



AGENDA

REGULAR CITY COUNCIL MEETING
Tuesday, June 20, 2017 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Gabriel Quinto
Councilmember Greg Lyman

Councilmember Paul Fadelli
Councilmember Rochelle Pardue-Okimoto

ROLL CALL

7:00 p.m. CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Mayor Pro Tem Gabriel Quinto.*

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4(A) through 4(H)

A. Approval of Minutes

Approve the following meeting minutes: June 2, 2017 Special City Council Meetings – Closed Sessions and June 2, 2017 Concurrent City Council/El Cerrito Public Financing Authority/Pension Trust Board.

B. Storm Drain Master Plan and Integrated Asset Management Strategy Consultant Services Agreement

Adopt a resolution authorizing the City Manager to execute a professional services agreement with Schaaf & Wheeler Consulting Civil Engineers in an amount not to exceed \$186,074 for preparation of a citywide Storm Drain Master Plan and Integrated Asset Management Strategy and a contingency in an amount not to exceed \$20,000.

C. Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project

Adopt a resolution: 1) Rejecting all bids submitted for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project, City Project No. C3076, Federal Project No. CML-5239(025); and 2) Authorizing City staff to amend project scope, if necessary, and rebid the project.

D. Amendments to the City's Job Classification Plan

Adopt a resolution amending the City's Job Classification Plan to: 1) Re-title and revise the class specification of Fire Secretary to Public Safety Executive Assistant, establish the salary with an initial control point of \$6,411 per month, and abolish the classification of Police Executive Assistant; 2) Re-title and revise the class specification of Information Services Technician to Information Technology Technician; 3) Establish the classification of Information Technology Specialist and establish the salary with an initial control point of \$7,022; and 4) Establish the classification of Network Security Engineer and establish the salary with an initial control point of \$8,834 per month.

E. Agreement with Tyler Technologies for Software as a Service Enterprise Resource Planning System

Adopt a resolution authorizing the City Manager to enter into an agreement with Tyler Technologies to provide Software as a Service (SaaS) for the City's Enterprise Resource Planning (ERP) system in an amount not to exceed \$290,355.

F. Police Dispatch Services

Adopt a resolution authorizing the City Manager or his designee to enter into an agreement with the City of Richmond for the provision of police dispatch services from July 1, 2017 to June 30, 2022.

G. Agreement with Mark 43, Inc. to provide Computer Aided Dispatch and Records Management Software

Adopt a resolution authorizing the City Manager to enter into an agreement with Mark 43, Inc. to provide computer aided dispatch and records management software in an amount not exceed \$46,170 annually, from June 30, 2017 through June 30, 2022.

H. Support for the Paris Climate Agreement and Joining the Mayors National Climate Action Agenda

Adopt a resolution authorizing the Mayor to sign on to support the Paris Climate Protection Agreement through the Mayors National Climate Action Agenda and to support, in consultation with the City Manager or his designee, other similar initiatives that are consistent with city policy.

5. PRESENTATIONS

A. Annual Sundar Shadi Garden Contest Awards Presentation – Acknowledgement of contest winners and presentation of awards Anna Frankfurt, President, El Cerrito Garden Club.

B. Contra Costa County Animal Services Department Update – Presentation by Steve Burdo, Community and Media Relations Manager, Contra Costa County Animal Services Department.

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

A. One Year Extension and Termination of the Open House Senior Center Lease

Receive community comments regarding the recent action of the West Contra Costa Unified School District (WCCUSD) to end the City's use of the Open House Senior Center, located at 6500 Stockton Avenue on the Fairmont Elementary School Campus, by June 30, 2018 and provide staff with direction on the proposed one year lease extension and lease termination.

B. Tax and Revenue Anticipation Notes – FY 2017-18 Short Term Cash Flow Financing

Adopt a resolution approving the borrowing of funds for Fiscal Year 2017-18 and the issuance and sale of 2017-18 tax and revenue anticipation notes ("TRAN"). Incorporated into the resolution is the authorization of the City Manager to execute an agreement to sell the TRAN in an amount not-to-exceed \$6,000,000 and authorize staff to enter into agreements with NHA Advisors, LLC, as the City's Municipal Advisor and Jones Hall, as bond counsel, to prepare and execute appropriate legal documents related to said financing.

C. Update of Management and Confidential Employee Resolution

Adopt a resolution modifying salaries, benefits, and conditions of employment for Management and Confidential Employees.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, July 18, 2017 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/streamingmedia>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL EL CERRITO PUBLIC FINANCING AUTHORITY EL CERRITO PENSION TRUST BOARD

MINUTES

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, June 6, 2017 – 6:30 p.m.

Hillside Conference Room

CONCURRENT CITY COUNCIL/PUBLIC FINANCING AUTHORITY/EMPLOYEE PENSION BOARD MEETING

Tuesday, June 6, 2017 – 7:00 p.m.

City Council Chambers

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

**Tuesday, June 6, 2017 – Immediately following the Concurrent City Council / Public
Financing Authority / Employee Pension Board Meeting**

Hillside Conference Room

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Gabriel Quinto

Councilmember Greg Lyman

Councilmember Paul Fadelli

Councilmember Rochelle Pardue-Okimoto

6:30 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Quinto and Mayor Abelson all present.

CONVENE SPECIAL CITY COUNCIL CLOSED SESSION

Mayor Abelson convened the special City Council meeting at 6:30 p.m.

ORAL COMMUNICATIONS FROM THE PUBLIC – No speakers.

ANOUNCEMENT OF CLOSED SESSION

Conference with Labor Negotiators (*Pursuant to Government Code Section 54957.6*)

Agency Designated Representatives: Scott Hanin, City Manager, Karen Pinkos, Assistant City Manager, Kristen Cunningham, Senior Human Resources Analyst, Glenn Berkheimer, Labor Negotiator and Sky Woodruff, City Attorney

Employee Organizations: Service Employees International Union Local 1021
International Association of Fire Fighters Local 1230

El Cerrito Police Employees Association

El Cerrito Public Safety Management

Unrepresented Employees

RECESS INTO CLOSED SESSION at 6:31 p.m.

REPORT OUT OF CLOSED SESSION

Mayor Abelson announced that the City Council provided direction to staff.

ADJOURNED SPECIAL CITY COUNCIL MEETING at 7:05 p.m.

7:00 p.m. ROLL CALL

Councilmembers Fadelli, Lyman, Pardue-Okimoto, Quinto and Mayor Abelson all present.

CONVENE REGULAR CITY COUNCIL MEETING

Mayor Abelson convened the regular City Council meeting at 7:15 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Councilmember Rochelle Pardue-Okimoto.

2. COUNCIL / STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

Councilmember Pardue-Okimoto invited all to attend the City's annual Loving Day Celebration on June 11.

