pham reported on the Posting of the Agenda.

1.5. Roll Call

Attendance	Attendee Name
Present	Rebeca Armendariz, Council Member Dion Bracco, Mayor Pro Tempore Tom Cline, Council Member Carol Marques, Council Member Fred Tovar, Council Member Marie Blankley, Mayor
Absent	Zach Hilton, Council Member

1.6. Orders of the Day

There were none.

1.7. Employee Introductions

Fire Chief Wyatt introduced Division Chiefs Gerry Laird and Arlen Summers.

Interim Public Works Director Bjarke introduced Michael Guerra, Maintenance Worker.

2. CEREMONIAL ITEMS - Proclamations and Awards

2.1. Proclamation Proclaiming September 2023 as Childhood Cancer Awareness Month

Mayor Blankley read aloud the proclamation and presented it to Jacobs Heart Outreach Coordinator Allyssa Gil-Ojeda.

2.2. Proclamation Proclaiming September 2023 National Preparedness Month

Mayor Blankley read aloud the proclamation and presented it to Emergency Services & Volunteer Coordinator Andrew Young.

3. PRESENTATIONS TO THE COUNCIL

3.1. Annual Presentation to Council – Library Commission

Library Commission Chair Coverson-Baxter provided the annual presentation to the Council.

3.2. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL

Mayor Blankley opened Public Comment.

The following members spoke on items that were not on the agenda:

Ron Kirkish raised concerns about potential delays at the Gourmet Alley project, citing weather issues.

Robert Zepeda voiced concerns over Assembly Bill 28's 11% tax on firearms.

There being no further speakers, Mayor Blankley closed Public Comment.

4. CITY COUNCIL TRAINING

Council Roles and Responsibilities During an Emergency Operation Activation

City Administrator Forbis conducted the training for the Council and responded to Council Member questions.

5. REPORTS OF COUNCIL MEMBERS

Council Member Bracco had no report.

Council Member Armendariz had no report.

Council Member Marques had no report.

Council Member Cline had no report.

Council Member Tovar had no report.

Mayor Blankley reported on the recent VTA board policy requiring future VTA transit-oriented developments to mandate housing developers to purchase two-year smart passes for each household, the initiation of a fourth-weekday train service from CalTrain to Gilroy starting September 25th, a related promotional event at the Gilroy Transit Center, and the introduction of sexual assault forensic examination services at St. Louise Regional Hospital for South County survivors.

6. COUNCIL CORRESPONDENCE

6.1. City Council Member Meeting Attendance

Council received the correspondence.

6.2. Receive State-Certified 2023-2031 Housing Element for the City of Gilroy

Council received the correspondence.

6.3. Letter from City of Gilroy Open Government Commission

Council received the correspondence.

7. FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Armendariz requested the Council to agendize the Open Government Commission's presentation on *Enabling Hybrid Public Meetings* to the Council. Her request did not receive majority support.

Mayor Blankley requested the Council to agendize updating the Downtown Specific Plan. Her request received majority support.

8. CONSENT CALENDAR

Council Member Tovar requested Consent Calendar Items Nos. 8.2 and 8.4 be pulled from the Consent Calendar.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Motion: Adopt the Consent Calendar Item Nos. 8.1, 8.3, 8.5, 8.6, and 8.7.

RESULT: Pass

MOVER: Tom Cline, Council Member

SECONDER: Dion Bracco, Mayor Pro Tempore

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Marques, Council Member Tovar, Mayor Blankley

NAYS: None

ABSENT: Council Member Hilton

8.1. Approval of the Action Minutes of the August 21, 2023 City Council Regular Meeting

A motion was made to approve the action minutes.

8.2. A Resolution of the City Council of the City of Gilroy to Release Unclaimed Checks to the City's General Fund in accordance with California Government Code Section 50053

The item was pulled out of the Consent Calendar.

8.3. A Resolution of the City Council of the City of Gilroy Updating the Appropriation Limit for Fiscal Year 2023-24

A motion was made to adopt the resolution.

Enactment No.: Resolution No. 2023-53

8.4. 2024 City Council Meeting Schedule

The item was pulled out of the Consent Calendar.

8.5. Adoption of an Ordinance of the City of Gilroy Amending Section 2.13 of the Gilroy City Code to Modify the Regular Meeting Schedule of the City Council

A motion was made to adopt the ordinance.

Enactment No.: Ordinance No. 2023-09

8.6. Approval of City Council Members' Travel for the League of California Cities Conference

A motion was made to approve the City Council Members Armendariz, Marques, Tovar, and Mayor Blankley's travel to the League of California Cities Conference.

8.7. Claim of Rita Castro (The City Administrator Recommends a 'Yes' Vote Under the Consent Calendar Shall Constitute a Denial of the Claim)

A motion was made to deny the claim.

8. CONSENT CALENDAR *(Items Pulled from the Consent Calendar)*

8.2. A Resolution of the City Council of the City of Gilroy to Release Unclaimed Checks to the City's General Fund in accordance with California Government Code Section 50053

Finance Director Harjot responded to Council Member questions.

Council Member Tovar expressed concerns about the methods of contacting individuals with unclaimed checks.

Motion: Adopt the Resolution

RESULT: Pass

MOVER: Dion Bracco, Mayor Pro Tempore

SECONDER: Tom Cline, Council Member

AYES: Mayor Pro Tempore Bracco, Council Member Cline, Council Member Marques, Mayor Blankley

NAYS: Council Member Armendariz, Council Member Tovar

ABSENT: Council Member Hilton

Enactment No.: Resolution No. 2023-52

8.4. 2024 City Council Meeting Schedule

Council discussion ensued about listing the holidays within the 2024 City Council Meeting Schedule.

Motion: Approve the 2024 City Council Meeting Schedule.

RESULT: Pass

MOVER: Rebeca Armendariz, Council Member

SECONDER: Carol Marques, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Marques, Council Member Tovar, Mayor Blankley

NAYS: None

ABSENT: Council Member Hilton

9. BIDS AND PROPOSALS

There were none.

10. PUBLIC HEARINGS

10.1. Proposed Tentative Map for a three-lot subdivision at 7040 Church Street, Application No. TM 22-03

Mayor Blankley asked the Council if they had received an ex-parte communication. None were reported.

Planner II Erin Freitas provided staff presentation and responded to Council Member questions.

Mayor Blankley opened the Public Hearing at 7:02 PM.

Amanda Musy-Verdel, representing the owners of the property, stated that the driveway's location on the lot is conceptual and will be addressed during development, praising staff's work and offering to answer any further questions.

Jose Avila, an owner near the proposed lot development, expressed concerns over increased traffic, overpopulation, and diminishing neighborhood quality, emphasizing a preference for sold homes over rentals to ensure community care and involvement.

There being no further speakers, Mayor Blankley closed the Public Hearing at 7:05 PM.

Motion: Determine that the proposed Tentative Map is exempt from further environmental review and qualifies for the State CEQA Guidelines Class 15 Exemption, Minor Land Divisions, because the proposed subdivision results in less than four parcels, is in conformance with the City's General Plan and Zoning, seeks no exceptions or variances, and all necessary services and access to the resulting parcels are available and adopt a resolution to approve the proposed tentative map to divide the property, known as 7040 Church Street, APN 799-11-068, into three residential parcels.

RESULT: Pass

MOVER: Fred Tovar, Council Member

SECONDER: Tom Cline, Council Member

AYES: Council Member Armendariz, Mayor Pro Tempore Bracco, Council Member Cline, Council Member Marques, Council Member Tovar, Mayor Blankley

NAYS: None

ABSENT: Council Member Hilton

Enactment No.: Resolution No. 2023-54

11. UNFINISHED BUSINESS

There were none.

12. INTRODUCTION OF NEW BUSINESS**12.1. Gilroy Garlic Festival Memorial Repairs/Upgrades**

City Administrator Forbis provided staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

The Council received the report and directed staff to return with design options for a garden-only memorial, including the consideration of replacing the current palm tree with three maintainable trees to memorialize the lives lost. The design should also feature a monument on a pedestal, measures to mitigate squirrel issues, and the potential addition of a permanent bench. It was suggested that the designer, Karen Aitken, be present during the next discussion to provide input and feedback.

13. CITY ADMINISTRATOR'S REPORTS**13.1. Love Gilroy/Fight Dirty Campaign Update****13.2. Gilroy Cares – Employee Wellness Program****13.3. Update on Sidewalk Vending Enforcement Program**

City Administrator Forbis provided his reports and responded to Council Member questions. Community Development Director Goei also provided an update to Item No. 13.3.

14. CITY ATTORNEY'S REPORTS

There were none.

15. CLOSED SESSION

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Mayor Blankley recessed the Regular Meeting at 7:32 PM.

The City Council reconvened into Closed Session at 7:38 PM.

The vote to stay in Closed Session was unanimous.

15.1. THREAT TO PUBLIC SERVICES OR FACILITIES

Pursuant to Government Code section 54957; Gilroy City Code Chapter 17A
Consultation with Gilroy Police Department and Chief Espinoza
Gilroy City Code Section 17A.11(1)

No reportable action.

16. ADJOURN TO OPEN SESSION

Mayor Blankley reported out of Closed Session as shown above.

17. ADJOURNMENT

Mayor Blankley adjourned the meeting at 8:43 PM.

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.

/s/Thai Nam Pham, MMC, CPMC
City Clerk

DRAFT

- 9.2. Claim of Cari McCormick (The City Administrator recommends a "yes" vote under the Consent Calendar shall constitute a denial of the claim**



City of Gilroy

STAFF REPORT

Agenda Item Title: Claim of Cari McCormick (The City Administrator recommends a "yes" vote under the Consent Calendar shall constitute a denial of the claim

Meeting Date: September 18, 2023

From: Jimmy Forbis, City Administrator

Department: Administrative Services

Submitted By: LeeAnn McPhillips, Administrative Services and Human Resources Director / Risk Manager

Prepared By: LeeAnn McPhillips, Administrative Services and Human Resources Director / Risk Manager

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Based on the recommendation from Municipal Pooling Authority (MPA) and/or legal counsel, this claim is recommended for rejection.

EXECUTIVE SUMMARY

Based on the recommendation from Municipal Pooling Authority (MPA) and/or legal counsel, the following claim is submitted to the City Council for rejection at the September 18, 2023 meeting:

- Claim of Cari McCormick

Attachments:

1. Claim of Cari McCormick



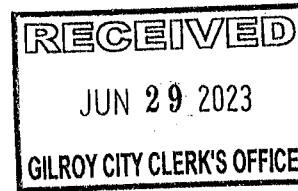
STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

KEVIN KISH, DIRECTOR

Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
 800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov



June 8, 2023

Brent Robinson
 Aiman-Smith & Marcy, 7677 Oakport Street, Suite 1150
 Oakland, California 94621

RE: **Notice to Complainant's Attorney**
 CRD Matter Number: 202306-20925508
 Right to Sue: McCormick / California Public Employees' Retirement System et al.

Dear Brent Robinson:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

Civil Rights Department

KEVIN KISH, DIRECTOR

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calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

June 8, 2023

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202306-20925508

Right to Sue: McCormick / California Public Employees' Retirement System et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

Civil Rights Department

KEVIN KISH, DIRECTOR

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June 8, 2023

Cari McCormick

RE: Notice of Case Closure and Right to Sue

CRD Matter Number: 202306-20925508

Right to Sue: McCormick / California Public Employees' Retirement System et al.

Dear Cari McCormick:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective June 8, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Cari McCormick

CRD No. 202306-20925508

Complainant,

vs.

California Public Employees' Retirement System
Lincoln Plaza East 400 Q Street Room 1820
Sacramento, CA 95811

Lake County
255 North Forbes Street
Lakeport, CA 95453

State of California
c/o Attorney General Rob Bonta, Department of
Justice, P.O. Box 944255
Sacramento, CA 94244-2550

Respondents

1. Respondent **California Public Employees' Retirement System** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Lake County** business as Co-Respondent(s).
Complainant is naming **State of California** business as Co-Respondent(s).

3. Complainant **Cari McCormick**, resides in the City of , State of .

4. Complainant alleges that on or about **June 1, 2023**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's age (40 and over) and as a result of the discrimination was denied equal pay, other.

-1-

Complaint – CRD No. 202306-20925508

Date Filed: June 8, 2023

CRD-ENF 80 RS (Revised 12/22)

1 **Additional Complaint Details:** See Exhibits A, B, and C attached hereto.
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27 *Complaint – CRD No. 202306-20925508*

28 Date Filed: June 8, 2023

CRD-ENF 80 RS (Revised 12/22)

1 VERIFICATION

2 I, **Brent A. Robinson**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On June 8, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Francisco, CA**

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27 *Complaint – CRD No. 202306-20925508*

28 Date Filed: June 8, 2023

CRD-ENF 80 RS (Revised 12/22)

EXHIBIT A



Exhibit A – Claim Narrative

Plaintiff Cari McCormick is an individual.

Defendants California Public Employees' Retirement System ("CalPERS"), State of California, and County of Lake are California governmental entities.

Plaintiff is ignorant of the true names or capacities of defendants named herein as Does 1 through 3,000, inclusive, and therefore identifies these defendants by these fictitious names. Each of the defendants named herein or designated as a Doe, is liable or in some manner legally responsible for the events alleged herein.

Plaintiff seeks to have the State of California, represented by the California Attorney General's Office, appointed to represent a defendant class, which includes all public entities that both employed one or more Plaintiffs, and are liable for employer-side retirement contributions for one or more Plaintiffs. A list of public entities believed to potentially be included within that defendant class, based on their listing as employers within the 2021-2022 Annual Comprehensive Financial Report published by CalPERS, is attached as Exhibit C.

Plaintiff refers to all defendants here collectively as "Defendants."

Plaintiff seeks to represent a plaintiff class of similarly situated persons. The class includes all persons who were employed by Defendants; who were at or over age 40 at the time they became members of the CalPERS system; who applied for and were granted ordinary disability retirement; whose retirement benefits are administered by CalPERS; and either (1) who have ever received disability retirement benefit payments pursuant to Government Code section 21423, who were over age 41 at membership in CalPERS, and who at retirement were credited with 18.518 or fewer years of actual service; or (2) who have ever received disability retirement benefit payments pursuant to Government Code section 21098, and who at retirement were credited with 24.691 or fewer years of actual service; or (3) who have ever received disability retirement benefit payments pursuant to Government Code section 21424, and who at retirement were credited with 29.629 or fewer years of actual service.

Plaintiff was employed by County of Lake; was over age 40 at membership in CalPERS; applied for and was granted ordinary disability retirement; receives benefits administered by CalPERS; and presently receives monthly disability benefit payments pursuant to one of the sections listed above. *See, generally, McCormick v. Public Employees' Retirement System* (2019) 41 Cal.App.5th 428.

Plaintiff refers to herself and the proposed plaintiff class collectively as "Plaintiffs."

At all relevant times, each of the Defendants was the agent of each of the remaining Defendants and, in doing the things alleged herein, was acting with the course and scope of such agency.

Exhibit A

Page 2

Each of the Defendants' actions or omissions as alleged herein was ratified by each of the remaining Defendants. Each of the acts or omissions of a Defendant's agents as alleged herein was ratified by that Defendant, as well as by each of the remaining Defendants. Each of the Defendants had knowledge of unlawful discrimination practiced upon its employees by the other Defendants, and failed to thereafter take all reasonable steps to prevent further discrimination against its employees. Each of the Defendants provided substantial assistance or encouragement to the other Defendants in the discrimination alleged here, and thereby caused harm to Plaintiff and the proposed class. Each of the Defendants had knowledge of the discrimination alleged here, and cooperated in that discrimination. For purposes of the discrimination alleged here, each of the Defendants was a joint employer and engaged in a joint venture, including by engaging in a combination of resources to carry out a single undertaking, with each having separate ownership interests in the joint undertaking, joint control, and an agreement to share profits and losses of that joint undertaking.

California law governs Plaintiffs' retirement benefits, and provides for ordinary disability retirement benefits for certain public employees such as Plaintiff who are rendered unable to do their job by any non-industrial long-term disability.

California law calculates such ordinary disability retirement benefits in a way that discriminates based on advanced age at membership. Government Code sections 21098, 21424, and 21423 each provides for younger employees to receive an ordinary disability retirement benefit equal to at least 33.333% of their final compensation. By contrast, older employees receive significantly reduced benefits, because those benefits are based on imputed years of service through age 60. For example, assume two state miscellaneous first-tier employees are otherwise identical, except that one was hired at age 18, the other at age 49. Each puts in 10 years of actual credited service, and each is forced to retire due to disabilities. The 18-year-old-at-hire will receive a benefit equal to 33.333% of his final compensation, because the formula gives him service credit as if he had worked without interruption through age 60. By contrast, the 49-year-old-at-hire will receive a benefit equal to just 19.8% under section 21423, with the difference in benefit amounts solely due to the older employee's advanced age.

Defendants are liable for disparate treatment. Defendants are qualifying employers, and employed Plaintiffs. Plaintiffs were over age 40 at membership. Defendants paid Plaintiffs reduced retirement benefits compared to employees younger at membership. Plaintiffs' age over 40 at membership was a substantial motivating factor in Defendants' determination and payment of the amount of Plaintiffs' disability retirement benefits. Plaintiffs have been harmed. Defendants' payment of reduced benefits to Plaintiffs is a substantial factor in causing them harm.

Defendants are also liable for pattern-or-practice of intentional discrimination. Discrimination is Defendants' standard operating procedure, rather than an unusual practice, and that standard operating procedure is a substantial factor in harming Plaintiffs.

Exhibit A

Page 3

Defendants are also liable for disparate impact. Defendants are qualifying employers, and employed Plaintiffs. Plaintiffs were over age 40 at membership. Defendants maintained a common policy or practice that has a disproportionate adverse effect on persons over age 40 at membership. Plaintiffs have been harmed. Defendants' policy or practice was a substantial factor in causing Plaintiffs' harm.

Defendants are also liable for their failure to prevent discrimination against Plaintiffs. Defendants knew or should have known of the above-alleged discrimination, and failed to take all reasonable steps necessary to prevent the same from occurring, thereby causing harm to Plaintiffs.

Defendants are also liable for breach of contract. At hiring, Defendants promised Plaintiffs future pay in exchange for present work, and Defendants' monthly retirement benefit payments are wages paid after the fact for Plaintiffs' years of labor. *See, e.g., Kern v. Long Beach* (1947) 29 Cal.2d 848, 850-852. The retirement benefit provisions at issue are contractual terms of class members' employment agreements: by those retirement provisions, Defendants promised class members future pay in exchange for present work, and once class members began performance, class members obtained a vested contractual right to the benefits Defendants had promised. *See, e.g., McGlynn v. State of California* (2018) 21 Cal.App.5th 548, 559.

Defendants maintained express written contractual terms of employment that provided for class members to be paid reduced retirement benefits based on their advanced ages at hiring. *See, Gov. Code §§ 21098, 21424, 21423.* Those terms of employment violate or are contrary to overriding state laws (*i.e.*, Gov. Code § 12940, subd. (a)) regulating such terms of employment, by providing for reduced compensation based solely on an employees' advanced age at hiring. To that extent, those terms of employment are contrary to superseding state law, they are illegal contractual terms, they are contrary to public policy, and they are therefore void. *See, Civil Code § 1667.* The unlawful terms of Plaintiffs' contracts with Defendants are severable, such that the illegal contract terms should be severed, and the balance of the contracts enforced. *Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 124. With illegal contractual terms severed, class members' contracts with the Defendants provide for class members to receive equal retirement benefits.

Alternately, FEHA's prohibition on age discrimination constitutes a contractual term of employment implied by operation of law into Plaintiffs' employment agreements with Defendants, such that Defendants were subject to a contractual duty to pay nondiscriminatory retirement benefits. *See, Castillo v. Express Escrow Company* (2007) 146 Cal.App.4th 1301, 1308 ("all laws in existence when the agreement was made become part of the contract"); *Anderson v. Time Warner Telecom of California* (2005) 129 Cal.App.4th 411, 418 ("All applicable laws are presumed to be known by the parties and to form a part of the agreement as if those laws were expressly referred to and incorporated."); *Coral Farms, L.P. v. Mahony* (2021) 63 Cal.App.5th 719, 731 ("The incorporation of current law into a contract is presumed and does not require a deliberate expression by the parties.").

Exhibit A

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The terms of Plaintiffs' employment contracts were sufficiently clear that the parties could understand what each was required to do, the parties exchanged consideration, and the parties agreed to terms. Plaintiffs did all, or substantially all, of the significant things their contracts required of them. Defendants failed to pay non-discriminatory benefits under the contracts, or paid discriminatory benefits in violation of the contracts. Plaintiffs were harmed. Defendants' breaches of contract were a substantial factor in causing Plaintiffs' harm.

The harm to Plaintiffs includes the loss of retirement benefits, the loss of additional amounts of money each would have received had he or she not suffered such unlawful discrimination, and harm in the form of humiliation, mental anguish, and emotional distress.

Defendants are also liable for prospective relief for violations of California's Equal Protection clause. Such relief includes declaratory relief, injunctive relief, and issuance of writs of mandamus and/or prohibition.

Thus, Defendants' unlawful policies and practices as alleged adversely affect, in a similar manner, a class of persons of which Plaintiff is a member, and raise substantial questions of law and fact that are common to that class. For those reasons, Plaintiff files this charge on behalf of a class of all others similarly situated, and seeks to represent the same.

EXHIBIT B

**Exhibit B – Required Claim Information (Gov. Code § 910)**

Name of Claimant:	Cari McCormick
Address of Claimant, and Address Where Notices re Claim Should Be Sent:	Cari McCormick c/o Brent A. Robinson Aiman-Smith & Marcy, PC 7677 Oakport Street, Suite 1150 Oakland, CA 94621
Date, Place, and Other Circumstances of the Occurrence or Transaction which Gave Rise to the Claim Asserted:	Following a decision in favor of Ms McCormick by the First District Court of Appeal in 2019, CalPERS granted Ms McCormick ordinary disability retirement. For additional information about facts giving rise to claim asserted, see Exhibit A.
A General Description of the Loss Incurred:	See Exhibit A for detailed factual narrative.
The Name or Names of the Public Employees Causing the Injury, Damage, or Loss, if Known:	Unknown.
The Amount Claimed If Less than \$10k:	The amount claimed exceeds \$10k.

Note: This Claim is presented on behalf of a class of similarly situated persons. Claimant is the proposed representative claimant. The class description is provided in Exhibit A.

EXHIBIT C



Exhibit C – List of Potential Defendants

1. South San Joaquin County Fire Authority
2. Central Fire Protection District of Santa Cruz County
3. California Intergovernmental Risk Authority
4. State of California
5. Alameda County Office of Education
6. Alpine County Office of Education
7. Amador County Office of Education
8. Butte County Office of Education
9. Calaveras County Office of Education
10. Colusa County Office of Education
11. Contra Costa County Office of Education
12. Del Norte County Office of Education
13. El Dorado County Office of Education
14. Fresno County Office of Education
15. Glenn County Office of Education
16. Humboldt County Office of Education
17. Imperial County Office of Education
18. Inyo County Office of Education
19. Kern County Office of Education
20. Kings County Office of Education
21. Lake County Office of Education
22. Lassen County Office of Education
23. Los Angeles County Office of Education
24. Madera County Office of Education
25. Marin County Office of Education
26. Mariposa County Office of Education
27. Mendocino County Office of Education
28. Merced County Office of Education
29. Modoc County Office of Education
30. Mono County Office of Education
31. Monterey County Office of Education
32. Napa County Office of Education
33. Nevada County Office of Education
34. Los Angeles Unified School District
35. Los Angeles Community College District
36. San Diego County Office of Education
37. Alpine County
38. Amador County
39. Butte County
40. Calaveras County
41. Colusa County

Exhibit C

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42. Del Norte County
43. El Dorado County
44. Glenn County
45. Humboldt County
46. Inyo County
47. Kings County
48. Lake County
49. Lassen County
50. Madera County
51. Mariposa County
52. Modoc County
53. Mono County
54. Monterey County
55. Napa County
56. Nevada County
57. Placer County
58. Plumas County
59. Riverside County
60. San Benito County
61. San Joaquin County
62. Santa Clara County
63. Santa Cruz County
64. Shasta County
65. Sierra County
66. Siskiyou County
67. Solano County
68. Sutter County
69. Tehama County
70. Trinity County
71. Tuolumne County
72. Yolo County
73. Yuba County
74. Adelanto
75. Agoura Hills
76. Alameda
77. Albany
78. Alhambra
79. Aliso Viejo
80. Alturas
81. American Canyon
82. Anaheim
83. Anderson
84. Angels

Exhibit C

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85. Antioch
86. Apple Valley
87. Arcadia
88. Arcata
89. Arroyo Grande
90. Artesia
91. Arvin
92. Atascadero
93. Atherton
94. Atwater
95. Auburn
96. Avalon
97. Avenal
98. Azusa
99. Bakersfield
100. Baldwin Park
101. Banning
102. Barstow
103. Beaumont
104. Bell
105. Bell Gardens
106. Bellflower
107. Belmont
108. Belvedere
109. Benicia
110. Berkeley
111. Beverly Hills
112. Biggs
113. Bishop
114. Blue Lake
115. Blythe
116. Bradbury
117. Brawley
118. Brea
119. Brentwood
120. Brisbane
121. Buellton
122. Buena Park
123. Burbank
124. Burlingame
125. Calabasas
126. Calexico
127. California City

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128. Calimesa
129. Calipatria
130. Calistoga
131. Camarillo
132. Campbell
133. Canyon Lake
134. Capitola
135. Carlsbad
136. Carmel-By-The-Sea
137. Carpinteria
138. Carson
139. Cathedral City
140. Cerritos
141. Chico
142. Chino
143. Chowchilla
144. Chula Vista
145. Citrus Heights
146. Claremont
147. Clayton
148. Clearlake
149. Cloverdale
150. Clovis
151. Coachella City
152. Coalinga
153. Colfax
154. Colma
155. Colton
156. Colusa
157. Commerce
158. Compton
159. Concord
160. Corcoran
161. Corning
162. Corona
163. Coronado
164. Corte Madera
165. Costa Mesa
166. Cotati
167. Covina
168. Crescent City
169. Cudahy
170. Culver City

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- 171. Cupertino
- 172. Cypress
- 173. Daly City
- 174. Dana Point
- 175. Davis
- 176. Del Mar
- 177. Del Rey Oaks
- 178. Delano
- 179. Desert Hot Springs
- 180. Diamond Bar
- 181. Dinuba
- 182. Dixon
- 183. Dos Palos
- 184. Downey
- 185. Duarte
- 186. Dublin
- 187. Dunsmuir
- 188. East Palo Alto
- 189. Eastvale
- 190. El Cajon
- 191. El Centro
- 192. El Cerrito
- 193. El Monte
- 194. El Segundo
- 195. Elk Grove
- 196. Emeryville
- 197. Encinitas
- 198. Escalon
- 199. Escondido
- 200. Etna
- 201. Eureka
- 202. Exeter
- 203. Fairfax
- 204. Fairfield
- 205. Farmersville
- 206. Fillmore
- 207. Firebaugh
- 208. Folsom
- 209. Fontana
- 210. Fort Bragg
- 211. Fortuna
- 212. Foster City
- 213. Fountain Valley

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- 214. Fowler
- 215. Fremont
- 216. Fullerton
- 217. Galt
- 218. Garden Grove
- 219. Gardena
- 220. Gilroy
- 221. Glendale
- 222. Glendora
- 223. Goleta
- 224. Gonzales
- 225. Grand Terrace
- 226. Grass Valley
- 227. Greenfield
- 228. Gridley
- 229. Grover Beach
- 230. Guadalupe
- 231. Gustine
- 232. Half Moon Bay
- 233. Hanford
- 234. Hawaiian Gardens
- 235. Hawthorne
- 236. Hayward
- 237. Healdsburg
- 238. Hemet
- 239. Hercules
- 240. Hermosa Beach
- 241. Hesperia
- 242. Hidden Hills
- 243. Highland
- 244. Hillsborough
- 245. Hollister
- 246. Hughson
- 247. Huntington Beach
- 248. Huntington Park
- 249. Imperial
- 250. Imperial Beach
- 251. Indian Wells
- 252. Indio
- 253. Industry
- 254. Inglewood
- 255. Ione
- 256. Irvine

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- 257. Irwindale
- 258. Jackson
- 259. Kerman
- 260. King City
- 261. Kingsburg
- 262. La Canada Flintridge
- 263. La Habra
- 264. La Habra Heights
- 265. La Mesa
- 266. La Mirada
- 267. La Palma
- 268. La Puente
- 269. La Quinta
- 270. La Verne
- 271. Laguna Beach
- 272. Laguna Hills
- 273. Laguna Niguel
- 274. Laguna Woods
- 275. Lake Elsinore
- 276. Lake Forest
- 277. Lakeport
- 278. Lakewood
- 279. Lancaster
- 280. Larkspur
- 281. Lathrop
- 282. Lawndale
- 283. Lemon Grove
- 284. Lemoore
- 285. Lincoln
- 286. Lindsay
- 287. Live Oak
- 288. Livermore
- 289. Livingston
- 290. Lodi
- 291. Loma Linda
- 292. Lomita
- 293. Lompoc
- 294. Long Beach
- 295. Loomis
- 296. Los Alamitos
- 297. Los Altos
- 298. Los Altos Hills
- 299. Los Banos

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- 300. Los Gatos
- 301. Lynwood
- 302. Madera
- 303. Malibu
- 304. Mammoth Lakes
- 305. Manhattan Beach
- 306. Manteca
- 307. Marina
- 308. Martinez
- 309. Marysville
- 310. Maywood
- 311. Mendota
- 312. Menifee
- 313. Menlo Park
- 314. Merced
- 315. Mill Valley
- 316. Millbrae
- 317. Milpitas
- 318. Mission Viejo
- 319. Modesto
- 320. Monrovia
- 321. Montague
- 322. Montclair
- 323. Monte Sereno
- 324. Montebello
- 325. Monterey
- 326. Monterey Park
- 327. Moorpark
- 328. Moraga
- 329. Moreno Valley
- 330. Morgan Hill
- 331. Morro Bay
- 332. Mountain View
- 333. Mt. Shasta
- 334. Murrieta
- 335. Napa
- 336. National City
- 337. Needles
- 338. Nevada City
- 339. Newark
- 340. Newman
- 341. Newport Beach
- 342. Norco

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- 343. Norwalk
- 344. Novato
- 345. Oakdale
- 346. Oakland
- 347. Oakley
- 348. Oceanside
- 349. Ojai
- 350. Ontario
- 351. Orange
- 352. Orange Cove
- 353. Orland
- 354. Oroville
- 355. Oxnard
- 356. Pacific Grove
- 357. Pacifica
- 358. Palm Desert
- 359. Palm Springs
- 360. Palmdale
- 361. Palo Alto
- 362. Palos Verdes Estates
- 363. Paradise
- 364. Paramount
- 365. Parlier
- 366. Pasadena
- 367. Paso Robles
- 368. Patterson
- 369. Perris
- 370. Petaluma
- 371. Pico Rivera
- 372. Piedmont
- 373. Pinole
- 374. Pismo Beach
- 375. Pittsburg
- 376. Placentia
- 377. Placerville
- 378. Pleasant Hill
- 379. Pleasanton
- 380. Pomona
- 381. Port Hueneme
- 382. Porterville
- 383. Portola
- 384. Portola Valley
- 385. Poway

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- 386. Rancho Cordova
- 387. Rancho Cucamonga
- 388.
- 389. Rancho Mirage
- 390. Rancho Palos Verdes
- 391. Rancho Santa Margarita
- 392. Red Bluff
- 393. Redding
- 394. Redlands
- 395. Redondo Beach
- 396. Redwood City
- 397. Reedley
- 398. Rialto
- 399. Richmond
- 400. Ridgecrest
- 401. Rio Vista
- 402. Ripon
- 403. Riverbank
- 404. Riverside
- 405. Rocklin
- 406. Rohnert Park
- 407. Rolling Hills
- 408. Rolling Hills Estates
- 409. Rosemead
- 410. Roseville
- 411. Ross
- 412. Sacramento
- 413. Salinas
- 414. San Anselmo
- 415. San Bernardino
- 416. San Bruno
- 417. San Buenaventura
- 418. San Carlos
- 419. San Clemente
- 420. San Dimas
- 421. San Fernando
- 422. San Francisco
- 423. San Gabriel
- 424. San Jacinto
- 425. San Joaquin
- 426. San Jose
- 427. San Leandro
- 428. San Luis Obispo

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- 429. San Marcos
- 430. San Marino
- 431. San Mateo
- 432. San Pablo
- 433. San Ramon
- 434. Sand City
- 435. Sanger
- 436. Santa Ana
- 437. Santa Barbara
- 438. Santa Clara
- 439. Santa Clarita
- 440. Santa Cruz
- 441. Santa Fe Springs
- 442. Santa Maria
- 443. Santa Monica
- 444. Santa Paula
- 445. Santa Rosa
- 446. Santee
- 447. Saratoga
- 448. Sausalito
- 449. Scotts Valley
- 450. Seal Beach
- 451. Seaside
- 452. Sebastopol
- 453. Selma
- 454. Shafter
- 455. Shasta Lake
- 456. Sierra Madre
- 457. Signal Hill
- 458. Simi Valley
- 459. Solana Beach
- 460. Soledad
- 461. Solvang
- 462. Sonoma
- 463. Sonora
- 464. South El Monte
- 465. South Gate
- 466. South Lake Tahoe
- 467. South Pasadena
- 468. South San Francisco
- 469. St. Helena
- 470. Stanton
- 471. Stockton

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- 472. Suisun City
- 473. Sunnyvale
- 474. Susanville
- 475. Sutter Creek
- 476. Taft
- 477. Tehachapi
- 478. Temecula
- 479. Temple City
- 480. Thousand Oaks
- 481. Tiburon
- 482. Torrance
- 483. Tracy
- 484. Truckee
- 485. Tulare
- 486. Tulelake
- 487. Turlock
- 488. Tustin
- 489. Twentynine Palms
- 490. Ukiah
- 491. Union City
- 492. Upland
- 493. Vacaville
- 494. Vallejo
- 495. Vernon
- 496. Victorville
- 497. Villa Park
- 498. Visalia
- 499. Vista
- 500. Walnut
- 501. Walnut Creek
- 502. Wasco
- 503. Waterford
- 504. Watsonville
- 505. Weed
- 506. West Covina
- 507. West Hollywood
- 508. West Sacramento
- 509. Westlake Village
- 510. Westminster
- 511. Whittier
- 512. Wildomar
- 513. Williams
- 514. Willits

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- 515. Willows
- 516. Windsor
- 517. Winters
- 518. Woodlake
- 519. Woodland
- 520. Woodside
- 521. Yorba Linda
- 522. Yountville
- 523. Yreka
- 524. Yuba City
- 525. Yucaipa
- 526. Yucca Valley
- 527. Academic Senate for California Community Colleges
- 528. Access Services Incorporated
- 529. Agoura Hills and Calabasas Community Center
- 530. Alameda Alliance for Health
- 531. Alameda Corridor Transportation Authority
- 532. Alameda County Fire Department
- 533. Alameda County Law Library
- 534. Alameda County Mosquito Abatement District
- 535. Alameda County Schools Insurance Group
- 536. Alameda County Transportation Commission
- 537. Alameda County Waste Management Authority
- 538. Alameda County Water District
- 539. Alliance of Schools for Cooperative Insurance Programs
- 540. Alpine Fire Protection District
- 541. Alpine Springs County Water District
- 542. Alta California Regional Center, Inc.
- 543. Alta Irrigation District
- 544. Altadena Library District
- 545. Amador County Transportation Commission
- 546. Amador Transit
- 547. Amador Water Agency
- 548. American Canyon Fire Protection District
- 549. American River Flood Control District
- 550. Anderson Cemetery District
- 551. Anderson Fire Protection District
- 552. Angiola Water District
- 553. Antelope Valley Mosquito and Vector Control District
- 554. Antelope Valley Schools Transportation Agency
- 555. Antelope Valley Transit Authority
- 556. Apple Valley Fire Protection District
- 557. Arbuckle-College City Fire Protection District