Mayor Pro Tem Quinto attended the Asian Pacific American Congressional Study Leadership training in Washington DC in May. He said it was an honor to meet the future leaders, many were from the Asian American Community and he looks forward to seeing them elected. Mayor Pro Tem Quinto also attended the Contra Costa Mayors' Conference in Richmond on behalf of Mayor Abelson. Prior to the Mayors' Conference he took a tour of the SS Red Oak Liberty Ship and encouraged the public to visit. He also attended an Association of Bay Area Governments/Metropolitan Transportation Commission merger meeting. The merger discussions are going smoothly and a budget has been approved.

Councilmember Fadelli thanked everyone who made the Hillside Festival a successful event and also thanked staff for its affordable housing outreach effort.

Councilmember Lyman gave reminded all that Tuesday, August 1, 2017 is the City's annual National Night Out event and encouraged all to attend.

Mayor Abelson attended the recent graduation of the Information Technology Academy of the West Contra Costa Unified School District and was excited to hear most graduates had college and/or university plans. Two weeks ago, she visited Sacramento as a member of the Contra Costa Transportation Advisory Committee (CCTA) and received an award for project of the year for the I-80 Integrated Corridor Mobility project. Mayor Abelson also attended an Americans with Disabilities advisory group meeting in El Cerrito on May 18. On May 17, she attended an event at the East Bay Municipal Utility District (EBMUD) regarding the drought and thinks that we should assume that the drought is long term and plan gardens and landscaping and household needs accordingly. Last week, Mayor Abelson attended an interesting presentation at Peres Elementary School in Richmond regarding the

Conscious Kitchen. There is a combined project going on at Madera school in El Cerrito and Peres Elementary that brings organic food to the meal programs at both schools. It is very exciting. Mayor Abelson said it would be great to see the program spread throughout the entire school district.

Mayor Abelson also reported that the City Council had just met in closed session and provided direction to staff but no action was taken.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Gary Hill, El Cerrito, asked that the City Council support and accept bike elements that Mr. Hill built with the community for bike training. City staff has asked Mr. Hill to remove the wooden structures and Mr. Hill would like them to stay and be used for a future bike park.

Cortis Cooper spoke in support of a bike park and the bike elements in the Hillside area with nine youths at his side. *Youths also urged support for the bike park.*

Jayden Balamaceda, El Cerrito, spoke in support of bike park.

Rebecca Milliken spoke in support of the bike park noting that it is a safe place for kids and also thanked Mayor Abelson for her support of the Paris Climate Accord.

Max Mankita, El Cerrito, spoke in support of the bike park.

Tobias Milliken Mankita, spoke in support of the bike park.

Finn Kaste, El Cerrito, spoke in support of the bike park.

Al Miller, El Cerrito, stated that is wonderful to see so many new young people telling the City Council what it can do for them. Mr. Miller also reported on the 2016-2017 NAACP Scholarship grants. The Eastshore Relay for Life is July 22 and 23 in Cerrito Vista Park his year. Mr. Miller urged the Council to continue to support the event.

Peter Loubal, El Cerrito, expressed concerns about the Senior Center and the Library. Mr. Loubal suggested that the Richmond Swim Center at Kennedy High School is two blocks away from El Cerrito and is underutilized. It is operated by the School District and may be closed down due to Richmond's financial crises. If El Cerrito is forced to vacate its Senior Center, this Richmond site could be used for a temporary Senior Center.

Howdy Goudey, El Cerrito, stated that the City Council received a report regarding a vacant residential property in the city and urged the Council to share the report with the public. Mr. Goudey said he reviewed the home inspection report and the repairs do not seem to be too difficult to make the property ready for occupancy. It doesn't seem right to leave a house vacant when housing is so tight in the area. The Council has not yet acted to mitigate the displacement caused by approving the El Dorado Townhouse development.

Robin Mitchell, El Cerrito, requested a meeting with the City Council, staff and concerned citizens to develop a housing solution for a former Audiss Trailer Park resident who is homeless as a result of the approval of the El Dorado Townhomes.

Seung Choo, El Cerrito, urged the City Council to keep the Senior Center open or find an alternative site and described some of the most helpful and popular programs offered at the Senior Center.

Debbie Marshall, El Cerrito, spoke in support of the expansion of Fairmont School and finding a solution to the growth of the city.

Amalia Cunningham, El Cerrito, spoke about Fairmont School's need to grow, noted that there are many new housing units in the city that have been approved, and urged the City to take the one-year lease.

Jan Schilling, El Cerrito, spoke in support of serving Senior Citizens well. The current location is an ideal site to serve senior residents. There are many activities that the Senior Center offers and she would like the Council to consider keeping it at its current location.

Art Machado, El Cerrito, representing the Tottenham Hots, thanked the City Council for their support of the Gilman Fields Project, particularly ensuring residents' access to those fields.

Suzanne Balmaceda, El Cerrito, representing Safe Gilman Turf, thanked the City Council for their support and for putting safety and health first at the Gilman Fields.

Drew Mc Garajhan, El Cerrito, spoke in support of the bike park.

Sebastian Alvarez, Richmond, spoke in support of the bike elements that are used for training and developing skills at the bike park.

Jeanine Strickland, Berkeley, spoke in support of an El Cerrito bike park because it is close to home, has health benefits, enhances social interactions and self-esteem.

David Montes, El Cerrito, urged the City Council to take a one year lease for the 6500 Stockton property and find a new location for the Senior Center.

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4(A) through 4(I)

Moved, seconded (Lyman/Quinto) and carried unanimously to approve Consent Calendar Item Nos. 4(A) through 4(I) as indicated below.

A. Approval of Minutes

Approve the following City Council meeting minutes: 1) May 2, 2016 Regular City Council; and 2) May 16, 2017 Special City Council, May 16, 2017 Special City Council Worksession, and May 16, 2017 Regular City Council.

Action: Approved minutes.

B. Update of Accessory Dwelling Unit Regulations

Adopt Ordinance No. 2017–04, an ordinance amending various sections of Titles 8 and 19 of the El Cerrito Municipal Code to update the City's Accessory Dwelling Unit Regulations. *Exempt from CEQA. Public Hearing and first reading, with amendments, May 16, 2017. Vote: Ayes – Councilmembers Fadelli, Lyman, Pardue-Okimoto and Mayor Abelson; Noes – None; Absent – Mayor Pro Tem Quinto.*

Action: Adopted Ordinance No. 2017-04.

C. LGBT Pride Month Proclamation

Approve a proclamation declaring the month of June as Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Pride month in the City of El Cerrito and inviting everyone to reflect on ways we all can live and work together with a commitment to mutual respect and understanding, and further, recognizing Pride Month by flying the rainbow flag at City Hall during the month of June.

Action: Approved proclamation.