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- 558. Arcade Creek Recreation and Park District
- 559. Arcata Fire Protection District
- 560. Area 12 Agency on Aging
- 561. Aromas Water District
- 562. Arrowbear Park County Water District
- 563. Arroyo Grande District Cemetery
- 564. Associated Students California State University San Bernardino
- 565. Associated Students Inc., California State University, Fullerton
- 566. Associated Students Incorporated of California State University East Bay
- 567. Associated Students Incorporated of California State University Stanislaus
- 568. Associated Students of California State University, Chico
- 569. Association of California Water Agencies
- 570. Association of California Water Agencies - Joint Powers Insurance Authority
- 571. Association of Monterey Bay Area Governments
- 572. Atascadero Cemetery District
- 573. Auburn Area Recreation and Park District
- 574. Auburn Public Cemetery District
- 575. Avila Beach Community Services District
- 576. Aztec Shops, Ltd.
- 577. Bard Water District
- 578. Bardsdale Cemetery District
- 579. Barstow Cemetery District
- 580. Bay Area Air Quality Management District
- 581. Bay Area Water Supply and Conservation Agency
- 582. Beach Cities Health District
- 583. Bear Mountain Recreation and Park District
- 584. Bear Valley Community Services District
- 585. Beaumont District Library
- 586. Beaumont-Cherry Valley Recreation and Park District
- 587. Beaumont-Cherry Valley Water District
- 588. Bella Vista Water District
- 589. Belmont Fire Protection District
- 590. Belmont-San Carlos Fire Department
- 591. Belvedere-Tiburon Library Agency
- 592. Benicia City Housing Authority
- 593. Berkeley Housing Authority
- 594. BETA Healthcare Group Risk Management Authority
- 595. Big Bear Area Regional Wastewater Agency
- 596. Big Bear City Airport District
- 597. Big Bear City Community Services District
- 598. Big Bear Municipal Water District
- 599. Bighorn-Desert View Water Agency
- 600. Black Gold Cooperative Library System

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601. Blanchard/Santa Paula Public Library District
602. Blue Lake Fire Protection District
603. Bodega Bay Fire Protection District
604. Bolinas Community Public Utility District
605. Bolinas Fire Protection District
606. Bonita-Sunnyside Fire Protection District
607. Boron Community Services District
608. Borrego Springs Fire Protection District
609. Borrego Water District
610. Boulder Creek Fire Protection District
611. Branciforte Fire Protection District
612. Brannan-Andrus Levee Maintenance District
613. Broadmoor Police Protection District
614. Brooktrails Township Community Services District
615. Browns Valley Irrigation District
616. Buckingham Park County Water District
617. Buena Park Library District
618. Burney Basin Mosquito Abatement District
619. Burney Fire District
620. Burney Water District
621. Butte County Air Quality Management District
622. Butte County Association of Governments
623. Butte County Fair Association
624. Butte County In-Home Supportive Services Public Authority
625. Butte County Mosquito and Vector Control District
626. Butte Local Agency Formation Commission
627. Butte Schools Self-Funded Programs
628. Butte-Glenn Community College District
629. Byron-Bethany Irrigation District
630. Cabrillo College Foundation
631. Cachuma Operation and Maintenance Board
632. Cal Poly Corporation
633. Cal Poly Pomona Foundation, Inc.
634. Calaveras Council of Governments
635. Calaveras County Water District
636. Calaveras Public Utility District
637. California Association for Park and Recreation Indemnity
638. California Authority of Racing Fairs
639. California Bear Credit Union
640. California Central Valley Flood Control Association
641. California Fair Services Authority
642. California Fairs Financing Authority
643. California Firefighter's Joint Apprenticeship Committee

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- 644. California Interscholastic Federation, Central Coast Section
- 645. California Interscholastic Federation, Central Section
- 646. California Interscholastic Federation, North Coast Section
- 647. California Interscholastic Federation, Northern Section
- 648. California Interscholastic Federation, Sac- Joaquin Section
- 649. California Interscholastic Federation, San Diego Section
- 650. California Interscholastic Federation, Southern Section
- 651. California Interscholastic Federation, State Office
- 652. California Joint Powers Insurance Authority
- 653. California Joint Powers Risk Management Authority
- 654. California Maritime Academy Foundation, Inc.
- 655. California Municipal Utilities Association
- 656. California Pines Community Services District
- 657. California Redevelopment Association Foundation
- 658. California School Boards Association
- 659. California Special Districts Association
- 660. California State University, Bakersfield Foundation
- 661. California State University, East Bay Foundation, Inc.
- 662. "California State University, Fresno Athletic
- 663. Corporation"
- 664. California State University, Stanislaus Auxiliary and Business Services
- 665. California State University-Fresno Association, Inc.
- 666. Callayomi County Water District
- 667. Calleguas Municipal Water District
- 668. Camarillo Health Care District
- 669. Cambria Cemetery District
- 670. Cambria Community Healthcare District
- 671. Cambria Community Services District
- 672. Cameron Park Community Services District
- 673. Camrosa Water District
- 674. Capitol Area Development Authority
- 675. Carmel Area Wastewater District
- 676. Carmel Highlands Fire Protection District of Monterey County
- 677. Carmichael Water District
- 678. Carpinteria Sanitary District
- 679. Carpinteria Valley Water District
- 680. Casitas Municipal Water District
- 681. Castro Valley Sanitary District
- 682. Castroville Community Services District
- 683. Cawelo Water District
- 684. Cayucos Sanitary District
- 685. Cayucos-Morro Bay Cemetery District
- 686. Centerville Community Services District

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- 687. Central Basin Municipal Water District
- 688. Central Calaveras Fire and Rescue Protection District
- 689. Central Coast Water Authority
- 690. Central Contra Costa Solid Waste Authority
- 691. Central Contra Costa Transit Authority
- 692. Central County Fire Department
- 693. Central Marin Fire Authority
- 694. Central Marin Police Authority
- 695. Central Marin Sanitation Agency
- 696. Central Sierra Child Support Agency
- 697. Central Valley Regional Center, Inc.
- 698. Central Water District
- 699. Channel Islands Beach Community Services District
- 700. Chester Public Utility District
- 701. Chico Area Recreation and Park District
- 702. Children and Families Commission of San Luis Obispo County
- 703. Chino Basin Water Conservation District
- 704. Chino Basin Watermaster
- 705. Chino Valley Independent Fire District
- 706. Citrus Heights Water District
- 707. City/County Association of Governments of San Mateo County
- 708. Clear Creek Community Services District
- 709. Clearlake Oaks County Water District
- 710. Cloverdale Citrus Fair
- 711. Cloverdale Fire Protection District
- 712. Clovis Cemetery District
- 713. Coachella Valley Association of Governments
- 714. Coachella Valley Mosquito and Vector Control District
- 715. Coachella Valley Public Cemetery District
- 716. Coachella Valley Water District
- 717. Coalinga/Huron Unified School District Library District
- 718. Coalinga-Huron Cemetery District
- 719. Coalinga-Huron Recreation and Park District
- 720. Coast Life Support District
- 721. Coastal Developmental Services Fdn DBA Westside Regional Center
- 722. Coastsides County Water District
- 723. Coastsides Fire Protection District
- 724. Colfax Cemetery District
- 725. College of The Canyons Foundation
- 726. Colusa County One-Stop Partnership
- 727. Colusa Mosquito Abatement District
- 728. Community College League of California
- 729. Community Development Commission of Mendocino County

Exhibit C

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- 730. Compass Community Credit Union
- 731. Compton Creek Mosquito Abatement District
- 732. Compton Unified School District
- 733. Conejo Recreation and Park District
- 734. Connecting Point
- 735. Consolidated Mosquito Abatement District
- 736. Contra Costa Community College District
- 737. Contra Costa County Law Library
- 738. Contra Costa County Schools Insurance Group
- 739. Contra Costa Transportation Authority
- 740. Cooperative Organization for the Development of Employee Selection Procedures
- 741. Cooperative Personnel Services
- 742. Copperopolis Fire Protection District
- 743. Cordelia Fire Protection District of Solano County
- 744. Cordova Recreation and Park District
- 745. Corning Water District
- 746. Costa Mesa Sanitary District
- 747. Cosumnes Community Services District
- 748. Cottonwood Fire Protection District
- 749. Cottonwood Water District
- 750. CRA/LA, a Designated Local Authority
- 751. Crescent City Harbor District
- 752. Crescenta Valley Water District
- 753. Crestline Lake Arrowhead Water Agency
- 754. Crestline Village Water District
- 755. Crockett Community Services District
- 756. Cucamonga Valley Water District
- 757. Cutler Public Utility District
- 758. Cutler-Orosi Joint Powers Wastewater Authority
- 759. Cuyama Valley Recreation District
- 760. Dairy Council of California
- 761. Davis Cemetery District
- 762. De Luz Community Services District
- 763. Del Norte County Library District
- 764. Del Paso Manor Water District
- 765. Del Puerto Water District
- 766. Del Rey Community Services District
- 767. Delano Mosquito Abatement District
- 768. Delta Diablo
- 769. Delta Mosquito and Vector Control District
- 770. Denair Community Services District
- 771. Desert Water Agency
- 772. Diablo Water District

Exhibit C

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- 774. Dixon Public Library District
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- 1435. Tri-Dam Project
- 1436. Trindel Insurance Fund
- 1437. Trinity Public Utilities District
- 1438. Truckee Donner Public Utility District
- 1439. Truckee Fire Protection District
- 1440. Truckee Sanitary District
- 1441. Truckee Tahoe Airport District
- 1442. Tulare Mosquito Abatement District
- 1443. Tulare Public Cemetery District
- 1444. Tuolumne City Sanitary District
- 1445. Tuolumne Fire District
- 1446. Tuolumne Utilities District
- 1447. Turlock Mosquito Abatement District
- 1448. Twain Harte Community Services District
- 1449. Twentynine Palms Water District
- 1450. Twin Rivers Unified School District
- 1451. Ukiah Valley Fire District
- 1452. Union Public Utility District
- 1453. Union Sanitary District
- 1454. United Water Conservation District
- 1455. University Enterprises Corporation at CSUSB
- 1456. University Enterprises, Inc.
- 1457. University Student Center of California State University Stanislaus

Exhibit C

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- 1458. Upland City Housing Authority
- 1459. Upper San Gabriel Valley Municipal Water District
- 1460. Utica Water and Power Authority
- 1461. Vacaville Fire Protection District
- 1462. Vacaville-Elmira Cemetery District
- 1463. Val Verde Unified School District
- 1464. Vallecitos Water District
- 1465. Vallejo Flood and Wastewater District
- 1466. Valley Center Municipal Water District
- 1467. Valley County Water District
- 1468. Valley Mountain Regional Center, Inc.
- 1469. Valley of the Moon Water District
- 1470. Valley Sanitary District
- 1471. Valley Springs Public Utility District
- 1472. Valley-Wide Recreation and Park District
- 1473. Vandenberg Village Community Services District
- 1474. Ventura College Foundation
- 1475. Ventura County Law Library
- 1476. Ventura County Schools Business Services Authority
- 1477. Ventura County Schools Self-Funding Authority
- 1478. Ventura County Transportation Commission
- 1479. Ventura Port District
- 1480. Ventura River Water District
- 1481. Victor Valley Transit Authority
- 1482. Victor Valley Wastewater Reclamation Authority
- 1483. Visalia Public Cemetery District
- 1484. Vista Irrigation District
- 1485. Walnut Valley Water District
- 1486. Wasco Recreation and Park District
- 1487. Washington Colony Cemetery District
- 1488. Water Employee Services Authority
- 1489. Water Facilities Authority
- 1490. Water Replenishment District of Southern California
- 1491. Weaverville Community Services District
- 1492. Weaverville Sanitary District
- 1493. West Almanor Community Services District
- 1494. West Basin Municipal Water District
- 1495. West Bay Sanitary District
- 1496. West Cities Communication Center
- 1497. West Contra Costa Integrated Waste Management Authority
- 1498. West Contra Costa Transportation Advisory Committee
- 1499. West County Transportation Agency
- 1500. West County Wastewater District

Exhibit C

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- 1501. West End Communications Authority
- 1502. West Kern Water District
- 1503. West Stanislaus Irrigation District
- 1504. West Valley Mosquito and Vector Control District
- 1505. West Valley Sanitation District of Santa Clara County
- 1506. West Valley Water District
- 1507. West Valley-Mission Community College District
- 1508. Westborough Water District
- 1509. Western Contra Costa Transit Authority
- 1510. Western Municipal Water District
- 1511. Western Riverside Council of Governments
- 1512. Westlands Water District
- 1513. Westwood Community Services District
- 1514. Wheeler Ridge-Maricopa Water Storage District
- 1515. Wildomar Cemetery District
- 1516. Williams Fire Protection Authority
- 1517. Willow County Water District
- 1518. Willow Creek Community Services District
- 1519. Willows Cemetery District
- 1520. Wilton Fire Protection District
- 1521. Winterhaven Water District
- 1522. Winters Cemetery District
- 1523. Winters Fire Protection District
- 1524. Winton Water and Sanitary District
- 1525. Woodbridge Rural County Fire Protection District
- 1526. Woodlake Fire District
- 1527. Woodside Fire Protection District
- 1528. Yolo County Federal Credit Union
- 1529. Yolo County Housing Authority
- 1530. Yolo County In-Home Supportive Services Public Authority
- 1531. Yolo County Public Agency Risk Management Insurance Authority
- 1532. Yolo County Transportation District
- 1533. Yolo Emergency Communications Agency
- 1534. Yolo-Solano Air Quality Management District
- 1535. Yorba Linda Water District
- 1536. Yuba Community College District
- 1537. Yuba County Water Agency
- 1538. Yuba Sutter Transit Authority
- 1539. Yucaipa Valley Water District
- 1540. Yuima Municipal Water District

10.1.Award the Purchase and Replacement of the Fire Departments Inventory of Self-Contained Breathing Apparatus (SCBA) for the Total Amount of \$850,003.60 Utilizing Sourcewell's Cooperative Purchasing Contract No. 032620

1. Staff Report:
2. Public Comment
3. Possible Action:
 1. Award the purchase and replacement of the Fire Department's Self-Contained Breathing Apparatus Personal Protective Equipment to LN Curtis in the amount of \$850,003.60 utilizing [Sourcewell's Cooperative Purchasing Contract No. 032620](#); and
 2. Authorize the City Administrator to execute the purchase contract documents.



City of Gilroy

STAFF REPORT

Agenda Item Title: Award the Purchase and Replacement of the Fire Departments Inventory of Self-Contained Breathing Apparatus (SCBA) for the Total Amount of \$850,003.60 Utilizing Sourcewell's Cooperative Purchasing Contract No. 032620

Meeting Date: September 18, 2023
 From: Jimmy Forbis, City Administrator
 Department: Fire
 Submitted By: Jim Wyatt, Fire Chief
 Prepared By: Jennifer Fortino, Management Analyst

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

1. Award the purchase and replacement of the Fire Department's Self-Contained Breathing Apparatus Personal Protective Equipment to LN Curtis in the amount of \$850,003.60 utilizing [Sourcewell's Cooperative Purchasing Contract No. 032620](#); and
2. Authorize the City Administrator to execute the purchase contract documents.

EXECUTIVE SUMMARY

The FY 24 budget approved by the City Council on June 5, 2023, includes the replacement of the Fire Department's inventory of Self Contained Breathing Apparatus (SCBA). The Fire Department is in critical need of replacing the Department's 15+ year-old SCBAs. This mission-critical Personal Protective Equipment (PPE) is vital to protecting firefighters and citizens during structure fires and other emergency responses requiring SCBAs. Approval of this purchase with LN Curtis via Sourcewell's Cooperative Purchasing Contract No. 032620, in the amount of \$850,003.60, will allow the Department to equip its firefighters with safer PPE that utilizes advanced technology

Award the purchase and replacement of the Fire Departments inventory of Self-Contained Breathing Apparatus (SCBA) for the total amount of \$850,003.60 utilizing Sourcewell's Cooperative Purchasing Contract No. 032620

that increases firefighter safety during fire-related emergencies. Cooperative purchasing is an authorized procurement method (Section 4.10.3) within the City's purchasing policy. It is encouraged as a way of obtaining goods and services as it aggregates volume and secures value pricing. The City is an active member of the Sourcewell Cooperative. In addition to LN Curtis' Sourcewell contract for PPE, the vendor is also offering buy one get one free pricing on SCBA tanks and harness complements, as well as a buy three get one free special on the Location, Unit, Name, Assignment, Air status, and Resources (LUNAR) advanced technology system. This additional discount will save the City \$97,136; however, the offer expires on September 29, 2023.

BACKGROUND

The National Fire Protection Association (NFPA) recommends a life span of 15 years for SCBAs, and the Department's current SCBA units were purchased in 2006 and 2007, placing the Department's SCBAs beyond this 15-year life span. The Department's current SCBAs only hold 30 minutes of air, while the current NFPA SCBA standards recommend using 45-minute air tanks. Many of the Department's SCBAs are out of service and cannot be repaired, leaving the Department with fewer functioning tanks to operate during emergencies. Gilroy Fire also receives and provides Auto-Aid and Mutual-Aid assistance to neighboring cities. The Department's current SCBAs are incompatible with other agencies' SCBAs, and Gilroy firefighters are inhibited from effecting a rapid intervention using buddy breathing because of this incompatibility. Gilroy firefighters are also prevented from transfilling their SCBA tanks with other agencies' air compressors because they are incompatible.

ANALYSIS

Gilroy Fire's existing SCBA units do not meet the current NFPA-recommended critical safety features necessary to protect the Department's firefighters. The Department has chosen to purchase SCBAs manufactured by MSA Safety Inc. MSA SCBAs provide a higher level of technology that delivers additional protection against life-threatening situations. MSA masks include integrated communications capabilities that connect to the Department's Motorola APX 7000 radios via Bluetooth technology. MSA also integrates thermal imaging technology within the SCBA masks and LUNAR technology. LUNAR technology enables firefighters to quickly locate separated teammates using thermal imaging cellular cloud connectivity to send real-time information such as a firefighter's air pressure, air level, and remaining battery life to Incident Command. This technology is critical in emergencies when a firefighter may be lost or down. LUNAR technology is only available with the MSA brand of SCBAs.

MSA SCBAs follow the updated NFPA 1981 recommendations for masks, Universal Rescue Connections (URC), and Personal Alert Safety Systems (PASS). The new NFPA mask heat rating is now 500 degrees. Gilroy Fire's masks have a lower heat rating and regularly experience heat failures. MSA SCBAs have URCs on the front and

Award the purchase and replacement of the Fire Departments inventory of Self-Contained Breathing Apparatus (SCBA) for the total amount of \$850,003.60 utilizing Sourcewell's Cooperative Purchasing Contract No. 032620

back of the air cylinder that illuminate when the low air alarm activates. This makes locating and filling air tanks easier when a Rapid Intervention Team (RIT) is activated when a firefighter is in distress.

MSA SCBAs also have the NFPA-recommended Personal Alert Safety System (PASS) on the front and back of their SCBAs. This is an important safety feature if the masked speaker is not functioning, or if a firefighter collapses and the speaker is muffled, the PASS alarm will still function, enabling a quicker location and rescue of a downed firefighter.

The Department's current SCBAs do not include these essential safety features. Purchasing MSA SCBAs will provide the Department's firefighters with significantly improved safety and top-of-the-line technology that protects firefighters while responding to emergencies.

ALTERNATIVES

The alternative would be to conduct a direct public bid process; however, staff does not recommend this alternative given that the Sourcewell Cooperative Purchase process is more efficient, secures competitive pricing, and the vendor's SCBAs meet the needs of the Gilroy Fire Department. If Council does not approve this purchase through the Sourcewell contract with LN Curtis, the Department will be required to conduct a lengthy direct public bid, thus not being able to take advantage of the additional discount offered by LN Curtis.

FISCAL IMPACT/FUNDING SOURCE

The expenditure for this procurement is included in the adopted FY24 budget within the Fire Operation Division in the General Fund (1003510). A total of \$880,000 is appropriated for this procurement, and the equipment cost is \$850,004, resulting in budgetary savings of approximately \$30,000. If approved, staff will create a purchase order of \$850,003.60 to place the order, and funds will be paid out at the time of delivery.

NEXT STEPS

Upon Council approval, a purchase order will be prepared to finalize the purchase before September 29, 2023, to take advantage of the vendor's additional discount. Fire staff will receive the equipment within 120 days of placing the order, and the vendor will provide training on the equipment. Once training is complete, the current SCBAs will be removed from all fire apparatus, and the new SCBAs will be placed into service.

Attachments

1. Quote

Ph: 510-839-5111
 TF: 800-443-3556
 Fax: 510-839-5325
oaksales@lncurtis.com
 UEI#: DDLSADSWN7U7



Pacific North Division
 6723 Sierra Court, Suite C
 Dublin, CA 94568
www.LNCurtis.com
 Quotation No. 248529

Quotation

CUSTOMER:

Gilroy City Fire Department
 7070 Chestnut Street
 Gilroy CA 95020

SHIP TO:

Gilroy City Fire Department
 7070 Chestnut St.
 Gilroy CA 95020

QUOTATION NO.

248529

ISSUED DATE

01/18/2023

EXPIRATION DATE

09/29/2023

SALESPERSON

Trevor Murphy
tmurphy@lncurtis.com
 408-314-3789

CUSTOMER SERVICE REP

Trevor Murphy
tmurphy@lncurtis.com
 408-314-3789

REQUISITION NO.
REQUESTING PARTY

Casey Main

CUSTOMER NO.

C33266

TERMS

Net 30

OFFER CLASS

SW-PPE

F.O.B.

DEST

SHIP VIA

Standard Shipping

DELIVERY REQ. BY
SPECIAL INSTRUCTIONS

Per Sourcwell Contract #032620

Member ID #210095

NOTES & DISCLAIMERS

Thank you for this opportunity to quote. We are pleased to offer requested items below. If you have any questions, need additional information, or would like to place an order, please contact your Customer Service Rep as noted above.

Safety Warning Notice: Products offered, sold, or invoiced herewith may have an applicable Safety Data Sheet (SDS) as prepared by the manufacturer of the product. Any handlers or users of product should refer to applicable SDS prior to handling or utilizing the product. Applicable SDS are included with shipment of products. For other important product notices and warnings, or to request an SDS, please contact Curtis or visit <https://www.lncurtis.com/product-notices-warnings>

Transportation is included in below pricing.

Thank you for this opportunity to provide grant budget pricing. Please contact our office for firm pricing at time of order.

Per Sourcwell Contract #032620

Member ID #210095

Ph: 510-839-5111
 TF: 800-443-3556
 Fax: 510-839-5325
oaksales@lncurtis.com
 UEI#: DDLSADSWN7U7



Pacific North Division
 6723 Sierra Court, Suite C
 Dublin, CA 94568
www.LNCurtis.com
 Quotation No. 248529

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	PL	UNIT PRICE	TOTAL PRICE
1	60	EA	A-G1FS-444MD2C2 LAR MSA	4500PSIg G1 Fire Service SCBA; * CGA Quick Connect Remote Connection * Serviceable Tunnel with Chest Strap * Metal Band Cradle Type * Adjustable Swiveling Solid Buckle * Solid Cover Regulator Type, Left Shoulder (As Worn) * Continuous Regulator Hose Type * ExtendAire II Emergency Breathing Support * Left Chest (As Worn) Speaker Module * Pass Right Shoulder (As Worn) * Rechargeable Battery Type WARNING: This product contains PFAS to reduce the risk of parts sticking or becoming inoperable. Sourcewell Discount: 20% Discount Offered: 33%		\$7,699.00	\$461,940.00
2	120	EA	10175708 MSA	45Min 4500# G1 SCBA Low Profile Cylinder, With Air, With Quick Connect Remote Connection		\$1,279.00	\$153,480.00
3	60	EA	10175708 MSA	45Min 4500# G1 SCBA Low Profile Cylinder, With Air, With Quick Connect Remote Connection		\$0.00	\$0.00
				NO CHARGE PER BUY ONE GET ONE FREE CYLINDER PROMOTION			
4	60	EA	10156459 MSA	Medium G1 Facepiece With Medium Nosecup, Includes: * 4-Point Adjustable Cloth Head Harness * Fixed Push-To-Connect Regulator Connection * Ato Number: A-G1Fp-Fm1M401 WARNING: This product contains PFAS to reduce the risk of parts sticking or becoming inoperable.		\$410.00	\$24,600.00

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LN	QTY	UNIT	PART NUMBER	DESCRIPTION	PL	UNIT PRICE	TOTAL PRICE
5	10	EA	10206313 MSA	Uebss 2018 Edition G1 Rit Extendaire II System, 4500#, Medium Facepiece, Regulator, 6Ft Quick-Fill Hose, Urc, Quick-Connect WARNING: This product contains PFAS to reduce the risk of parts sticking or becoming inoperable.		\$5,529.00	\$55,290.00
6	5	EA	10175710 MSA	60Min 4500# G1 SCBA Cylinder, With Air, With Quick Connect Remote Connection		\$1,559.00	\$7,795.00
7	5	EA	10175710 MSA	60Min 4500# G1 SCBA Cylinder, With Air, With Quick Connect Remote Connection NO CHARGE PER BUY ONE GET ONE FREE CYLINDER PROMOTION		\$0.00	\$0.00
8	10	EA	RBL20 TRUE NORTH	Red L-2 Rit Bag W/ Iron-Cloth Technology & Heat-Shield Skid Plate	OM	\$280.46	\$2,804.60
9	6	EA	10158385 MSA	G1 SCBA Charging Station Kit		\$915.00	\$5,490.00
10	36	EA	10148741-SP MSA	Battery Pack, G1, Rechargeable		\$469.00	\$16,884.00
11	100	EA	10083875 MSA	Tag Assy, Electronic Id, M7		\$52.00	\$5,200.00
12	1	EA	10158407 MSA	Kit, Rfid Reader/Writer, G1		\$849.00	\$849.00

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 Quotation No. 248529

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	PL	UNIT PRICE	TOTAL PRICE
13	5	EA	10149700-SP MSA	4500/5500 Quick Connect Coupling		\$529.00	\$2,645.00
14	5	EA	96-347-1SS- MSAQC-CW BLUE SPARTAN	Copper Washer		\$2.59	\$12.95
15	5	EA	MSAQC-FG4 BLUE SPARTAN	MSA Female X 1/4NPT To Connect to MSA Adapter		\$67.00	\$335.00
16	15	EA	10225355 MSA	Handheld Wireless Lunar Thermal Imaging System, Includes Battery and Single Point Charger, FirstNet U.S.		\$2,519.00	\$37,785.00
17	5	EA	10225355 MSA	Handheld Wireless Lunar Thermal Imaging System, Includes Battery and Single Point Charger, FirstNet U.S.		\$0.00	\$0.00
				NO CHARGE PER BUY THREE GET ONE FREE LUNAR PROMOTION			
18	4	EA	10214752 MSA	Multi-Bay Charger, Lunar System		\$529.00	\$2,116.00
19	20	EA	10203941 MSA	Retractable Tether, Lunar System		\$85.00	\$1,700.00

Per Sourcewell Contract #032620

Member ID #210095

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Quotation No. 248529

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	PL	UNIT PRICE	TOTAL PRICE
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Small Business
CAGE Code: 5E720
SIC Code: 5099
Federal Tax ID: 94-1214350
UEI #DDLSADSWN7U7

This pricing remains firm until 09/29/2023. Contact us for updated pricing after this date.

Due to market volatility and supply shortages, we recommend contacting your local L.N. Curtis and sons office prior to placing your order to confirm pricing and availability. This excludes our GSA Contract and other Fixed Price Contracts which are governed by contract-specific prices, terms, and conditions.

Subtotal	\$778,926.55
Estimated Tax Total	\$71,077.05
Transportation	\$0.00
Total	\$850,003.60

[View Terms of Sale and Return Policy](#)

12.1.Approval of Consulting and Reimbursement Agreement between the City of Gilroy and Sharks Sports & Entertainment LLC

1. Staff Report:
2. Public Comment
3. Possible Action:
 1. Approve an agreement with Sharks Sports & Entertainment LLC (Sharks) in the amount of \$270,000 for consulting services for the design and construction of the Gilroy Ice Center; and
 2. Authorize the City Administrator to execute the agreement and make minor modifications (if necessary) to the agreement (not related to price and term) upon the legal review of the City Attorney.



City of Gilroy

STAFF REPORT

Agenda Item Title: Approval of Consulting and Reimbursement Agreement between the City of Gilroy and Sharks Sports & Entertainment LLC

Meeting Date: September 18, 2023

From: Jimmy Forbis, City Administrator

Department: Administration

Submitted By: Jimmy Forbis, City Administrator

Prepared By: Jimmy Forbis, City Administrator

STRATEGIC PLAN GOALS

Promote Economic Development Activities

RECOMMENDATION

1. Approve an agreement with Sharks Sports & Entertainment LLC (Sharks) in the amount of \$270,000 for consulting services for the design and construction of the Gilroy Ice Center; and
2. Authorize the City Administrator to execute the agreement and make minor modifications (if necessary) to the agreement (not related to price and term) upon the legal review of the City Attorney.

BACKGROUND

On August 21, 2023, the City Council approved two Sharks-related items, a Bond Reimbursement Agreement, and a contract with Architects Perkins Will for the preparation of the "Basis of Design" documents related to the Gilroy Ice Center project.

This was a significant step in the development of the Ice Center as the City has now moved into the design phase of the project. The architects will now create documents that permit a vendor to formally bid on the project using the "design-build" format, which allows for a qualified firm to serve in a dual role of designing and constructing the project.

This is the next step in the progression of this project. The City Council had previously heard agenda items regarding the Ice Center and Sharks 13 times since the commencement of the project. These discussions include:

1. May 6, 2019 – Council approves first exclusivity agreement with the Sharks.
2. November 18, 2019 – Closed session real property negotiations with the other party being the Sharks.
3. April 20, 2020 – approved an extension of an exclusivity agreement with the Sharks.
4. June 15, 2020 – Adoption of Phase III Amendments to the Gilroy Sports Park EIR to accommodate the Ice Center project.
5. June 1, 2021 – Closed session real property negotiations with the other party being the Sharks.
6. July 1, 2021 – approved an exclusivity agreement with the Sharks and authorized \$100,000 for activities related to the financial analysis and feasibility of the project.
7. December 6, 2021 – the City Administrator provided a brief update on the Ice Center.
8. February 7, 2022 – Closed session real property negotiations with the other party being the Sharks.
9. May 2, 2022 – Closed session real property negotiations with the other party being the Sharks.
10. June 20, 2022 – Council approved the Third Amendment to the Exclusive Negotiating Agreement with the Sharks and the non-binding term sheet.
11. February 6, 2023 – The City Administrator provided a brief update on the Ice Center to Council.
12. June 5, 2023 – Update provided on the Ice Center provided during the City Administrator's Report.
13. August 21, 2023 – Awarded contract to Perkins and Will for Preparation of 'Basis of Design' Documents for the Ice Center.

ANALYSIS

There are three significant key elements in completing this project:

1. Determining the method of construction – completed
2. Entering a contract with Perkins Will to prepare Basis of Design documents – Council approval received on 8/21/23.
3. Retaining the Sharks to provide professional guidance and technical support and serve as Project Manager during the process of facility design through construction.

As items 1 and 2 have been completed, element 3 is the final step in the "pre-project" phase.

Construction of the 100,000-square-foot ice facility is a complex project requiring specific industry expertise. The Sharks recently completed an expansion of Sharks Ice in San Jose, which added two new ice rinks, bringing a total of six ice rinks at the facility covering just under 400,000 square feet. Given their expertise, experience, and future role as the operators of the Gilroy Ice Center, staff believes services provided by the Sharks are essential to the success of the facility from design, construction, and operation.

The consultant agreement with the Sharks is for 18 months at \$15,000 monthly for a total contract cost of \$270,000. Roles and responsibilities for both the City and Sharks are included in Exhibit B of the attached contract.

ALTERNATIVES

Council could decide not to approve the agreement, which would essentially terminate the ice rink project.

FISCAL IMPACT/FUNDING SOURCE

Future bond proceeds will reimburse the cost of this agreement.

PUBLIC OUTREACH

None.

NEXT STEPS

Should Council approve the agreement, the Sharks will begin developing the project, including oversight of the day-to-day project management. The next steps include completing the basis of bid documents, which will allow for formal bidding and subsequent issuance of bonds to fund the project.

Attachments:

1. Sharks/City Agreement

CONSULTING AND REIMBURSEMENT AGREEMENT (Gilroy Ice Center)

This CONSULTING AND REIMBURSEMENT AGREEMENT ("**Agreement**") is made as of this _____ day of September, 2023 (the "**Effective Date**"), between the following entities (the "**Parties**");

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

"**CONSULTANT**": Sharks Ice, LLC, having a principal place of business at
525 W. Santa Clara Street, San Jose, California

RECITALS

- A. As of June 20, 2022, CITY and CONSULTANT each approved that certain Non-Binding Term Sheet for an Operating Agreement for Gilroy Ice Center ("**Term Sheet**"), which sets forth the basic terms and conditions under which the parties expect to work together in good faith to negotiate and draft formal agreements to implement a development project (the "**Project**") for the design, permitting, financing, construction and operation of an Ice Center consisting of a 100,000 square foot building with two ice rinks, a restaurant, snack bar, pro shop and ancillary uses; all related FF&E; and a Parking Area with approximately 387 spaces.
- B. This Agreement constitutes both the Consulting Agreement referenced in Section 6(a) of the Term Sheet and the Reimbursement Agreement referenced in Section 6(b) of the Term Sheet; provided, however, that in the event of any inconsistencies between the Term Sheet and the provisions of this Agreement, the provisions of this Agreement shall control.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on the Effective Date set forth above, and will continue in effect through the completion date of the Project (currently estimated to be June 30, 2026) 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 CONSULTANT 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 CONSULTANT or any employee or agent of CONSULTANT. Both Parties acknowledge that CONSULTANT is

not an employee for state or federal tax purposes. CONSULTANT 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. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

CONSULTANT agrees to perform the services assigned to CONSULTANT as described in **Exhibit "A"** ("**Specific Provisions**") and **Exhibit "B"** ("**Scope of Services**"), within the time periods described in **Exhibit "C"** ("**Project Schedule**"), all as may be modified by the mutual agreement of the Parties.

B. Method of Performing Services

CONSULTANT 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 CONSULTANT'S services.

C. Employment of Assistants

CONSULTANT may, at the CONSULTANT'S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT'S assistants in the performance of those services. CONSULTANT 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

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

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit "D"** ("**Payment Schedule**"), which provides for a total payment to CONSULTANT in the amount of Two Hundred Seventy Thousand Dollars (\$270,000) assuming that the Project proceeds as described in the exhibits to this Agreement.

1. Such total amount shall be subject to reduction in the event of a termination of this Agreement as described in **Article 7.F**.

2. Such total amount may be increased by up to Thirty Thousand Dollars (\$30,000), if CONSULTANT and CITY mutually agree to such increased payment in connection with an amendment to this Agreement, subject to **Article 9.A and 9.M.**

B. Invoices

CONSULTANT shall submit invoices for all services rendered. CONSULTANT shall also submit to CITY a signed W-9 form certifying CONSULTANT'S Federal Taxpayer Identification Number.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONSULTANT has first provided CITY with a written 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 CONSULTANT 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

CONSULTANT 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 CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT'S costs of doing business. CITY shall not be responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting "direct expenses" referenced on **Exhibit "A."**

CITY shall be responsible for all costs and expenses incident to the performance of the tasks assigned to CITY as described in **Exhibit "B" ("CITY'S Tasks")**. However, if CITY requests and CONSULTANT agrees in writing to provide any technical reports or perform any other of CITY'S Tasks for or on behalf of CITY, then the costs and expenses incident to such work shall be deemed "direct expenses" that are reimbursable by CITY pursuant to **Exhibit "A."**

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

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

B. Workers' Compensation

CONSULTANT agrees to provide workers' compensation insurance for CONSULTANT'S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees (collectively, the "**CITY Parties**") 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 (collectively, "**Claims**"), to the extent arising out of any injury, disability, or death of any of CONSULTANT'S employees.