D. Loving Day Proclamation

Approve a proclamation declaring June 12, 2017 as Loving Day in the City of El Cerrito and inviting all residents to recognize this day as a celebration of multiculturalism, and to reflect on the Loving family and all of the pioneers who have and will continue to fight for the civil right to love.

Action: Approved proclamation.

E. Household Hazardous Waste Services

Adopt a resolution authorizing the City Manager to execute a three-way agreement with the West Contra Costa Integrated Waste Management Authority (RecycleMore) and West County Resource Recovery, Incorporated (WCRR) for the provision of Household Hazardous Waste collection services at the El Cerrito Recycling + Environmental Resource Center. *Neither new information nor changed circumstances necessitate further review of the proposed HHW collection activities beyond what was already considered in the Initial Study/Negative Declaration.*

Action: Adopted Resolution No. 2017-39.

F. Compliance with State Surplus Land Act for Metropolitan Transportation Commission, One Bay Area Grant, Cycle 2 Program

Adopt a resolution affirming compliance with the State Surplus Land Act to be eligible for the One Bay Area Grant, Cycle 2 Program available through the Metropolitan Transportation Commission. *Exempt from CEQA.*

Action: Adopted Resolution No. 2017-40.

G. Support Senate Bill 231 Local Government: Fees and Charges

Approve a recommendation authorizing Mayor Abelson to sign and send letters to the authors, and other appropriate legislators and legislative bodies, in support of Senate Bill 231 (Hertzberg) Local Government: Fees and Charges, which allows cities to fund stormwater projects in the same manner as other public works utilities, such as water or sanitary sewer projects, under Proposition 218.

Action: Approved recommendation.

H. Financial Contribution to the Gilman Sports Complex Turf Replacement Project

Adopt a resolution appropriating \$39,404 for the Gilman Sports Complex Turf Replacement Project as El Cerrito's share of the overall increased replacement budget recommended by the City of Berkeley.

Action: Adopted Resolution No. 2017-41.

I. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation appointing Paul D. Hernandez to the Economic Development Committee, effective June 7, 2017.

Action: Approved recommendation.

5. PRESENTATIONS – None

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

CONCURRENT CITY COUNCIL / PENSION TRUST BOARD / PUBLIC FINANCING AUTHORITY ITEM

A. Approval of the City's Fiscal Year 2017-18 Budget Update and Spending Authority by Fund for the City, Employee Pension Board and Public Financing Authority and Approval of the Fiscal Year 2017-18 Annual Gann Appropriation Limit

1. Staff requests that the City Council adopt a resolution authorizing Fiscal Year 2017-18 spending authority by fund for the City of El Cerrito;
2. Staff requests that the Public Financing Authority Board adopt a resolution authorizing Fiscal Year 2017-18 spending authority by fund for the El Cerrito Public Financing Authority;
3. Staff requests that the El Cerrito Employee Pension Board adopt a resolution authorizing Fiscal Year 2017-18 spending authority by fund for the El Cerrito Employee Pension Board.
4. Staff requests that the City Council adopt a resolution approving the calculation and establishing the FY 2017-18 annual Gann Appropriation Limit.

Presenter: Mark Rasiah, Finance Director.

Speakers: Michael Fischer, El Cerrito representative on the Contra Costa Library Commission, thanked the City Council for funding additional library services and noted benefits that additional hours provide in terms of recruitment and retention of library staff.

Al Miller, El Cerrito, thanked the City Council for funding additional library services and urged the Council to approve the budget.

Gary Pokorny, El Cerrito Library Foundation, thanked the City Council for funding additional library hours and noted the benefits to youth, families and seniors. Mr. Pokorny also pledged the Library Foundation's commitment to help with the Library and Senior Center.

Actions:

CITY COUNCIL ITEMS

- 1) Moved, seconded (Lyman/Quinto) and carried unanimously to adopt Resolution No. 2017-42 authorizing Fiscal Year 2017-18 spending authority by fund for the City of El Cerrito.
- 2) Moved, seconded (Pardue-Okimoto/Lyman) and carried unanimously to adopt Resolution No. 2017-43 approving the calculation and establishing the FY 2017-18 annual Gann Appropriation Limit.

PUBLIC FINANCING AUTHORITY ITEM

- 3) Moved, seconded (Lyman/Fadelli) and carried unanimously to adopt Public Financing Authority Resolution No. 2017-01 authorizing Fiscal Year 2017-18 spending authority by fund for the El Cerrito Public Financing Authority.

PENSION TRUST BOARD ITEM

4) Moved, seconded (Pardue-Okimoto/Quinto) and carried unanimously to adopt Pension Trust Board Resolution No. 2017-1 authorizing Fiscal Year 2017-18 spending authority by fund for the El Cerrito Employee Pension Board.

CITY COUNCIL ITEM

B. City Council Wall of Fame Nomination Subcommittee Recommendation

Approve the City Council Wall of Fame Nomination Subcommittee's recommendation to induct Mae Ritz and Theresa Parella into the El Cerrito Wall of Fame and direct the City Clerk to return to the City Council with a resolution confirming the appointment and schedule the formal induction ceremony in either July or August 2017 pending availability of all parties involved.

Presenters: Councilmember Pardue-Okimoto and Mayor Pro Tem Quinto.

Speaker: Howdy Goudey, El Cerrito, spoke in support of Theresa Parella.

Actions: Moved, seconded (Lyman/Fadelli) and carried unanimously to approve the Wall of Fame Nomination Subcommittee's recommendation and schedule the formal induction of Ms. Ritz and Ms. Parella into the El Cerrito Wall of Fame.

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

Councilmember Pardue-Okimoto reported that the Gilman Fields shockpad and cork filling for the soccer fields was approved unanimously by the Joint Powers Authority board members at its last meeting.

Councilmember Fadelli attended the ABAG meeting and Contra Costa Mayors Conference. The joint meeting of Arts and Culture Commission and Economic Development Committee was postponed and will be rescheduled.

9. ADJOURNED SPECIAL CONCURRENT CITY COUNCIL / PUBLIC FINANCING AUTHORITY / EMPLOYEE PENSION TRUST BOARD MEETING at 9:13 p.m. Moved, seconded (Lyman/Pardue-Okimoto) and carried unanimously to adjourn the meeting in memory of Doug Maples, Richmond Police Officer and father of Lance Maples and Sean Maples.

10. CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Mayor Abelson convened the special City Council meeting at 9:16 p.m.

ORAL COMMUNICATIONS FROM THE PUBLIC

ANOUNCEMENT OF CLOSED SESSION

Conference with Real Property Negotiators (*Pursuant to Government Code Section 54956.8*)

Property: 6500 Stockton Avenue, El Cerrito, CA 94530

Agency Negotiators: Scott Hanin, City Manager
Karen Pinkos, Assistant City Manager

Sky Woodruff, City Attorney
Negotiating Parties: West Contra Costa Unified School District
Under Negotiation: Price and Terms of Payment

RECESSED INTO CLOSED SESSION at 9:18 p.m.

REPORT OUT OF CLOSED SESSION

Mayor Abelson announced that the City Council provided direction to staff.

ADJOURNED SPECIAL CITY COUNCIL MEETING - CLOSED SESSION at 10:15 p.m.

SUPPLEMENTAL REPORTS and COMMUNICATIONS

Item No. 4(B) Update of Accessory Dwelling Unit Regulations –

1. Ordinance containing correction of clerical errors in Section 3 – *Submitted by Margaret Kavanaugh-Lynch.*

Item No. 7(A) Approval of the City's Fiscal Year 2017-18 Budget Update and Spending Authority by Fund for the City, Employee Pension Board and Public Financing Authority and Approval of the Fiscal Year 2017-18 Annual Gann Appropriation Limit

2. Powerpoint presentation – *Submitted by Mark Rasiah, Finance Director.*
3. Comments regarding additional library hours – *Submitted by Al Miller, El Cerrito.*
4. Comments regarding additional library hours – *Submitted by Michael Fischer, El Cerrito representative on the Contra Costa Library Commission.*

Other:

5. NAACP Scholarships – *Submitted by Al Miller, El Cerrito.*
6. Petition signed by 442 people urging formal support for the concept of an El Cerrito Bike Park – *Submitted by Gary Hill, El Cerrito.*
7. Volunteer built bicycle skills park – *Submitted by Gary Hill, El Cerrito.*



AGENDA BILL

Agenda Item No. 4(B)

Date: June 20, 2017
To: El Cerrito City Council
From: Melissa Tigbao, Engineering Manager/Senior Engineer
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Storm Drain Master Plan and Integrated Asset Management Strategy -
Consultant Services Agreement

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute a professional services agreement with Schaaf & Wheeler Consulting Civil Engineers for an amount not to exceed \$186,074 for preparation of a citywide Storm Drain Master Plan and Integrated Asset Management Strategy plus a contingency amount not to exceed \$20,000.

BACKGROUND

In 1992, City Council adopted a Storm Drain Master Plan that identified deficiencies in the City's storm drain system, provided drainage improvement goals, and recommended a priority list of improvements. At that time, City Council also directed staff to conduct further research concerning the feasibility of establishing a storm drain improvement and maintenance fee to finance the first phase of the prioritized list of improvements identified in the Plan. Subsequently, in March 1993, the voters of the City of El Cerrito approved issuance of revenue bonds to finance the first phase of the reconstruction of the City's storm drain system (Measure J). The voters also approved the repayment of those bonds through the imposition of an annual storm drain fee on property within the City. The storm drain fees and charges may be used exclusively for acquisition, constructing, reconstruction, maintenance, and operation of City storm drain facilities, including the repayment of principal and interest on bonds issued to finance the construction or reconstruction of storm drain facilities.

In the late 1990's and early 2000s, a major investment to repair, and in some cases replace, storm drain facilities was completed. Although a significant amount of work was done, deficient pipe segments still exist around the City and are in need of rehabilitation. The City made its final debt payment related to the 1993 bonds during Fiscal Year 2013-14, and since that time has been making emergency and minor repairs to the storm drain system as well as continuing with various storm drain maintenance and operations efforts including those related to meeting Clean Water requirements. To support a more comprehensive effort for rehabilitation and identify capital improvements to the City's storm drain system, the City's Storm Drain Master Plan needs to be updated.

It is intended that an updated Master Plan revisit the goals, strategies, and evaluation of the storm drain system first undertaken in the 1990's, and related strategies identified in

the City's Urban Greening Plan, Trash Management Plan, and recently approved Green Infrastructure Framework. The updated Master Plan and Integrated Asset Management Strategy is intended to serve as a long-range planning document and system that provides a framework for understanding the storm drain assets the City owns, risks it assumes, and financial investments it requires to repair, rehabilitate and improve these assets.

ANALYSIS

City staff released the Request for Proposals (RFP) for the El Cerrito Storm Drain Master Plan and Integrated Asset Management Strategy on April 21, 2017. The availability of the RFP was posted on the City's website and the RFP was emailed to over 150 engineering and asset management related firms. The City received five statements of interest and eventually four proposals from consultant teams by the deadline of May 11, 2017. A consultant selection panel consisting of City staff reviewed the proposals based on the evaluation criteria listed in the RFP which are listed below:

1. Presentation, completeness, clarity, organization, and conformance to the RFP content and format requirements;
2. Approach to delivering work with demonstrated clear understanding and create approaches to project tasks;
3. Record of experience in strategic and master planning for storm drain facilities;
4. Record of experience in preparing asset management plans, systems, and/or programs;
5. Client experience on similar projects;
6. Qualifications of the firm, project manager and other personnel to be assigned to the Project, including education, experience, and professional expertise in this type of work; and
7. Reasonableness of cost for services.

The selection panel short-listed three consultant teams for interviews. Interviews were conducted on Tuesday, May 23, 2017. The panel developed the final ranking of the consultant teams as follows:

1. Schaaf & Wheeler Consulting Civil Engineers
2. BKF Engineers
3. Water Resources Engineering, Inc.

The Schaaaf & Wheeler team is supported by several specialized consulting firms including V. W. Housen & Associates (engineering firm for asset management), NBS Government Finance Group (funding and financing firm), Kier & Wright Civil Engineers & Surveyors, Inc. (survey and mapping firm), and Presidio Systems Inc. (CCTV inspection). The Schaaf & Wheeler proposal was selected as the best fit by the selection committee because of the level of expertise they have brought to bear on each

topic that the Master Plan will cover. Schaaf & Wheeler itself has more than 25 years of practical experience in the master planning process.

Through review of the City's related planning efforts, field reconnaissance, data collection effort and evaluation, the completed El Cerrito Storm Drain Master Plan and Integrated Management Asset Strategy will consist of:

1. Conditions assessment of storm drain infrastructure, including open channels, creeks, and watershed areas;
2. Integration of Green Infrastructure Plan elements;
3. Framework, functional requirements and specifications for an asset management system that has the ability to support an inventory of both linear and non-linear infrastructure and facilities;
4. Recommended capital improvements projects that include estimated costs and prioritization;
5. Funding evaluation and financial plan for implementation of Plan recommendations; and
6. Final Report and Action Plan.

The timeframe for development of the Master Plan is approximately 12 months and would begin immediately if approved by the City Council. The final Master Plan (or portions of the Master Plan) will be brought to the City Council for consideration and adoption.