C. Indemnification of Liability, Duty to Defend

To the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless the CITY Parties against any and all Claims, to the extent arising or resulting directly or indirectly from any willful or negligent acts or omissions of CONSULTANT or CONSULTANT'S officers, representatives, agents and employees (collectively, the "**CONSULTANT Parties,**") including all Claims relating to the injury or death of any person or damage to any property.

In no event, however, will CONSULTANT be responsible for any special, incidental, indirect, or consequential damages (including without limitation loss of profits, loss of opportunity, or loss of goodwill) incurred by CITY as a result of CONSULTANT'S actions or omissions.

D. Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement, the following types of insurance:

1. Commercial General Liability insurance covering all of the CONSULTANT Parties, 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, with minimum limits of \$2,000,000 each occurrence; and
2. Business Auto insurance covering any owned and non-owned automobiles used in pursuit of performing CONSULTANT'S services, with a minimum combined single limit coverage of \$1,000,000 per occurrence.

As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Commercial General Liability policy referred to in 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 CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

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

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;

- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of CITY

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

CITY also agrees perform, at its cost, CITY'S Tasks as set forth in **Exhibit "B"** within the time periods described in **Exhibit "C,"** all as may be modified by the mutual agreement of the Parties.

B. Assignment

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

C. Indemnification of Liability, Duty to Defend

To the fullest extent permitted by law, CITY shall defend, through counsel approved by CONSULTANT (which approval shall not be unreasonably withheld), indemnify and hold harmless the CONSULTANT Parties against any and all Claims to the extent arising or resulting directly or indirectly from any willful or negligent acts or omissions of the CITY Parties, including all Claims relating to the injury or death of any person or damage to any property.

In no event, however, will CITY be responsible for any special, incidental, indirect, or consequential damages (including without limitation loss of profits, loss of opportunity, or loss of goodwill) incurred by CONSULTANT as a result of CITY'S actions or omissions.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of CONSULTANT'S Business/ Death of CONSULTANT.

CONSULTANT shall notify CITY of the proposed sale of CONSULTANT'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 CONSULTANT set forth in **Exhibit "A," Subsection V.J.,** no later than thirty (30) days after CITY'S receipt of such notice of sale.

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

B. Termination by CITY for Default of CONSULTANT

Should CONSULTANT 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 CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement, and CONSULTANT does not take meaningful steps to cure such failure within thirty (30) days of written notice from CITY.

2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT 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, CONSULTANT, at the CONSULTANT'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 CONSULTANT to CITY.

D. Termination for Failure to Complete CITY'S Tasks

If (i) CITY fails to perform any of CITY'S Tasks as described in **Exhibit "B"** and when required pursuant to **Exhibit "C"** and CITY does not take meaningful steps to cure such failure within thirty (30) days of written notice from CONSULTANT, or (ii) if the City Council does not approve all of the Project Documents by September 30, 2025, or (iii) if for any other reason the Parties mutually determine that the Project will not be constructed, then in any such event either CITY or CONSULTANT, at its option, may terminate this Agreement by giving written notice to the other Party.

As used herein, the term "**Project Documents**" means and includes the following: (i) a design-build contract for the construction of the Project; (ii) a lease agreement between CITY and CONSULTANT for the operation of the completed Ice Center; (iii) all documents required to obtain taxable municipal revenue bond financing to fund the "**Project Costs**" and "**Finance Costs**" as defined in **Exhibit "E"**; and (iv) a Memorandum of Understanding ("**MOU**") between CITY and CONSULTANT describing the steps that CITY will take to ensure that funding will be available when needed to provide "**Support Services**" as defined in **Exhibit "E"**.

E. Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT 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 CONSULTANT'S duties by any new CONSULTANT hired by the CITY to complete such services.

F. Payment after Termination

CONSULTANT shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of any termination notice given by either Party, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth on **Exhibit "D."**

ARTICLE 8. REIMBURSEMENT AGREEMENT FOR DESIGN FEES

A. Payment of Design Fees

As provided in the Term Sheet, and as further described in Paragraph A.1.(c) of **Exhibit "B"** to this Agreement, CITY will enter into an Architectural Services Agreement ("**ASA**") with Perkins + Will (the "**Design Architect**") for the preparation of documents that will be used as the basis of design for bidding by design-build contractors on the Project (the "**Design Development Documents**"). It is anticipated that the fees payable to the Design Architect for such work (the "**Design Fees**") will total \$225,000, payable at the rate of \$45,000 per month for 5 months. CITY and CONSULTANT will each pay 50% of the Design Fees as and when they become due under the ASA, as follows:

1. Following the Effective Date of this Agreement, CITY will send CONSULTANT an invoice for \$112,500, which is 50% of the total Design Fees. CONSULTANT will advance said sum to CITY within 30 days following the receipt of such invoice. CITY will hold such amount in a restricted fund, to be used solely for the payment of the Design Fees under the ASA.

2. Following receipt and approval of each monthly invoice from the Design Architect, CITY will pay the full amount of such invoice, drawing 50% of such payment from the CITY'S general fund (or other funding source) and 50% from the restricted fund established by the payment from CONSULTANT.

3. Any architectural fees related to optional additional services (such as transition coordination with the design-build contractor) will not be included in the Design Fees for which CONSULTANT advances funds to CITY. Rather, such additional fees will be paid for solely by CITY out of the proceeds of the bond financing or other funding sources.

B. Reimbursement of Design Fees

If the Project is constructed, the full amount of the Design Fees paid by the Parties shall be included in the Project Costs and reimbursed to CITY and CONSULTANT (in their proportionate shares) out of the bond proceeds, as part of the first disbursement request.

If for any reason this Agreement is terminated pursuant to **Article 7.C** or **Article 7.D** above, then CITY shall reimburse CONSULTANT the full amount of the Design Fees advanced by CONSULTANT (i.e., \$112,500). Such payment shall be due and payable within thirty (30) days after CITY'S receipt of an invoice for such amount from CONSULTANT.

C. Interest

If either Party fails to make any payment that is due to the other Party under this Agreement as and when such payment is due, such delinquent payment shall bear interest at the rate of ten percent (10%) per annum, from the due date until payment in full.

ARTICLE 9. 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT 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 CONSULTANT, 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 CONSULTANT 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, CONSULTANT 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. CONSULTANT also agrees to comply with all

state and local laws regarding payment of prevailing wages, to the extent they may apply. CONSULTANT will defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY from and against any and all claims alleging any violation of state prevailing wage laws related to or arising from CONSULTANT's services under this Agreement.

F. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT 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 CONSULTANT 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.J.** 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

CONSULTANT 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.

M. Approval by CITY

Any approval, consent or agreement by the CITY under this Agreement may be given by the CITY Administrator, without the necessity for an action by the City Council, provided that such approval, consent or agreement (i) does not materially increase CITY'S other obligations or liabilities under this Agreement; and (ii) does not materially decrease CITY'S benefits under this Agreement. Notwithstanding the foregoing, the City Administrator may, in his sole and absolute discretion, elect to bring any such approval, consent or agreement to the City Council for action.

N. Limitation on Monetary Damages

Neither CITY nor CONSULTANT shall be liable to the other Party for any money damages relating to or arising out of any violation or breach of its obligations under this Agreement; provided, however, that CONSULTANT shall have the right to seek money damages against CITY for CITY'S failure to pay any sums that are to be paid or reimbursed to CONSULTANT by CITY under this Agreement.

In no event, however, will CITY be responsible for any special, incidental, indirect, or consequential damages (including without limitation loss of profits, loss of opportunity, or loss of goodwill) incurred by CONSULTANT as a result of CITY'S actions or omissions in failing to pay such sums.

[Signatures appear on next page.]

[Signatures to Consulting and Reimbursement Agreement]

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

CONSULTANT:

SHARKS ICE, LLC, a Delaware limited liability
company

By: _____
Name: Jon Gustafson
Title: Senior Vice President

CITY:

CITY OF GILROY, a Municipal corporation

By: _____
Name: Jimmy Forbis
Title: City Administrator

Approved as to Form

City Attorney

ATTEST:

City Clerk

EXHIBIT "A"
SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT 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, CONSULTANT agrees to assign Jon Gustafson, 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, CONSULTANT shall furnish all 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.

CITY acknowledges that CONSULTANT is not a licensed architect, engineer, or contractor, and that the Services do not require that CONSULTANT hold a professional license of any type.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT 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, Jimmy Forbis shall be the designated CITY contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.J. ("Notices")** of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT 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 CONSULTANT has not completed all of such Services as required by this Agreement, CITY shall so inform CONSULTANT within this two (2) week period.

III. PROJECT SCHEDULE

The schedule for performance and completion of the Services will be consistent with the Project Schedule set forth in the attached **Exhibit "C"** (as may be modified by the mutual agreement of the Parties).

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT 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. CONSULTANT 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

CONSULTANT represents and warrants that it has the qualifications and skills necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills and qualifications. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by persons engaged in the same type of work on similar projects 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 CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement; provided, however, that CONSULTANT'S review and comments on any plans and specifications, technical reports, public works contract documents, financing documents, or other documents that are prepared by (or under the supervisions of) a licensed professional shall create no responsibility or liability on the part of CONSULTANT for any errors or omissions in connection therewith.

CONSULTANT also shall not be responsible for the accuracy of any project or technical information provided by the CITY.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

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 CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT for direct expenses in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), 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 CONSULTANT for direct expenses, 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 CERTAIN INFORMATION

In connection with the Parties' dealings with each other under this Agreement, a party ("**Discloser**") may disclose to the other Party ("**Recipient**") information pertaining to Discloser's financial affairs, business dealings, intellectual property, private business data or other proprietary information that Discloser identifies as confidential ("**Confidential Information**").

Recipient may use Confidential Information only in connection with the Project, and for no other purpose. Recipient must use a reasonable degree of care to protect Confidential Information and to prevent any unauthorized use or disclosure of Confidential Information. Recipient may share Confidential Information with its employees, directors, agents or third party contractors who need to know it, provided that they have agreed in writing to keep such information confidential.

Confidential Information does not include information that: (a) was known to Recipient without restriction before receipt from Discloser; (b) is publicly available through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; or (d) is independently developed by Recipient. A Recipient may disclose Confidential Information when compelled to do so by law if it provides reasonable prior notice to Discloser, unless a court orders that the Discloser not be given notice. The Parties acknowledge that the CITY is subject to public disclosure laws, including the California Public Records Act, that may require disclosure by the CITY without any court process.

E. USE OF NAMES.

CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

CITY shall not use CONSULTANT'S name or insignia, or distribute publicity pertaining to this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CONSULTANT.

F. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY. All contracts with design professionals, contractors, construction managers, third party inspectors, and other professionals retained for the Project shall be in the name of the CITY and executed by an authorized representative of the CITY following due approval by the CITY.

G. 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 CONSULTANT 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, CONSULTANT shall not be responsible for, and CITY shall indemnify CONSULTANT 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.

H. 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.

I. COVENANT AGAINST CONTINGENT FEES.

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it 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, CITY 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.

J. NOTICES.

Notices are to be sent as follows:

CITY:	Jimmy Forbis, City Administrator City of Gilroy 7351 Rosanna Street Gilroy, CA 95020
CONSULTANT:	Jon Gustafson, Senior Vice President Sharks Ice, LLC 525 W. Santa Clara Street San Jose, CA 95113

EXHIBIT “B”
SCOPE OF SERVICES

This **Exhibit “B”** is attached to and made a part of the Consulting and Reimbursement Agreement (“**Consulting Agreement**”) between the City of Gilroy (“**City**”) and Sharks Ice, LLC (“**Sharks Ice**” or “**Consultant**”). Capitalized terms not defined herein shall have the meanings given in the Consulting Agreement or, if indicated, the Term Sheet referenced in the Consulting Agreement.

A. DESIGN DEVELOPMENT DOCUMENTS

1. City is responsible for the following, at its cost except as noted:

- (a) Prepare an Architectural Services Agreement (“**ASA**”) between the City and Perkins + Will (the “**Design Architect**”) for the preparation of concept design, schematic design and design development documents and related performance specifications (collectively, “**Design Development Documents**”) as needed to enable the City to obtain proposals from Contractors for the construction of the Project on a design-build basis.
 - (i) Per the City’s standard contract provisions, the City will own the Design Development Documents, subject to payment by City as required under the ASA.
 - (ii) Obtain City Council approval for the ASA, after it has been approved by the Design Architect, Sharks Ice and City staff.
- (b) Provide the Design Architect with any technical reports or information that may be needed by the Design Architect to prepare the Design Development Documents.
 - (i) This will include a topographical survey/site plan, a description of any special requirements for City-owned buildings, and other technical code requirements for this Project (to the extent such requirements differ from standard California Codes).
- (c) Pay all fees to the Design Architect as and when required under the ASA.
 - (i) It is anticipated that the Design Architect’s work will take approximately 5 months (20 weeks), and fees will be payable at the rate of \$45,000 per month for a total of \$225,000 in fees (“**Design Fees**”).
 - (ii) Sharks Ice will advance 50% of the Design Fees to the City, as described below.
 - (iii) Any architectural fees related to optional additional services (such as transition coordination with the Contractor) will not be included in the Design Fees for which Sharks Ice provides a 50% advance; rather, such additional fees will be paid for solely by the City out of the proceeds of the Bond Financing or other sources.
- (d) Provide comments and other input to Design Architect on a timely basis following City’s receipt of the Design Development Documents at each phase of the work (concept design, schematic design and design development).

- (i) City will attend meetings with Sharks Ice and Design Architect, as scheduled by Sharks Ice.

2. Sharks Ice is responsible for the following, at its cost except as noted:

- (a) Coordinate communications between the City and Design Architect as needed to negotiate and finalize the ASA.
- (b) Receive and address any requests for information from the Design Architect regarding Project requirements and parameters, technical information needed from the City, and the like.
- (c) Provide the Design Architect with the specifications and requirements for the Ice Center desired by Sharks Ice.
- (d) Manage applications for payment and other administrative matters under the ASA.
 - (i) As described in **Article 8** of the Consulting Agreement, within 30 days following receipt of an invoice from City, Sharks Ice will advance the City \$112,500 in cash (50% of the Design Fees). The City's use of said funds will be restricted to making 50% of each payment as and when it is due under the ASA.
 - (ii) Sharks Ice will review and approve the Design Architect's applications for payment before they are submitted to the City.
- (e) Provide comments and other input to Design Architect on a timely basis following receipt by Sharks Ice of the Design Development Documents at each phase of the design work (concept design, schematic design and design development).
 - (i) Sharks Ice will schedule meetings at mutually convenient times (typically by video conference) with the City and Design Architect to discuss comments to the Design Development Documents.
 - (ii) At the request of the City, Sharks Ice will prepare a slide deck of selected Design Development Documents and related information for presentation to the City Council or other public meeting.

B. PROCUREMENT OF DESIGN BUILD CONTRACT

1. City is responsible for the following, at its cost except as noted:

- (a) Prepare and issue a Request for Qualifications ("**RFQ**") to short-list design-build entities ("**Contractors**") qualified to submit proposals for the Project.
 - (i) City will oversee the process of selection of qualified Contractors.
 - (ii) This process should be completed while the Design Development Documents are being prepared.
- (b) Prepare a form of Design-Build Contract that includes all of the City's required terms and conditions, including the City's conflict of interest policy, bond requirements, insurance requirements, etc.

- (i) This should also be done while the Design Development Documents are being prepared.
 - (c) Prepare and issue a Request for Proposals (“**RFP**”) to all previously-qualified Contractors once the Design Development Documents have been completed.
 - (i) City will oversee the process of awarding the Design-Build Contract, including obtaining approval from the City Council.
 - (ii) The RFP will specify that the Design-Build Contract will be awarded on the basis of the best value, not the lowest bid.
 - (d) Finalize the Design-Build Contract and issue notices to proceed (“**NTP**”) as appropriate.
 - (i) The City may (but is not required) to issue a NTP with respect to design, estimating, value engineering and other pre-construction services prior to the closing of the Bond Financing and Lease Agreement, so that the contractor can provide information needed for the Project Budget and can expedite the design phase of its services.
 - (ii) The City may not issue a NTP with respect to on-site construction work until the closing of the Bond Financing and the Lease Agreement (the “**Closing**”) has occurred.
2. Sharks Ice is responsible for the following, at its cost except as noted:

- (a) Provide City with sample forms of RFQ’s, contracts and RFP’s that were used for the Sharks Ice San Jose Expansion Project, to assist in City’s preparation of the necessary documents.
 - (i) Identify, for inclusion in the RFQ and RFP, a list of the specific type of Design-Build Subcontractors and other consultants that will need to be part of the Contractor’s Design-Build team, such as ice skid engineering, civil engineering, soils engineering, structural engineering, HVAC, electrical, plumbing, metal building, fire/life safety, LEED, lighting, AV/scoreboard, etc.
- (b) Review and comment on the RFQ, the form of Design-Build Contract, and the RFP, and actively participate in the selection of short-listed Contractors and the award of the Design-Build Contract.

C. BOND FINANCING AND LEASE AGREEMENT

1. City is responsible for the following, at its cost except as noted:
- (a) Provide input to Sharks Ice as necessary for the preparation of a Project Budget, which will include estimates of the Project Costs as defined in **Exhibit “E”**.
 - (i) The Project Costs include the services of a third party construction manager (typically someone with a general contractor’s license or other construction expertise), the selection of which will be subject to the reasonable approval of the City.

- (ii) The Project Costs do not include the Support Services as defined in **Exhibit “E”**, which will be provided by the City at its cost.
- (b) Develop an overall Finance Plan and budget for the Finance Costs as defined in **Exhibit “E”**, as well as the projected annual debt service.
- (c) Work with Sharks Ice on the drafting of a Lease Agreement, consistent with the Term Sheet and the Finance Plan.
- (d) Create a separate legal parcel for the ice facility (the “Premises” under the Lease Agreement), including all associated parking areas and other site improvements.
 - (i) Obtain and record all necessary easements appurtenant to the Premises for ingress and egress, utilities, drainage, and the like.
- (e) Obtain City Council approval for the Bond Financing, Lease Agreement and all associated documents, and satisfy all conditions necessary for the Closing of the Bond Financing and Lease Agreement (which should be done concurrently).

2. Sharks Ice is responsible for the following, at its cost except as noted:

- (a) Develop a Project Budget, in consultation with the City and the selected Contractor (assuming the City has issued a NTP to the Contractor to commence pre-construction services).
- (b) Provide input to the City on the Finance Plan and the budget for the Finance Costs.
- (c) Prepare the initial draft of the Lease Agreement (which will be based in large part on the Lease Agreement for Sharks Ice at San Jose) and work with the City to make revisions as necessary to achieve a mutually acceptable agreement.
- (d) Cooperate with the City’s efforts to obtain approval for the Bond Financing and Lease Agreement, and to achieve a concurrent Closing for the same.

D. DESIGN-BUILD WORK

1. City is responsible for the following, at its cost except as noted:

- (a) Provide the Contractor with all property condition reports as may be required in connection with the preparation of construction drawings and specifications (“**Construction Documents**”), such as soils reports, topographical and/or title surveys, title report, environmental site assessment, biological survey, etc.
- (b) Prepare, negotiate and obtain City Council approval of a Construction Management Agreement with a third party construction manager selected by Sharks Ice and approved by the City.

- (c) Appoint a City employee as the City's representative to attend weekly Project meetings, and provide comments, input and assistance during those meetings as appropriate.
- (d) Prepare and submit building permit applications (or the equivalent) as may be required for City-owned projects.
- (e) Perform all necessary plan check and inspection services (except that special testing and inspection services typically performed by third party inspectors shall be paid from the Project Funds as a Project Cost).
- (f) Submit applications (and pay all fees) necessary to obtain any required development clearances by third party governmental agencies, such as for the Habitat Conservation Plan.
- (g) Construct any public improvements required by the applicable EIR Mitigation Monitoring and Reporting Program (MMRP), such as traffic signals, traffic lanes, and other street improvements, as specified in a Memorandum of Understanding (MOU) between the Parties to be drafted during and coordinated with the preparation of the Construction Drawings.
- (h) Make improvements to off-site utility main lines, including any upsizing or extensions that may be needed (also to be specified in the MOU).
- (i) Promptly process all Applications for Payment under the Design-Build Contract, so as to ensure that the Contractor and its Subcontractors are paid within the timeframes required by prompt payment laws. Funding for such payments will be obtained via disbursements from the Project Fund established by the Bond Financing.
- (j) Promptly issue a Certificate of Occupancy, Notice of Completion, and other similar documents upon satisfaction of the legal requirements therefor.
- (k) Participate in review and discussion of all other aspects of the Project, including (but not limited to) all matters listed in Paragraph D.2 below, and perform all functions of the "Owner" in connection therewith.

2. Sharks Ice is responsible for the following, at its cost except as noted:

- (a) Select a third party construction manager (to be approved by City), and assist in negotiation of a Construction Management Agreement between the City and the construction manager.
- (b) Advise City regarding additional services by the Design Architect as may be needed to review the RFP and/or coordinate transition of design work to the Contractor.
- (c) Review and comment on Construction Documents.

- (i) Review by Sharks Ice would be limited to issues regarding overall design and aesthetics, functionality, and operational matters.
 - (ii) Sharks Ice will also arrange for and oversee contracts with third party technical review CONSULTANTS (such as code compliance, ADA, LEED, etc.)
- (d) Review and comment on the Contractor's bid packages for key subcontractors, and oversee bidding and bid analysis
 - (i) This will include (but not be limited to) ice rink engineering, structural, soils, M/E/P, lighting, utilities, smoke control, civil engineering, trash, landscaping, signage, audio/video, scoreboard, and security.
- (e) Review and comment on Guaranteed Maximum Price ("**GMP**"), and prepare Project Budget updates during the course of construction
 - (i) Sharks Ice will review final Subcontractor line items, as well as General Conditions, Contractor's Fee, and Contractor's Insurance costs.
 - (ii) Sharks Ice will also review and comment on Allowances, Contingencies, Alternates, and the like.
- (f) Review and comment on initial Project Schedule, and prepare Project Schedule updates during the course of construction.
 - (i) Sharks Ice will make recommendations to the City regarding the purchase and procurement of long lead items.
 - (ii) Sharks Ice will work with the construction team to address any delays and ascertain ways to make up time for such delays.
- (g) Review and comment on certificates of insurance, payment and performance bonds, licenses, employment records, Department of Industrial Relations (DIR) registrations, and other documents required from Contractor and its Subcontractors.
- (h) Coordinate with the City's risk manager regarding the purchase (as a Project Cost) of Builder's Risk insurance for the duration of the Project.
- (i) Review and comment on the Project's site logistics plan, safety plan, environmental mitigation plans (such as noise and dust control), etc.
- (j) Schedule and manage weekly Owner/Architect/Contractor meetings, and ensure that meeting minutes are distributed to all team members and applicable City authorities.
- (k) Review and comment on contracts between City and third party testing and inspections CONSULTANTS (as outlined in the Construction Documents and as required by the building code).
- (l) Review and comment on purchase agreements between the City and vendors for the delivery and installation of moveable furniture, supplies and equipment.

- (m) Review and comment on requests for Change Orders, and advocate for the Owner's (City's) position on any disputes regarding requested increases in costs or time.
- (n) Review and comment on all Applications for Payment, and follow-up re prompt payment by City.
- (o) Oversee preparation of punch lists, and monitor completion of all outstanding construction items.
- (p) Monitor Contractor's delivery of all guarantees, warranties, lien releases, as-built drawings, and other close-out documents as required by the Contract Documents.

EXHIBIT “C”
PROJECT SCHEDULE

Month	Completion Date	Design Development Documents	Procurement of Design-Build Contract	Bond Financing and Lease Agreement	Design-Build Work
1	Sept 2023	Negotiate/Sign Consulting Agreement (with Council Approval)			
2	Oct 2023	Negotiate/Sign ASA (with Council Approval)			
3	Nov 2023	Concept Design (4 wks)	Prepare RFQ (with Council Approval) (4 wks)		
4	Dec 2023	Schematic Design (6 wks)	Issue RFQ and collect responses (4 wks)		
5	Jan 2024		Select short-listed contractors (2 wks)		
6	Feb 2024	Design Development and BOD Narrative (8 wks)		Prepare preliminary Project Budget and Finance Plan (4 wks)	
7	Mar 2024	Refine Design Development Document Package (2 wks)	Prepare form of Design-Build Contract (8-12 wks)	Prepare form of Lease (8-12 wks)	
8	Apr 2024		Prepare and Issue RFP to Qualified Contractors (4 wks)	Prepare draft MOU re City's off-site construction obligations	DPW to prepare drawings for off-site improvements (utility work and MMRP traffic mitigation)
9	May 2024	Design Architect to coordinate transition of design work to Contractor	Award Contract (with Council Approval) (4 wks); issue NTP for pre-construction work	Revise Project Budget and Finance Plan; circulate first drafts of Financing Documents	Begin preparation of Construction Drawings
10	June 2024			Circulate first draft of Preliminary Official Statement	
11	July 2024			Submit credit package to rating agency and Bond insurers	Circulate 25% CD's (8 wks)
12	Aug 2024			Credit rating presentation	Issue bid requests for all major subs (8 wks)
13	Sept 2024			Circulate draft staff report for review and comment	Circulate 50% CD's (8 wks)
14	Oct 2024		Prepare Guaranteed Maximum Price (GMP) amendment to Design-Build Contract	Finalize Project Budget, Financing Documents and Lease; post staff report	Review bids and select major subs
15	Nov 2024		Obtain Council approval of MOU and GMP, including advance purchase of long-lead equipment	Obtain credit rating; price Bonds; Council Approval for Bond Financing and Lease	Complete 100% CD's and submit for permit (8 wks)
16	Dec 2024			Release Final Official Statement; circulate and execute closing documents	
17	Jan 2025		Issue NTP for on-site construction work	Close of escrow on Bond Financing and Lease	Obtain building permit (8 wks)
18	Feb 2025				Begin construction
19	Mar 2024				
20	Apr 2025				
21	May 2025				

22	June 2025				
23	July 2025				
24	Aug 2025				
25	Sept 2025				
26	Oct 2025				
27	Nov 2025				
28	Dec 2025				
29	Jan 2026				
30	Feb 2026				
31	Mar 2026				Complete construction (14 months)
32	Apr 2026				
33	May 2026				Complete Punchlist and Close-Out (2 months)
34	June 2026				Notice of Completion is recorded

EXHIBIT "D"
PAYMENT SCHEDULE

Month	Payment Date	Amount of Payment
1	Sept 1, 2023	\$-0-
2	Oct 1, 2023	\$-0-
3	Nov 1, 2023	\$15,000
4	Dec 1, 2023	\$15,000
5	Jan 1, 2024	\$15,000
6	Feb 1, 2024	\$15,000
7	Mar 1, 2024	\$15,000
8	Apr 1, 2024	\$15,000
9	May 1, 2024	\$15,000
10	June 1, 2024	\$15,000
11	July 1, 2024	\$15,000
12	Aug 1, 2024	\$15,000
13	Sept 1, 2024	\$15,000
14	Oct 1, 2024	\$15,000
15	Nov 1, 2024	\$15,000
16	Dec 1, 2024	\$15,000
17	Jan 1, 2025	\$15,000
18	Feb 1, 2025	\$15,000
19	Mar 1, 2025	\$15,000
20	Apr 1, 2025	\$15,000
21	May 1, 2025	\$-0-
22	June 1, 2025	\$-0-
23	July 1, 2025	\$-0-
24	Aug 1, 2025	\$-0-
25	Sept 1, 2025	\$-0-
26	Oct 1, 2025	\$-0-
27	Nov 1, 2025	\$-0-
28	Dec 1, 2025	\$-0-
29	Jan 1, 2026	\$-0-
30	Feb 1, 2026	\$-0-
31	Mar 1, 2026	\$-0-
32	Apr 1, 2026	\$-0-
33	May 1, 2026	\$-0-
34	June 1, 2026	\$-0-
Total Payments		\$270,000

EXHIBIT “E”
DEFINED TERMS

As used in the foregoing Agreement, the following terms shall have the meanings given below:

The term “**Project Costs**” includes the following costs for the design, permitting and construction/installation of the Ice Center, FF&E, and Parking Area improvements:

- (i) Design, engineering, LEED consulting, and other consulting services, including the payments to CONSULTANT and to the Design Architect as described in the Agreement;
- (ii) Compliance with applicable MMRP conditions set forth in the EIR (air quality control measures for construction activities; LEED Silver building standards; on-site landscaping within stream setback buffer; and storm drainage plan);
- (iii) Water, sanitary sewer and other utility connection fees;
- (iv) Third party special testing and inspection services;
- (v) Grading, utility trenching and installation of utility facilities;
- (vi) Landscaping and arborist services;
- (vii) Construction management services;
- (viii) Premiums for insurance and bonds required by the Contract Documents;
- (ix) Labor, supervision, materials, supplies, hauling, and temporary facilities;
- (x) Purchasing and installing furniture, fixtures, and equipment (“**FF&E**”); and
- (i) Building and site signage.

The term “**Finance Costs**” includes all costs related to the underwriting, issuance and sale of the revenue bonds, including for the following items:

- (i) Bond Counsel/Disclosure Counsel fees and expenses;
- (ii) Municipal advisor fees and expenses;
- (iii) Rating agency fees;
- (iv) Trustee fees and expenses;
- (v) The establishment of a Capitalized Interest Fund;
- (vi) The establishment of a Debt Service Reserve Fund, if required; and
- (vii) Underwriter’s discount, if applicable.

The term “**Support Services**” includes all other services and work paid for or provided by CITY related to the Project, such as the following:

- (i) Planning applications and approvals, including necessary CEQA clearance;
- (ii) City Charter and Ordinance amendments to allow design-build Project delivery;
- (iii) Habitat Conservation Plan fees, traffic mitigation fees, in-lieu fees, and other development fees or exactions;
- (iv) Preparation and bidding of Construction Contract documents;
- (v) Building permit applications and inspections;
- (vi) Construction of public improvements required by the MMRP, such as traffic signals, traffic lanes, and other street improvements;
- (vii) Improvements to off-site utility main lines, including any upsizing or extensions that may be needed;
- (viii) Economic feasibility studies; and
- (ix) Survey work to establish the boundary lines of the subject parcel and/or any required utility easements.

13.1. Report on Measures Taken to Improve the Condition of Las Animas Park, Including Safety and Crime Prevention

1. Staff Report:
2. Public Comment
3. Possible Action:

Receive the report.



City of Gilroy

STAFF REPORT

Agenda Item Title: **Report on Measures Taken to Improve the Condition of Las Animas Park, Including Safety and Crime Prevention**

Meeting Date: September 18, 2023

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

Receive the report.

BACKGROUND

The City of Gilroy owns and operates Las Animas Veterans Park, a 31-acre public park located along Mantelli Drive between Wren Avenue and Church Street. Las Animas Park has been the location of a significant number of complaints regarding loitering, crimes in progress, and calls for service relating to the unhoused.

On March 16, 2023, the two parking lots from Wayland Lane and Hanna Street were closed due to a series of complaints and issues from area residents. Since both lots have been closed, the closure of the Wayland Lane Parking Lot near the tennis courts has resulted in a complaint being received about its closure from the Gilroy Tennis Club (GTC). Closing the lot eliminated 13 parking spots; however, there are many parking spots available in the Oaks Parking Lot (located along Mantelli Drive closest to Wren Avenue, adjacent to the Skate Park), which is roughly equidistant to the nearest tennis court (approximately 12 feet in difference), as measured by the City's GIS program. The distance measurements along the paths in the park to the closest tennis court are on the following page.



History of the issue

Below is an approximate timeline of the development of this matter, commencing with public comments made at prior Council Meetings over a year ago.

- January 31, 2022 – Issues of tents being erected at Las Animas Park, including in the handball courts and vandalism of restrooms and other facilities, commences an effort to find ways to address the conditions created by the unhoused using the park as living accommodations and issues with loitering during all times of the day in parking lots adjacent to residential areas.
- March 2022 through mid-April 2022 – Issues continue to intensify at Las Animas Park. Enhanced coordination between the Program Administrator for the unhoused, as well as the Police Quality of Life team and Recreation, to connect the unhoused with services and resolve the prohibited camping at the park.
- June 7, 2022 – A complaint was received from the Gilroy Tennis Club about revenge vandalism to the tennis courts arising from a conflict between the Tennis Club and soccer players. Cameras were installed in the park.
- August 1st and 15th, 2022 – Public comments were received regarding illegal and nuisance-related activity happening repeatedly at the Hanna Street Parking Lot, including assault, rape, shots heard, burglary, drug paraphernalia in the lot near the lot next to the playground, nudity, loud music/noise, public intoxication, trespassing, and suspicious behaving persons and vehicles to name a few.
- Late August 2022 - Following the council meetings, a series of site visits, e-mail correspondence, and meetings followed regarding constructing a locking gate to lock the lot after-hours, cameras for monitoring activity in the lot, and discussions about possible ways to enforce the closure were held.
- August 18, 2022 – City Administrator forwarded an e-mail to Council from a resident regarding the proposed improvements to address the lot. In the e-mail, the City Administrator informed Council of the procurement and eventual installation of the locking gate for use when closing the parking lot.
- Mid-September 2022 – Correspondence between an engaged resident and the City Administrator demonstrates the order placed for the gate and the intent to lock the gate when the park closes. Additionally, signs were installed to denote the park's closure at 11 p.m., as well as signage restricting parking along Hanna Street near the neighborhood entrance to the park.
- Late October 2022 – Due to costs, the proposed gate required bidding. Bidding was requested for construction.
- January 17, 2023 – The Parks and Recreation Commission, based on the issues relating to late use of the parks, recommended adjusting park closure times for Las Animas Park from 11 p.m. to 10 p.m.
- February 2023 – The locking gate is installed at the Hanna Parking Lot. Immediate improvement is witnessed in the parking lots.
- March 15, 2023 – An e-mail was received from a resident concerning issues at the Las Animas neighborhood parking lots, requesting that staff close the parking lots permanently. The e-mail also listed negative activity in the parking lot overnight with cold temperatures.

- March 16, 2023 – Once the park closed for the day, the gates remained locked with signs informing of the temporary closure of the parking lots for an undetermined amount of time.
- March 28, 2023 – A community meeting was held at City Hall in the evening with the neighbors around the parking lots to discuss the issues experienced at the park and, more specifically, the subject parking lots. The residents again advocated for the permanent closure of the residential parking lots.
- April 10, 2023 – The City Administrator met with representatives of the Gilroy Tennis Club to discuss the Wayland Lane Parking Lot closure.

The City has received complaints from the GTC concerning closing the 13 parking spaces. The City Administrator offered to allow the GTC use of the lot during tournaments and other significant events but otherwise determined that the health/safety issues outweighed the convenience of those parking spaces. Thus, the lot would remain closed. To date, the GTC has not taken up staff's offer to open the lots during tournaments and significant events.

ANALYSIS

Below is a listing and description of the reasons why the lots were identified for closure at this time:

Complaints

Complaints from the Gilroy Tennis Club (GTC)

The City has received varied complaints from the GTC concerning safety (loitering, trespassing, camping) within and around the park. When the City closed the smaller neighborhood entry parking lots, the GTC then submitted complaints regarding the closure of the parking lots, specifically, the closure of the Wayland Parking Lot – the closest to the tennis courts – as it is now considered a significant inconvenience for the GTC members/players. It is important to note that the Wayland Lane parking lot, the closest parking lot pre-closure, is only approximately twelve feet (12') closer than the Oaks Parking Lot, as established above.

Petition from Neighbors

The City had also received a petition from neighbors around Las Animas Park, asking the City to address the community entrances and the loitering and crime issues around the two smaller parking lots. A total of 98 signatures were applied to the petition. The petition is attached to this staff report.