STRATEGIC PLAN CONSIDERATIONS

Approval of the professional services agreement with Schaaf & Wheeler to prepare a Storm Drain Master Plan and Integrated Asset Management Strategy is consistent with the following El Cerrito Strategic Plan Goals:

- Goal A – *Deliver exemplary movement services* by increasing productivity and efficiency will help further every goal in El Cerrito's Strategic Plan and several identified strategies utilizing data-driven analysis to ensure appropriate resource allocation;
- Goal B – *Achieve long-term financial sustainability* by developing a financial plan to address ongoing and deferred maintenance of facilities and infrastructure and continue to pursue and support opportunities for new funding, including outside grants
- Goal D – *Develop and rehabilitate public facilities* by developing a plan to address ongoing and deferred maintenance of facilities and infrastructure and continue the facilities assessment to prioritize and strategize investment.

ENVIRONMENTAL CONSIDERATIONS

Some level of environmental review will be required for the adoption of the Master Plan. As development of the Master Plan progresses, City staff anticipates that the appropriate level will be identified and will prepare the appropriate documentation.

FINANCIAL CONSIDERATIONS

Approval of this resolution will authorize the City Manager to enter into an agreement with Schaaf & Wheeler for Storm Drain Master Plan and Integrated Asset Management Strategy services. Funding for this effort is available in the Adopted Fiscal Year 2017-18 Budget and Capital Improvement Program (CIP) in an allocation from the Measure J Storm Drain Fund for the Storm Drain Program.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Storm Drain Master Plan and Integrated Asset Management Request for Proposals
2. Schaaf & Wheeler Work Plan, Timeline and Budget
3. Accompanying Resolution



REQUEST FOR PROPOSALS (RFP)

for

**CITY OF EL CERRITO
STORM DRAIN MASTER PLAN and INTEGRATED ASSET MANAGEMENT STRATEGY**

**CITY OF EL CERRITO
PUBLIC WORKS DEPARTMENT
10890 SAN PABLO AVENUE
El Cerrito, California 94530
(510) 215-4382**

April 20, 2017

Proposals Due: 4:00 PM, May 11, 2017

REQUEST FOR PROPOSALS (RFP)

for

CITY OF EL CERRITO
STORM DRAIN MASTER PLAN and INTEGRATED ASSET MANAGEMENT STRATEGY

CITY OF EL CERRITO
PUBLIC WORKS DEPARTMENT

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1. Creek Inventory
2. DRAFT Green Infrastructure Framework

PROJECT DESCRIPTION

El Cerrito is located in West Contra Costa County approximately two-thirds of a mile east of the San Francisco Bay. The City is generally bordered by the City of Richmond to the west, Wildcat Canyon Regional Park to the east, unincorporated Kensington to the southeast, unincorporated Richmond Heights to the north and City of Albany to the south. The City of El Cerrito is a residential community of approximately 24,000 people and covers an area of approximately 3.7 square miles. The City varies in elevation between 3 feet and 1,007 feet above sea level.

Most of the residential areas of El Cerrito were developed during the late 1940's and 1950's. During that time it was common practice to drain public streets into the nearest natural drainage way rather than constructing a separate drainage system within the street right-of-way as common practice is today. Accordingly, the City's original storm drainage system was not installed in a systematic manner, and many drains were installed on private property without obtaining any type of easements.

In the late 1990s and early 2000s, a major investment to repair, and in some cases replace, storm drain facilities was done. Capital improvements were programmed into multiple phases. Although a significant amount of work was complete, deficient pipe segments still exist around the City and are in need of rehabilitation.

The City of El Cerrito ("City") is seeking proposals from qualified firms ("Consultant") to enter into an Agreement with the City for **Storm Drain Master Plan and Integrated Asset Management Strategy** ("Plan") that achieves the following goals:

- Provides an accurate inventory and assessment of the City's Storm Drain network, including database and GIS elements, to support infrastructure planning; and
- Provides cost estimate and prioritization of capital improvements for the City's Storm Drain network to meet existing deficiencies and future needs including compliance with the most current stormwater permit requirements; and
- Develop a framework and functional requirements to acquire an asset management system to collect and organize asset data for linear and non-linear infrastructure and City facilities and complement future master planning and budgeting efforts; and
- Evaluate existing funding and resources and develop implementation strategy including potential funding scenarios and financial mechanisms for capital improvements.

The Master Plan and Integrated Asset Management Strategy shall serve as a long-range planning document and system that provides a framework for understanding the storm drain assets the City owns, risks it assumes, and financial investments it requires to repair, rehabilitate and improve these assets.

The City currently has several long-range plans related to the City's storm drain network and stormwater management. It is intended that the Master Plan shall build upon, and update as

necessary, rather than replace or replicate these plans. A partial list of these resources is listed in the “Available Resources” section of this RFP. The Plan should incorporate the applicable goals, strategies, and evaluation of Green Infrastructure, and include financing and funding strategies.

PROJECT SCOPE, TASKS AND DELIVERABLES

The Scope of Work will consist of working with City staff and stakeholders to develop a Storm Drain Master Plan and Integrated Asset Management Strategy to be adopted by the City Council. The City intends for the Plan to be a dynamic and useful planning and implementation document. The selected consultant’s proposed Work Plan and Schedule will form the basis for negotiations with the City to devise a final Work Plan and Schedule. Development of the Plan will consist of the general tasks and deliverables listed below.

Interested consultant teams should include further description and detail in their proposed Work Plan and Schedule than what is listed below. The City is seeking an effective, efficient and creative approach to providing these deliverables and meeting the City’s goals, timeline and budget for this project.

- 1) **Project Management:** Effectively manage Plan development in a timely and budget-conscious manner.
- 2) **City Policy and Document Review:** Review plans, policies, projects, and data from existing resources that can be utilized in the Storm Drain Master Plan and Integrated Assent Management Strategy.
- 3) **City Goals, Strategies and Priorities:** Identify and meet with stakeholders to clearly establish Plan goals, strategies and priority criteria and methodology based on adopted Strategic Plan, Urban Greening Plan and other master plan efforts.
- 4) **Data Collection and Analysis:** Locate storm drain infrastructure elements, including pipes, inlets, manholes, open channels, creeks, trash capture devices, easements and watershed areas with GPS and map system on GIS; Survey and assess conditions of storm drain infrastructure (with possible need for televising pipes) and determine capacities of existing storm drain facilities; include identification of isolated flooding locations, and determination of capacity needs or engineered solutions; Potentially update some hydraulic modeling.
- 5) **Policies and Regulations:** In compliance with the Regional Water Quality Control Board stormwater permit, evaluate the adopted City’s Green Infrastructure Plan Framework and integrate elements of the Green Infrastructure Plan into the Storm Drain Master Plan. The City is well underway to meeting its minimum trash reduction requirements, however this effort should also check for consistencies and compliance with the City’s Trash Management Plan.

- 6) **Asset Management Strategy:** Develop framework of functional requirements and specifications for an asset management system. Assist in the identification of compatible asset management software that has the ability to support an inventory of both linear and non-linear infrastructure and facilities. This system would be acquired by the City in a future phase.
- 7) **Financial Evaluation and Prioritization:** Develop cost estimates, funding strategies, and optimal financial plan for implementation of Plan recommendations, for capital projects including repair, rehabilitation and improvement; Create framework for communicating and prioritizing financial resources required to sustain current and desired assets at appropriate level of service. Develop list of capital improvements projects and include estimated costs and prioritization
- 8) **Plan Development and Timeline:** Development and submission of the Plan elements for review at various milestones in order for the City team to provide effective and timely feedback and support. Please list these milestones and the desired timeline for achieving the goal of bringing the Plan to the City Council in summer 2018 for adoption.

The scope of work should be developed in two components. The primary component should include the work tasks that will fit within the stated project budget. The secondary component should propose the additional work tasks that would enhance the study.

BUDGET

The anticipated consultant budget for the Master Plan is between \$150,000 to \$200,000 subject to negotiation and approval by the El Cerrito City Council. This includes all billable hours, reimbursable expenses, and materials. The consultant team shall provide a breakdown of the budget by proposed task, identifying employees and/or subcontractors, classification, billing rate and estimated hours per task. The City will support the consultant team with the City's Public Works Departments' staff.

PROPOSAL REQUIREMENTS

This document, together with its Appendices, comprises the RFP for the project. Responses to the RFP should be submitted according to the instructions outlined herein. Proposal content and completeness are most important. Although no page limitation will be imposed, clarity and conciseness is essential. Proposers are encouraged to print double-sided to conserve paper. Each proposal should include, at a minimum, the following items:

1. Transmittal letter – Include contact information (physical address, telephone, fax and email address) for the primary person responsible for your proposal who will be the

point of contact for the City on all correspondence and communications pertaining to this RFP. ***State whether any addendums to this RFP have been received by your firm and whether consideration of their content has been included in your proposal.***

2. Statement of Project Understanding – Provide a detailed discussion (in narrative and illustrated format, as necessary) of your understanding of the nature of the work, approach to be taken, and your vision for the project.
3. Consultant's Work Plan – Explain in detail your proposed work plan and timeline, including all anticipated tasks, along with any supplemental tasks (those not specifically identified in this RFP) you deem necessary for successful completion of this project by the anticipated Council adoption date. Include a spreadsheet showing all project tasks, along with the proposed project team member assigned to each task and their estimated hours. Also, include a schedule for the work plan.
4. Statement of Experience and Qualifications – Present the qualifications and experience of the proposed key staff and any support staff and subcontractors proposed for the project. Include descriptions of the projects undertaken by your proposed Project Manager(s) and members of the proposed professional staff within the last five years for your firm that are similar in nature to this project. Demonstrate their availability to pursue completion of this project in terms of the involvement in other projects that are presently in your firm's backlog.
5. Cost Proposal – Provide your firm's estimated fee for providing the Consultant's Work. Provide a breakdown of your fee by task, identifying project team members, billing rates and estimated hours per task. Include hour and fee total by subtask and information of any other incidental cost, such as mileage, etc.
6. References – Provide three (3) recent public agency references for your proposed Project Manager(s) and other key staff or sub-consultants; include names, addresses, email addresses, and telephone numbers.
7. Consulting Services Agreement – A statement that the Consulting Services Agreement has been read, that the firm will meet the prerequisite insurance requirements, and the firm, if selected, agrees to enter in to such agreement.
8. Other Information (Optional) – Provide additional relevant information that may be helpful in the selection process (not to exceed two pages).

Proposers Statement of Interest: In order to ensure inclusion on the City's notification list for this RFP, proposers are strongly encouraged to submit a letter of interest by email to the address below no later than **4:00 PM on April 27, 2017**.

Final Questions Concerning the RFP: Consultant questions pertaining to this RFP should be submitted no later than **4:00 PM on May 4, 2017**, by email to the address below. Responses to questions timely submitted will be answered within three (3) business days and distributed to all consultants that have submitted a timely Statement of Interest to the City.

City of El Cerrito
Public Works Department
Attention: Melissa Tigbao, Engineering Manager/Senior Engineer
10890 San Pablo Avenue
El Cerrito, CA 94530
Email: mtigbao@ci.el-cerrito.ca.us

Written addenda will be e-mailed to consultants. The City will not be bound by any oral representations, clarifications, or changes made to this RFP unless provided in written addenda form. ***Consultant shall identify receipt of all responses and addenda in their Transmittal Letter.***

Proposal Submittal: Five (5) paper copies and an electronic copy on a USB drive of Consultant's proposal shall be submitted no later than **4:00 PM on May 11, 2017** to the address indicated above. Proposals will not be accepted after the deadline regardless of whether they are postmarked with the date of the deadline. Consultants submitting proposals assume the risk of their selected method of delivery.

Proposals shall be sealed and clearly marked on the outside of the envelope with the consultant's name and the description "Proposal for Storm Drain Master Plan and Integrated Asset Management Strategy". The proposal shall be signed by an officer of the firm who is authorized to bind the firm to contract and shall contain a statement to this effect.

Costs incurred by consultants in preparing and submitting their proposals for consideration by the City shall not be reimbursed.

SELECTION PROCESS

Each proposal will be reviewed to determine if it meets the submittal requirements contained within this RFP. Failure to meet the requirements for the RFP can be cause for rejection of the proposal. The City may reject any proposal if it is conditional, incomplete or contains irregularities. The City may waive an immaterial deviation in a proposal, but this shall in no way modify the proposal document or excuse the consultant from compliance with the contract requirements if the consultant is awarded a contract.

Proposals will be evaluated based upon the following factors, but may not be limited to just these factors:

- 1) Presentation, completeness, clarity, organization, and conformance to the RFP content and format requirements.
- 2) Approach to delivering work with demonstrated clear understanding and creative approaches to project tasks.
- 3) Record of experience in strategic and master planning for storm drain facilities.

- 4) Record of experience in preparing asset management, systems, and/or programs.
- 5) Client experience on similar projects.
- 6) Qualifications of the firm, project manager and other personnel to be assigned to the Project, including education, experience, and professional expertise in this type of work.
- 7) Reasonableness of cost for services.

This list above is not necessarily in order of importance.

Contract award will be made to a team that presents the proposal that, in the opinion of the City of El Cerrito, is the most advantageous to the City, based on evaluation criteria outlined above. Having worked with the City is not a prerequisite for selection.

The selection committee will rank the proposals and may shortlist two or more firms. Those firms on the shortlist will be notified, no later than the **week of May 11, 2017** and interviews of the short-listed firms will be scheduled on **May 23 or 24, 2017 between 1-5pm**.