Police and Public Safety Impacts

Per the Police Department, limiting access to the parking lots can diminish chances for criminals to take advantage of secluded areas within the park. This, in turn, could decrease occurrences like vandalism, drug-related activities, and disturbances. This proactive approach also contributes to easing the workload of law enforcement tasked with monitoring these spaces. Striking the right balance between deterring crime and maintaining visitor convenience is crucial. Despite the sensitive nature of this

equilibrium, the possible gains stemming from decreased criminal incidents and the improved safety of the surrounding community highlight this strategy's efficacy.

As the City and residents have taken a more proactive approach to policing and monitoring the park, Staff has received feedback that the park is now more family-friendly and accessible during the daytime. Crime has essentially been eliminated from the two back lots as there is now no access through the neighborhood streets; thus, all vehicular access is now through the streets of Mantelli, Church, and Wren. The decision to close the lots was not based on crime statistics and, thus, not a data-driven decision. The decision addresses activity within the lots while focusing on policing at the park's main access points. Since the closure of the Hanna and Wayland parking lots, staff has assessed the resulting changes and determined that the park and neighborhood issues have vastly improved.

Flexibility to adjust operations to address issues of health and safety while balancing the need for public access is something that is a basic staff duty and one that is not taken lightly. The value of the convenience of the two smaller lots is overshadowed by the higher need to preserve overall public safety. The City has seen significant improvements in this area of town - it is much easier and cost-effective to prevent undesirable activities than directly addressing them through constant law enforcement.

Preventing criminal and disruptive acts before they happen reduces both the need to react to the act itself and providing deterrence to other acts, compared to responding to only a single violation whenever it occurs.

Other Impacts and Considerations

Available Parking

With the closure of the Wayland and Hanna parking lots, a combined 38 parking spaces were made unavailable, including two handicapped spaces (16 and 22, respectively, each including one handicapped space). The remaining parking spaces include the following:

- Oaks Parking Lot – 56 spaces (including four handicapped parking spaces)
- Mantelli Parking Lot – 53 spaces (including two handicapped parking spaces)
- Street Parking – City code has parking stalls to be made with 18 feet of depth. The total available parking strip is 2,108 feet for the entire park. Assuming 18 feet per vehicle parked, a total of 117 vehicles may park at one time along Wren and Mantelli at the park, which will be the number of “parking spaces” used for this analysis.

The total amount of parking spaces listed above, including the two closed lots, is 264. The 38 spaces of the closed lots account for 14% of the total parking spaces, leaving 86% remaining open and available.

In addition, on several occasions (including Saturdays during Gilroy Little League games), staff has checked the parking availability at Las Animas Veterans Park at

varied times of the day. On all visits, plenty of parking was available in the park areas noted above for park users.

Impacts of Lot Closure

Closing the two neighborhood entrances has caused inconvenience for those aiming to use the lots to access the park's southern side more directly. However, this is considered by staff to be a minor impact, as the walking distance to the tennis courts is very similar to the Oaks parking lot as it is from the Wayland parking lot, which is closed. Residents can still access the park through the closed areas on foot or bicycle, and the closure obstructs only vehicles. Other than this, no further impact has been identified by staff from the closures.

Future of the Lots

While a convenience for neighboring residents, there are concerns with crime, disturbances, and other nuisances that can be generated by heavier than normal usage in residential areas because of the use of these parking lots.

One option considered is to have the lots open only for part of each day. However, staff is of the opinion that this would create additional issues. The lots would be available for part of the day, creating the opportunity to be a gathering spot for illegal and nuisance activity. It should be noted that some of the most egregious activities occurred during the daytime.

Furthermore, the closures would create instances where vehicles may remain parked after closing hours, requiring towing and other parking enforcement activities. This would require staff time, as well as impound fees for those vehicles ultimately towed, to be able to close the lots.

Currently, staff believes the best measure to help reduce the illegal and nuisance activities in the two neighborhood entrance parking lots is for them to remain closed. The lots could be considered for other uses or returned to parkland.

ALTERNATIVES

None – This is an informational report.

FISCAL IMPACT/FUNDING SOURCE

None – This is an informational report.

PUBLIC OUTREACH

This item was included in the publicly posted agenda for this meeting.

Attachments

1. Petition

WE, THE UNDERSIGNED, HEREBY PETITION the City of Gilroy, to approve the permanent closure of two parking lots located at Las Animas Veterans Park, 400 Mantelli Drive, Gilroy, California. The parking lots are located on the corner of Wayland Lane and Arnold Drive, and the corner of Hanna Street and Arnold Drive, in Gilroy, California.

WE STATE OR BELIEVE:

1. That the petitioners are residents of Gilroy, California.
2. That the permanent closing of the parking lots will promote safety and security for the community.
3. That the permanent closing of the parking lots will reduce crime activity.
4. That the permanent closing of the parking lots will reduce unnecessary traffic.
5. That the permanent closing of the parking lots will reduce the unnecessary congregation of vehicles and people, resulting in reduced noise levels.
6. That the permanent closing of the parking lots will promote an overall enhanced quality of life for the community.
7. That the permanent closing of the parking lots will not discourage the community from accessing the park, given there are two large, lit, and open parking lots on Mantelli Drive, in addition to unrestricted street parking on Mantelli Drive, Church Street, and Wren Avenue.

NAME	ADDRESS	TELEPHONE	SIGNATURE
Charlie Morales			
Rita Morales			
Skip Bloom			
Judy Bloom			
Jose C-			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Louis DE LA CRUZ JR.			
Yolanda DE LA CRUZ			
Rick DUYAO			
Lizette Guerreiro			
Albert Guerreiro			
Brian Lerni			
Raul Lerni			
Samos LOPEZ			
Rachel Leal			
Joel Vargas			
Elena Pimentel			
Juan Gutierrez			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Sylvia Gutierrez			
Rachelle Perez			
Sarah Maguinales			
Henry Maguinales			
Brent Anderson			
Heather Anderson			
Melanie Mejia			
Billy Ayoubi			
Helen Daniels			
Albert Vogel			
Rosemarie Vogel			
Elizabeth Gonzalez			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Keith Glasper			
Shannon Glasper			
Richard Quina			
Francisco MAA			
Mercy MAR			
Nestor Perez			
Betty L. Perez			
Juan Lopez			
Maria G Lopez			
Juan Lopez			
malcolm B			
Nguyen			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Jennie Bolger			
Dave Perez			
Roberto Cárdenas			
MONICA ARISTA			
Bora Choi			
Jay			
Edgar R			
Rebecca K			
FABIOLA BAUTISTA			
PAUL BAUTISTA			
LUCKY HERNANDEZ			
VICTORIA SOTO			
Xochitl Bautista			

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5. That the permanent closing of the parking lots will reduce the unnecessary congregation of vehicles and people, resulting in reduced noise levels.
6. That the permanent closing of the parking lots will promote an overall enhanced quality of life for the community.
7. That the permanent closing of the parking lots will not discourage the community from accessing the park, given there are two large, lit, and open parking lots on Mantelli Drive, in addition to unrestricted street parking on Mantelli Drive, Church Street, and Wren Avenue.

NAME	ADDRESS	TELEPHONE	SIGNATURE
NICK CAGNON			
Blanca Rodriguez			
Jose L Rodriguez			
David Jue			
Jay P. Dore			
Paul Kuehn			

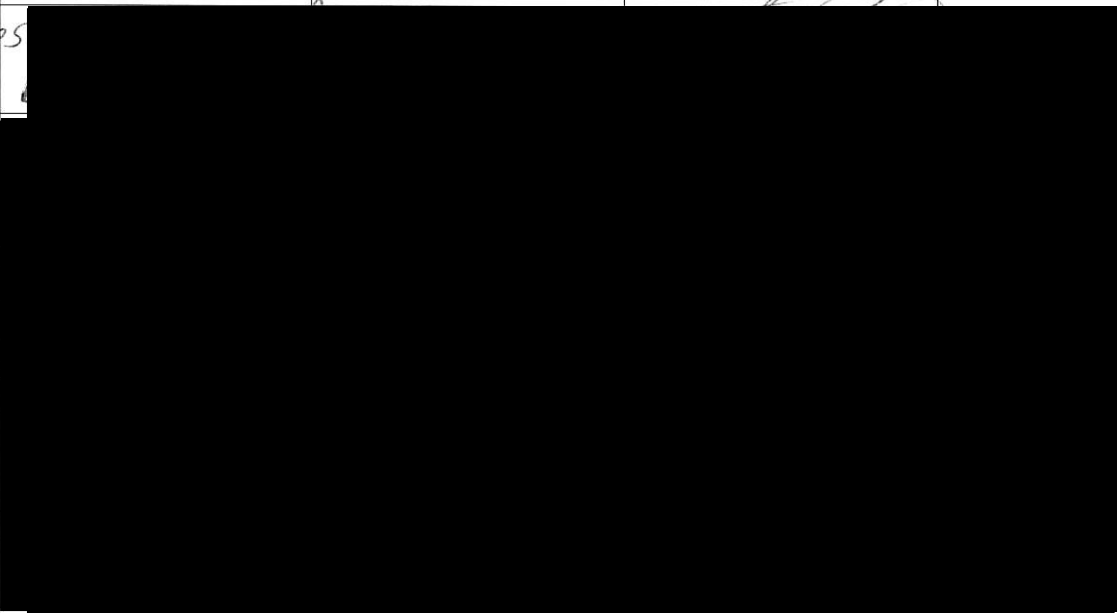
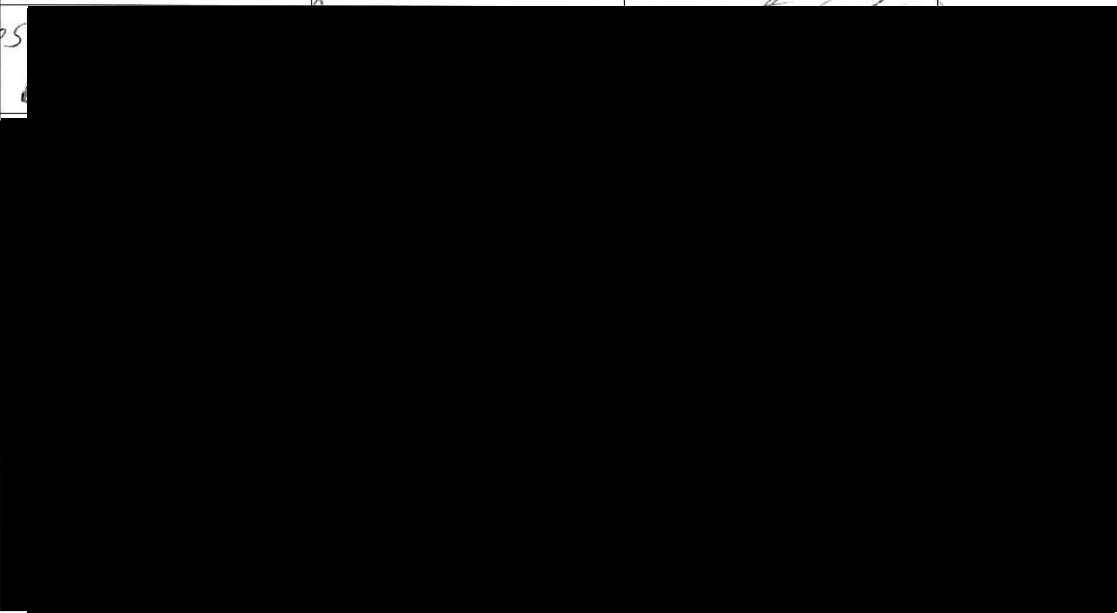
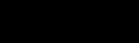
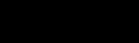
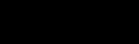
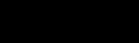
NAME	ADDRESS	TELEPHONE	SIGNATURE
Guadalupe y Lopez			
Sandra Lopez			
Manuel Ortiz			
Jorge Cardenas			
Sara Cardenas			
TOLO VANG			
Philip Mai			
Bryan Dennizton			
Luis Carmone			
Jose Zapien			
Maribel Zapien			
Abhop CANDO			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Jesec Silva			
Michael Larson			
Jose Salinas			
Maria I. Gonzalez			
Jose C Salinas			
Jane Steven			
Jessica. Silva			
Jerry Vasquez			
Venancio H.			
JAY AGUILAR			
Libby Matulich			
Jeff Casalegno			
Tammy Casalegno			

WE, THE UNDERSIGNED, HEREBY PETITION the City of Gilroy, to approve the permanent closure of two parking lots located at Las Animas Veterans Park, 400 Mantelli Drive, Gilroy, California. The parking lots are located on the corner of Wayland Lane and Arnold Drive, and the corner of Hanna Street and Arnold Drive, in Gilroy, California.

WE STATE OR BELIEVE:

1. That the petitioners are residents of Gilroy, California.
2. That the permanent closing of the parking lots will promote safety and security for the community.
3. That the permanent closing of the parking lots will reduce crime activity.
4. That the permanent closing of the parking lots will reduce unnecessary traffic.
5. That the permanent closing of the parking lots will reduce the unnecessary congregation of vehicles and people, resulting in reduced noise levels.
6. That the permanent closing of the parking lots will promote an overall enhanced quality of life for the community.
7. That the permanent closing of the parking lots will not discourage the community from accessing the park, given there are two large, lit, and open parking lots on Mantelli Drive, in addition to unrestricted street parking on Mantelli Drive, Church Street, and Wren Avenue.

NAME	ADDRESS	TELEPHONE	SIGNATURE
Art & Frances Gomez			
Daniel Medina			
Roy Gonzales May			
Enrique Gonzalez			
Edith Martinez			

NAME	ADDRESS	TELEPHONE	SIGNATURE
Erial ThreeStars			
Vincent Sorge			
Putricia BAIZ			
JARED TSODA			
Rigoberto Gonzalez Jr.			
Eulalia Vasquez			
ROZ ALVDS			
Chris Roscoe			
Daniel - Pequeno			
Naomi Perez			

13.2.Sidewalk Vending Permit Fee and Senior Code Enforcement Officer

1. Staff Report:
2. Public Comment
3. Possible Action:
 1. Adopt a resolution establishing a permit application fee and annual renewal fee for sidewalk vending.
 2. Approve the addition of a Senior Code Enforcement Officer position in the Community Development Department.
 3. Adopt a resolution approving the updated Position Control List for FY 24.



City of Gilroy

STAFF REPORT

Agenda Item Title: Sidewalk Vending Permit Fee and Supervising Code Enforcement Officer

Meeting Date: September 18, 2023

From: Jimmy Forbis, City Administrator

Department: Community Development

Submitted By: Sharon Goei, Community Development Director

Prepared By: Jon Biggs, Special Assistant to City Administration
Sharon Goei, Community Development Director

STRATEGIC PLAN GOALS

Promote Economic Development Activities

RECOMMENDATION

1. Adopt a resolution establishing a permit application fee and annual renewal fee for sidewalk vending.
2. Approve the addition of a Supervising Code Enforcement Officer position in the Community Development Department.
3. Adopt a resolution approving the updated Position Control List for FY 24 and FY 25.

EXECUTIVE SUMMARY

Staff is proposing an initial sidewalk vending permit application fee of \$865 and an annual renewal fee of \$204 be adopted by the City Council for this activity in the City.

Staff is also proposing the addition of a Supervising Code Enforcement Officer position to expand the proficiency and capability of the code enforcement function to address complex cases, implement new ordinances, and supervise and prioritize activities.

BACKGROUND

At the August 21, 2023 regular City Council meeting, the Council adopted an ordinance adding Chapter 16B, Sidewalk Vending, to the Gilroy City Code. Staff has been working on the implementation of the ordinance. The ordinance goes into effect on September 20, 2023.

ANALYSIS**Sidewalk Vending Permit Application Fee and Annual Renewal Fee**

The City's current fee schedule was last updated in July of 2023 and the fees adopted for the various services the City provides support the City Council's strategic priority to be fiscally resilient and sustainable. As such, adopting the fee as proposed will ensure 100% cost recovery.

Staff has conducted a review of the steps necessary to process a sidewalk vending permit application and based the recommended fee on the fully burdened staff rate of those members who will be responsible for processing the applications and the amount of time to complete each step in the permit review and approval process. Staff that will be responsible for processing the sidewalk vending permit applications include a Code Enforcement Officer and, to a lesser degree, a Permit Technician. Steps included in the processing of an application include the following:

- Initial inquiry by applicants on the permit requirements and standards for sidewalk vending
- Application submittal and assignment to staff
- Staff review of the application
- Follow-up review, if needed
- Permit issuance
- Tracking of permit – with notices of permit renewal being sent out annually

A permit application fee of \$865 is derived from a review of the steps expected in processing a permit application along with the time projected each step in the process will take, multiplied by the fully burdened rate of the staff members involved in processing the permit. A Code Enforcement Officer, at a fully burdened rate of \$121.88 per hour, is anticipated to spend 6.75 hours total covering applicant inquiry, application submittal, application review and follow-up, and permit tracking. A Permit Technician, at a fully burdened rate of \$83.92 per hour, is anticipated to spend 0.5 hours on application and fee processing, followed by permit issuance. Staff is recommending that \$865 be the fee for sidewalk vending permits adopted by the City Council.

Given that renewal of sidewalk vending permits is expected to take less time, the annual renewal fee is proposed at \$204. A Code Enforcement Officer, at a fully burdened rate of \$121.88 per hour, is anticipated to spend 1.5 hours total covering application submittal, application review and follow-up, and permit tracking. A Permit Technician, at a fully burdened rate of \$83.92 per hour, is anticipated to spend 0.25 hours on application and fee processing, followed by permit issuance. Staff notes here that all

issued permits will be normalized and set to expire at the end of the calendar year; thus, vendors will need to renew their permits at the start of each calendar year. There will be no prorating of the permit date or application fee because the City will incur the same expenses in processing each new permit application.

For comparison purposes, staff is providing below the sidewalk vending permit application fee for the following cities:

- Carmel-by-the Sea - \$425
- Sacramento - \$112
- Salinas - \$746.75
- Santa Cruz - \$30
- San Jose - \$500 for vending at fixed locations; \$356 for mobile permits (Note these permits are good for two (2) years)
- Watsonville - \$306

These fees reflect a wide range and differ from the one being proposed by staff. Reasons behind the differences in fees include the following:

- Staff assigned to process the permit applications
- Permit requirements or standards
- Incentives to support the program (General Fund subsidizing the costs incurred by their city to process these permits). Gilroy's program assumes that the City will realize full cost recovery.