Following the selection process, the City will begin fee negotiations with the top-ranked firm. If the City fails to reach an agreement with that firm, a new negotiation will be initiated with the next highest ranked firm. If the new negotiation fails to reach an agreement, then the process will be repeated until either a contract is successfully negotiated or the process is terminated by the City.

The City currently anticipates conducting the project and selection process proceeding in accordance with the following list of milestones. This selection process schedule is subject to revision and the City reserves the right to modify this schedule as necessary, in its sole discretion.

PROPOSAL AND PROJECT TIMELINE

It is the City's intent to follow the process and timetable as set forth below. At the City's discretion, estimated dates and process are subject to change as necessary:

Release RFP	April 20, 2017
Statement of Interest Due	April 27, 2017*
Final Questions Due	May 4, 2017 (4 P.M.)**
Proposals Due	May 11, 2017 (4 P.M.)
Short List Notification	Week of May 15, 2017
Interviews (Please hold time slots)	May 23 and 24, 2017 (1-5 P.M.)
Anticipated Council Award	June 20, 2017

* Email Statement of Interest to Melissa Tigbao, mtigbao@ci.el-cerrito.ca.us

** Consultant questions pertaining to this RFP should be emailed to mtigbao@ci.el-cerrito.ca.us. Responses to questions timely submitted within the specified time period will be

answered within three (3) business days by addendum distributed to all consultants who have submitted a statement of interest on or before April 27, 2017. Consultant shall identify receipt of all addenda in their Transmittal Letter.

AVAILABLE RESOURCES

The following resources are available online for familiarization with the City's related planning efforts.

- 1) El Cerrito Storm Drain Master Plan (1992 and 1999 Update) <http://www.el-cerrito.org/index.aspx?NID=659>
- 2) El Cerrito Urban Greening Plan, 2015 <http://www.el-cerrito.org/index.aspx?NID=928>
- 3) El Cerrito Strategic Plan, 2015 <http://www.el-cerrito.org/index.aspx?nid=747>
- 4) Structural Facilities Master Plan, 2004 <http://www.el-cerrito.org/index.aspx?nid=476>
- 5) Trash Management Plan, <http://ca-elcerrito.civicplus.com/DocumentCenter/View/3466>

CONTRACTUAL ISSUES

A sample of the City Consultant Services Agreement is provided in Appendix A for the review of all proposing consultants. The successful consultant will be required to execute a Consultant Services Agreement with the City and meet the insurance requirements therein. Please review carefully all sections and pay special attention to the indemnity portions of the contract. The City does not ordinarily allow modifications to the standard agreement when contracting for services from outside firms.

APPENDIX A: SAMPLE Agreement for Consultant Services

CONSULTING SERVICES AGREEMENT BETWEEN

THE CITY OF EL CERRITO AND

[NAME OF DESIGN PROFESSIONAL CONSULTANT]

[USE THIS AGREEMENT FOR CONSULTING AGREEMENTS WITH LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, AND DESIGN FIRMS CONTAINING THESE DESIGN PROFESSIONALS]

THIS AGREEMENT for consulting services is made by and between the City Of El Cerrito ("City") and _____ ("Consultant") (together sometimes referred to as the "Parties") as of _____, 20__ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the

standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

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

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

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

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

- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

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

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified below, and shall not exceed \$. Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

[NOTE TO STAFF: IF NECESSARY, THE EXPENSES MAY BE INCLUDED IN OR ATTACHED AS EXHIBIT [C or D], AND THE PRECEDING LANGUAGE MODIFIED APPROPRIATELY.]

- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

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

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

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such

insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$ **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$ **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$_ **\$1,000,000** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to City, indemnify, and hold City, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, ("Claims"). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

Consultant may cancel this Agreement upon 60 days' written notice to City and shall include in such notice the reasons for cancellation.

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

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

- 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and

audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County _____ or in the United States District Court for the _____ District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

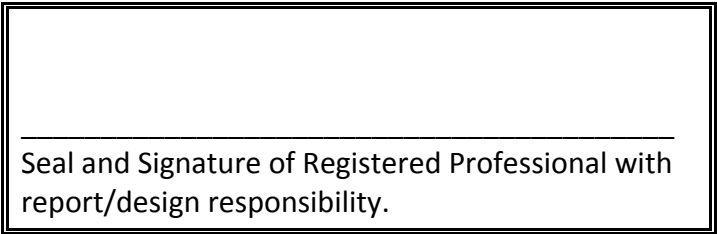
Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in

this Agreement that would violate California Government Code Sections 1090 *et seq.*

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

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
- _____
- _____
- _____
- Any written notice to City shall be sent to:
- _____
- _____
- _____
- 10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of

Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, ~~[[and]C[, and D]]~~ **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Payment Schedule
Exhibit [C or D] Expenses **[DELETE IF NOT APPLICABLE]**

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF EL CERRITO

CONSULTANT

[NAME, TITLE]

[NAME, TITLE]

Attest:

[NAME], City Clerk

Approved as to Form:

[NAME], City Attorney

1011035_1.DOC

EXHIBIT A

SCOPE OF SERVICES

.

EXHIBIT B

COMPENSATION SCHEDULE

APPENDIX B: ADDITIONAL INFORMATION

1. Creek Inventory
2. DRAFT Green Infrastructure Framework

3. Work Plan and Schedule

The following work plan and schedule are based on the City's request for proposals (RFP) and Schaaf & Wheeler's experience in storm drain master planning and asset management. This approach is intended to be a draft and we expect to refine the work plan with City staff prior to finalizing the contract documents.

Task 1 – Project Management

Master plan scopes can become nebulous and need to be administered carefully. Schaaf & Wheeler's tried and tested methods have time and again proved that staying in regular contact with our client is an effective tool for keeping master plans on track and within budget. We plan to have face to face meetings with staff at key points during the project. These meetings will involve reviewing work products and making decisions on future steps. Our team will be available to City staff throughout the project via telephone and email. Our engineers are also available to attend quick meetings on short notice. Fidel Salamanca has managed several stormwater projects and has worked on ten storm drain master plan studies.

Management Structure. This study will be structured so that the City staff can learn from the engineers at Schaaf & Wheeler. This approach increases the number of people viewing the data, allowing data accuracy issues and known deficiencies to be identified early in the process.

Subtask 1.1 – Kick-off Meeting

Schaaf & Wheeler will provide and distribute draft and final meeting agendas to the City prior to the kick-off meeting. The project schedule and budget shall be distributed to all parties at the meeting.

Subtask 1.2 – Project Status Meetings

The project manager will submit monthly project status reports via email to the City staff which will provide an update of work completed, next steps, and any issues requiring resolution. Project schedule and summary of completed tasks shall be included in the email update.