If adopted, the recommended fees will support processing these applications and help achieve compliant sidewalk vending in the City.

Code Compliance Efforts and Education

As the City Council is aware, a successful program is achieved when an appropriate enforcement strategy is undertaken to verify and compel compliance with adopted rules and standards. To achieve a successful sidewalk vendor program, staff will be undertaking the following steps to implement and enforce the rules for sidewalk vending reflected in the ordinance:

Outreach and Education – Staff will conduct this phase in English and Spanish. Staff will be creating a webpage and posting notices at various physical locations and electronically about the permit requirements and standards for sidewalk vending. Staff will also be conducting educational outreach to outdoor vendors and businesses in person, including during the evening and nighttime hours on Fridays and Saturdays. Staff will conduct a training workshop for outdoor vendors on the permit process, including the need for permits from other agencies, standards for sidewalk vending, explain what will be needed and how to complete the permit application, and answer questions. Staff is also working on having the Santa Clara County Health Department present at the outreach and education workshop so possible vendors can learn first-hand about the permit requirements of this agency. The efforts in this outreach and

education phase are anticipated to take place between September 18 and the first week of October.

Enforcement – After three weeks of educational outreach, staff will begin conducting active enforcement during the first weekend of October. This enforcement effort will be conducted Citywide. Code Enforcement staff will initially be supported by the Police Department and the Fire Prevention team as needed. At the first encounter with a vendor operating outside the permit requirements and standards, staff will attempt to explain how the vendor can bring their activity into compliance. If these efforts are not successful, staff can begin issuing citations to compel compliance or, in the most extreme situations, confiscate the vending device and materials. This would be the step of last resort, and staff is hopeful that vendors will understand that compliance with the rules is the preferred alternative.

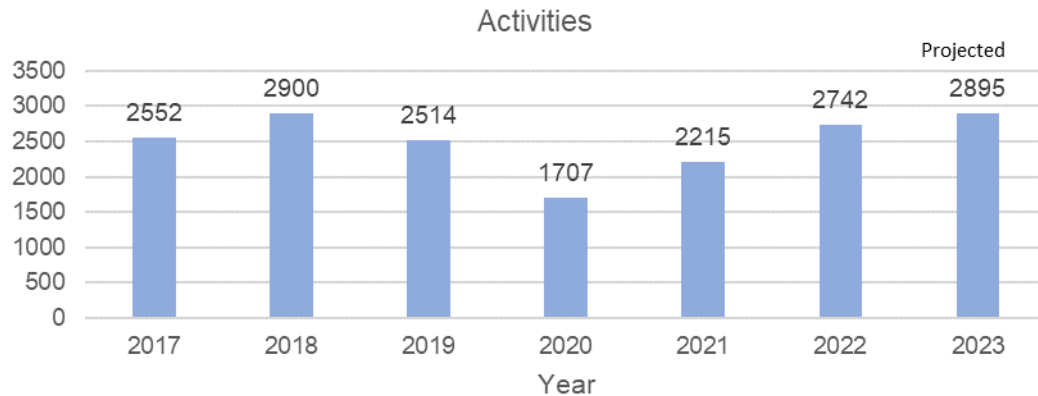
As noted earlier, 100% cost recovery supports the City Council's strategic priority to be fiscally resilient and sustainable, and the proposed fee is in line with this strategic priority. Staff anticipates that the initial applications that are submitted will take more time than the estimate used to support the fees. As it acquaints itself with the review of these applications, staff expects that the processing time will be in line with projections. Staff believes that the outreach and education effort will be the most effective way to achieve compliance with the sidewalk vending ordinance, and given the standards that this ordinance sets in place, result in safe and accessible sidewalks, paths, and parks across the City.

Code Enforcement Activity and Capacity

Prior to the COVID-19 pandemic, the City had 3.25 FTE in the code enforcement function. There were two (2) full-time Code Enforcement Officers, plus two (2) part-time Code Enforcement Officers, each working 25 hours a week, mostly on evening and weekend enforcement. After the part-time positions were defunded during the pandemic, the City has had 2.0 FTE in the code enforcement function, both reporting to the Building Official.

Code enforcement activities have been increasing since 2020 and are returning to pre-pandemic levels as people resume normal activities. Code enforcement receives a wide range of concerns from the community, including building or substandard housing complaints, blight, weeds, garbage-related complaints, unhoused encampment concerns, multifamily housing complaints, recreational vehicle or trailer-related complaints, spill, stormwater, public way encroachment concerns, and various municipal code violations.

Measuring customer interaction as activities, which would include contact/phone log entries, meetings, and inspections, the following chart shows the activity trend for the past seven years.



In the past year, the complexity of the code enforcement cases, and the necessity of cross-departmental collaboration, have been on the rise. For example, after staff inspected the Travel Park Circle area in early 2023, staff opened six cases as different parcels and property owners were involved. Staff also coordinated with the Police Department in these cases. Each case has different violations, and each violation has different corrective actions and timeframes. The case history is extensive for each case, including contact/phone log entries, research, site visits, notices, and follow-up letters.

Another example of increasing complexity is new ordinances and the intricacy associated with them that has necessitated more staff expertise. For the new ordinance prohibiting smoking at multifamily housing and public events, code enforcement staff has addressed numerous complaints and inquiries from one source, including responding to approximately 50 phone calls and e-mails, as well as conducting multiple site visits and in-person meetings. Staff has held many discussions with the Community Development management team to analyze the ordinance and situation, exploring possible pathways to resolution.

Recently adopted, the Sidewalk Vending ordinance has involved and detailed requirements and standards. To fully implement and facilitate this complex program, and to address the increasing complexity and activity level as noted above, staff recommends adding an advanced level code enforcement position to expand the expertise and capacity of the code enforcement function.

Code enforcement activities involve many procedural requirements. For the code enforcement function in a city, there is typically a supervisor or a lead staff member who can assist staff in setting priorities and in ensuring consistent procedures among staff. A senior staff member can also assist less experienced staff through complex cases.

Supervising Code Enforcement Officer Position

During the City Council meetings in developing the Sidewalk Vending ordinance these past few months, Council indicated to staff its priority on enhanced enforcement efforts. To achieve this Council priority, after analyzing current code enforcement activities and capacity, staff recommends adding a Supervising Code Enforcement Officer position. This position will prioritize code enforcement activities, cases, and ordinances to

implement, and focus on complicated, often cross-departmental cases with Police, Fire, and/or Public Works Departments.

The Supervising Code Enforcement Officer will handle the most complex and sensitive investigations and cases; organize, supervise, and prioritize code enforcement activities; coordinate staff training; provide technical expertise on difficult incidents; assist with the development and implementation of policies and procedures to ensure timely and accurate completion of assignments; supervise the preparation of materials and evidence for administrative appeal hearings; and coordinate with other departments or divisions on compliance activities. After joining the Code Enforcement team, the Supervising Code Enforcement Officer will be able to address and assist with the accumulation and backlog of cases, as well as elevate areas that are currently necessitated to be lower priority, such as signages, offsite advertisement, abandoned newspaper racks, shopping carts, etc.

Staff believes this resource level of one (1) Supervising Code Enforcement Officer and two (2) Code Enforcement Officers provides the basic level for reactive, complaint-driven enforcement efforts. Most jurisdictions operate on a reactive model of code enforcement, and the function is typically funded by the General Fund as it serves the entire community. Staff's proposed resource level will bring the City close to the pre-pandemic level, which had two full-time and two part-time Code Enforcement Officers. The proposed resource level will expand the proficiency and capability of the code enforcement function with a supervisor position and will resolve the difficulty with filling part-time positions.

Revenues and Expenditures

Staff anticipates revenues being generated during the first year of the sidewalk vending program. These revenues include the anticipated submittal of approximately fifteen (15) stationary food sidewalk vendor permits at various locations around the City and approximately forty (40) applications for the seasonal stationary sidewalk vendors that sell items during holidays. The projected revenue of \$47,575 is derived from fifty-five (55) applications at the proposed \$865 permit application fee for each application. Ongoing revenue derived from an annual renewal fee of \$204 each for fifty-five (55) applications is estimated at \$11,220 per year. There may be new applications each year as well.

The cost to add one Supervising Code Enforcement Officer position is estimated to be approximately \$150,000 annually. Once approved, staff will work on establishing a new job description and a final salary range for the classification of Supervising Code Enforcement Officer and will submit it to the Personnel Commission for review and approval.

The cost associated with adding a Supervising Code Enforcement Officer position will be paid from the General Fund. Any short-term salary savings from vacant General Fund positions in the Community Development Department can offset some of the initial expense. However, since the savings are temporary, the ongoing cost of adding the

Supervising Code Enforcement Officer position will be about \$150,000 annually. The cost will be absorbed within the existing FY 24 and FY 25 budgetary appropriations so no budget amendment is needed at this time. Future years' budgetary impacts will be included in the next budget cycle.

ALTERNATIVES

The City Council could direct staff to adjust the fee to less than full cost recovery. This is not recommended as it is the Council's strategic priority to be fiscally resilient and sustainable. As such, adopting the fee as proposed will ensure 100% cost recovery.

FISCAL IMPACT/FUNDING SOURCE

Aside from developing the ordinance and taking it through the review and approval process, establishing a regulatory program for sidewalk vending does incur additional costs for the City. Expenditures for developing the program include both personnel and materials costs. These are one-time expenditures to develop the program and are not reflected in the permit application fee applicants will pay to process their applications.

Revenues generated by the proposed sidewalk vending permit application fee, estimated at \$47,575 from fifty-five (55) applications at the proposed \$865 permit application fee, are expected to recover the costs incurred by the City in processing these applications.

The ongoing fiscal impact to the General Fund of adding a Supervising Code Enforcement Officer position is estimated to be approximately \$150,000 annually. The cost will be absorbed within the existing FY 24 and FY 25 budgetary appropriations, so no budget amendment is needed at this time. Future years' budgetary impacts will be included in the next budget cycle.

PUBLIC OUTREACH

Staff, as part of its outreach and education effort, will be providing information on the permit application, procedures, and fees for sidewalk vending.

NEXT STEPS

Staff is completing the webpage creation with applications and handouts that will support the sidewalk vending permitting process and is beginning educational outreach efforts to the community.

Attachments:

1. Draft Resolution Establishing a Sidewalk Vending Permit Application and Annual Renewal Fee
2. Draft Resolution for Position Control List

RESOLUTION 2023-XX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY ESTABLISHING A PERMIT APPLICATION AND ANNUAL RENEWAL FEE FOR SIDEWALK VENDING**

WHEREAS, State law allows cities to charge fees for services rendered by various Departments to individuals or groups so long as the amount of those fees and charges do not exceed the reasonable cost required to provide the service for which the fees and charges are levied; and

WHEREAS, Gilroy City Code authorizes the establishment of such fees and charges and their cost recovery; and

WHEREAS, Staff has conducted an evaluation of the steps taken in the processing of a sidewalk vending permit application and annual renewal fee and the amount of time needed for each step, and the associated fully burdened rate of the staff member processing these applications; and

WHEREAS, Section 7.4 of the Gilroy City Code provides that all fees and charges set forth shall take effect upon a duly passed resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED THAT the fee for a sidewalk vending permit application is \$865 and the annual sidewalk vending permit renewal fee is \$204, and these may be amended from time to time as appropriate so that the fees reflect increases in the Consumer Price Index for the San Francisco-Oakland-San Jose All Urban Consumers area.

PASSED AND ADOPTED by the City Council of the City of Gilroy at a regular meeting duly held on the 18th day of September 2023 by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk

RESOLUTION NO. 2023-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GILROY ADOPTING THE AUTHORIZED POSITION
CONTROL LIST FOR THE CITY OF GILROY FOR FISCAL
YEARS 2023-2024 AND 2024-2025**

WHEREAS, the business operations of the City of Gilroy are conducted by hired professional staff; and

WHEREAS, the City of Gilroy is committed to delivering services to our residents; and

WHEREAS, the delivery of services is effectuated by providing adequate and appropriate staffing levels to carry out the business of the City.

NOW, THEREFORE, BE IT RESOLVED that the number and classifications of both regular and limited-term full-time positions in which persons may be employed by the City of Gilroy during Fiscal Years 2023-2024 and 2024-2025 are hereby amended and shall be as set forth in the attached position control list, incorporated herein by reference.

BE IT FURTHER RESOLVED that a change in the position control list shall only be accomplished by resolution of the City Council of the City of Gilroy.

PASSED AND ADOPTED at a Regular Meeting of the City Council this 18th day of September 2023 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Marie Blankley, Mayor

ATTEST:

Thai Nam Pham, City Clerk

POSITION CONTROL LIST

Below is the Table of adopted full-time positions by Department for FY24 and FY25.

DEPARTMENT	Amended FY22	Amended FY23	Amended FY24	Amended FY25
ADMINISTRATION	14	16	15	15
Assistant to the City Administrator	0	1	1	1
City Administrator	1	1	1	1
City Clerk	1	1	1	1
Community Coordinator	1	1	1	1
Communication and Engagement Manager	1	1	1	1
Community Engagement Coordinator	0	0	1	1
Community Resilience Coordinator	0	1	1	1
Deputy City Clerk	1	1	1	1
Economic Development Manager	1	1	1	1
Emergency Services & Volunteer Coordinator	1	1	1	1
HCD Technician	1	1	0	0
Management Analyst	0	1	1	1
Office Assistant VII	0	0	1	1
Program Administrator	1	1	0	0
Recreation Coordinator	2	1	1	1
Recreation Manager	1	1	1	1
Recreation Supervisor	0	1	1	1
Senior Management Analyst	2	1	0	0
ADMINISTRATIVE SERVICES	14	14	14	14
Administrative Services & Human Resources				
Director/Risk Manager	1	1	1	1
Equipment Mechanic	2	2	2	2
Facilities Maintenance Specialist	3	3	3	3
Facilities Superintendent	1	1	1	1
Fleet Superintendent	1	1	1	1
Human Resources Analyst	1	1	1	1
Human Resources Technician II	1	1	1	1
Management Assistant	1	1	1	1
Senior Custodian	1	1	1	1
Senior Equipment Mechanic	1	1	1	1
Senior Human Resources Analyst	1	1	1	1
COMMUNITY DEVELOPMENT	23	23	26	26
Building Inspector VII	3	3	3	3
Building Official	1	1	1	1
Code Enforcement Officer	2	2	2	2
Community Development Director	1	1	1	1
Customer Service Manager	1	1	1	1
Deputy Fire Marshal/Haz Mat Supervisor	1	1	1	1
GIS Coordinator/Planner	1	0	0	0
Hazardous Materials Inspector VII	3	3	3	3
HCD Technician	0	0	1	1
Housing and Community Services Manager	0	0	1	1
Management Analyst	1	1	1	1
Management Assistant	1	1	1	1
Office Assistant VII	1	1	1	1
Permit Technician	2	3	3	3
Planner VII	2	2	2	2
Planning Technician	1	1	1	1
Supervising Code Enforcement Officer	0	0	1	1
Senior Planner	2	2	2	2
FINANCE	17	20	21	21
Accountant VII	1	1	2	2
Accounting Assistant VII	6	7	7	7
Accounting Technician - Payroll	1	1	1	1
Accounting Technician VIII	1	0	0	0
Finance Director	1	1	1	1
Finance Manager	2	2	2	2
Financial Analyst			1	1

Resolution No. 2023-XX
Position Control List
City Council Regular Meeting | September 18, 2023
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Geographic Information Systems Analyst	0	1	1	1
IT Applications Analyst	1	1	1	1
IT Manager	1	1	1	1
IT Technician I/II	1	1	1	1
Network Administrator	0	1	1	1
Public Safety Systems Administrator	1	1	1	1
Supervising Accounting Technician	0	1	1	1
FIRE	44	44	44	46
Fire Administration Technician	1	1	1	1
Fire Captain	10	10	10	10
Fire Chief	1	1	1	1
Fire Division Chief	3	3	3	3
Fire Engineer	9	9	9	9
Firefighter VII	19	19	19	21
Management Analyst	1	1	1	1
POLICE	101	102	104	107
Community Engagement Coordinator	0	0	1	1
Community Services Officer	4	4	4	4
Police Crime Analyst	1	1	1	1
Detention Services Officer	3	4	4	4
Management Analyst	1	1	1	1
Management Assistant	1	1	1	1
Multi-Service Officer	1	1	1	1
Office Assistant VII	1	1	1	1
Police Captain	3	3	3	3
Police Chief	1	1	1	1
Police Corporal	8	8	8	8
Police Officer	44	44	44	46
Police Records Technician VII	6	6	6	6
Police Sergeant	11	11	11	11
Property and Evidence Technician	1	1	1	1
Public Safety Communications Supervisor	1	1	1	1
Public Safety Communicator	12	12	13	14
Police Records Supervisor	1	1	1	1
Youth Task Force Coordinator	1	1	1	1
PUBLIC WORKS	49	49	31	31
City Engineer/Transportation Engineer	1	1	1	1
Deputy Director of Public Works	1	1	1	1
Engineer I/II	5	5	5	5
Engineering Technician/Inspector VII/III	2	2	3	3
Maintenance Worker VII	27	25	10	10
Management Analyst	2	2	2	2
Management Assistant	1	1	1	1
Operations Services Supervisor	3	3	2	2
Program Administrator	0	0	1	1
Public Works Director	1	1	1	1
Senior Civil Engineer	2	2	2	2
Senior Environmental Engineer	1	1	0	0
Senior Maintenance Worker	3	5	2	2
UTILITIES	0	0	27	27
Utilities Director	0	0	1	1
Business Manager	0	0	1	1
Engineer I/II	0	0	2	2
Environmental Engineer	0	0	1	1
Maintenance Worker VII	0	0	15	15
Management Analyst	0	0	1	1
Office Assistant VII	0	0	1	1
Operations Services Supervisor	0	0	1	1
Senior Environmental Engineer	0	0	1	1
Senior Maintenance Worker	0	0	3	3
CITYWIDE FULL-TIME PERSONNEL	262	268	282	287