Schaaf & Wheeler has budgeted up to three (3) project status meetings at the request of City staff. Project status meetings should be scheduled when simple correspondence email is not enough. These meetings can be used to discuss technical issues, contractual or schedule concerns, or to brief City staff not directly involved in the project. Key meetings may include presenting the existing conditions modeling results, critical permitting issues, along with CIP project improvement alternatives and cost estimates.

Subtask 1.3 – Presentation

Schaaf & Wheeler has budgeted for two formal presentations during this study, these would be presented at two of the three project status meetings outlined in Subtask 1.2. The team will also provide materials necessary to inform the public about this study and other information about storm drainage to the City. Based on our current project understanding we envision the following presentations:

- Presentation of the existing conditions mapping and model results to staff
- CIP project presentation and rankings to staff

Subtasks 1.4 & 1.5 – Coordination and Billing

Fidel Salamanca will be the primary contact for Schaaf & Wheeler and will coordinate meetings, data collection, sub consultant work, project billings, and provide regular updates to City staff.

Task 1 – Deliverables:

- Kick-off meeting agenda and minutes
- Monthly progress emails
- Presentation materials

Task 2 – City Policy and Document Review

Schaaf & Wheeler prefers to review as much readily available data related to the project as possible. Most cities usually have As-Built plans, previous studies, design standards, and policies in place that can be utilized as part of this study.

Subtask 2.1 – Plan Review

Schaaf & Wheeler will review all readily available plans, storm drain utility maps and previous hydrologic and hydraulic studies to incorporate any information provided in the documents that is relevant to this study. This also

provides valuable historical knowledge of past projects to the project team, and could also assist in identifying potential problems that may be present in the existing storm drain network.

Subtask 2.2 – Inventory

Schaaf & Wheeler will develop an inventory of all relevant storm drain infrastructure in GIS format to be utilized in any hydraulic modeling and in the future Asset Management system. This data will be added to any available existing GIS or AutoCAD shapefiles that may already exist. Existing deficiencies found in previous studies will also be inventoried to be referenced during the hydraulic modeling task.

Subtask 2.3 – Urban Greening

The Schaaf & Wheeler team has been engaged in several green infrastructure projects and keeps in mind that funding is more readily available to projects that incorporate green infrastructure elements. The team will review the City's existing Urban Greening plan to incorporate elements of the plan during the CIP project development.

Task 2 – Deliverables:

- Electronic GIS files of existing Infrastructure

Task 3 – City Goals, Strategies and Priorities

Schaaf & Wheeler will review the existing plans prepared by the City in order to develop the project goals and make sure that the end product is what the City and stakeholders envision. Once the goals are set, the strategies to accomplish set goals will be developed by the project team and discussed with City staff and the stakeholders. This process helps prioritize the project goals.

Subtask 3.1 Plan Goals, Strategies and Priorities

The project team will utilize the City's existing Strategic Plan, Urban Greening Plan, and previous Storm Drain Master Plan to develop our initial project goals. The project team will meet with the City and Stakeholders to refine the list of project goals, to develop the strategy to meet each goal, and to prioritize project goals. This is anticipated to be completed at the Kick-off meeting in order to move forward with the project as soon as possible.

Task 3 Deliverables

- Prioritized list of Project Goals

Task 4 – Data Collection and Priorities

Subtask 4.1 – QAQC Existing Data

There are various sources of existing data that will be compiled as part of Task 2, however, it is anticipated that significant data gaps will exist and that the quality will vary depending on where the existing data was pulled from. Schaaf & Wheeler will review the existing data and develop a survey plan to supplement data deficiencies and to improve the quality of the available data.

Subtask 4.2 – Survey and Field Data Collection

To supplement the existing data, the Schaaf & Wheeler team plans to work with Kier & Wright to complete a GPS survey of most of the manholes and catch basins within the City limits to measure pipe diameters and obtain existing rim elevation and depth. This data will be utilized during the hydraulic analysis and will be stored in GIS format to be utilized in the future Asset Management system. It is not anticipated that every pipe diameter will be measured as part of this effort, if that is the desired level of detail requested by the City then we will adjust the scope and budget to fit the additional data acquisition into the project.

Schaaf & Wheeler has worked on various storm drain master plans with tight budgets. This past experience has given us a good understanding what data is most useful for hydraulic analyses and what other information can be collected based on what the City needs. Schaaf & Wheeler has allotted a specific amount to survey the existing city system and collect pipe diameter and manhole rim and invert elevations, as well as 10-creek cross-sections. It is assumed that the City can provide rough maps that identify the existing storm drain pipe diameters and materials. Schaaf & Wheeler's approach is based on our limited knowledge of the existing City data and it is anticipated that the scope for this task will be refined based on conversations with the City prior to finalizing the contract.

Subtask 4.3 Condition Assessment

Schaaf & Wheeler has budgeted time to perform field reconnaissance and inventory up to 25 drainage structures. This inventory would include photographs, structure description, and site notes. It is anticipated that the City will provide input as to which pipes and other storm drain facilities require condition assessment. This scope may be refined after discussing the anticipated level of effort with the City.

Subtask 4.4 – Hydraulic Analysis

Existing Models

Schaaf & Wheeler will utilize the existing available hydrologic and hydraulic data to avoid duplication of effort. The existing data will be reviewed for compliance with the current Contra Costa County hydrology manual and be updated with new survey data and available plans.

New Models

In the event that the existing hydrologic and hydraulic data is unusable, Schaaf & Wheeler can utilize our experience with a wide range of hydrologic and hydraulic models and methods to develop new models. Schaaf & Wheeler is highly familiar with the Contra Costa County Hydrology Manual methodology which can be easily implemented utilizing the Army Corps HEC-HMS. It is anticipated that HEC-HMS in conjunction with the catchment delineation tools in the ArcHydro Tools of ArcGIS would be utilized to develop catchment boundaries. The 10 year design storm will be analyzed, and results will then be coupled with a hydraulic model of the City's choice to assess the storm drain hydraulics.

If the City opts for a comprehensive City-wide hydraulic model, there are many hydraulic modeling software programs to choose from ranging from the proprietary DHI MIKE-URBAN to the public domain SWMM 5. Schaaf & Wheeler can assist the City in choosing the modeling software program based on master planning goals. The team is also capable of providing 2D overland analyses for creeks and storm drain networks as an additional task. For the purposes of this proposal, it is assumed that the hydraulic model will be developed using the survey data and existing data collected in during the plan review process.

It is assumed that two creeks will be analyzed using cross-section data collected in Subtask 4.1, the survey data will be supplemented with County LiDAR data as needed. The creeks will be analyzed using HEC-RAS, an open channel modeling software program developed by the U.S. Army Corps of Engineers, and will utilize runoff developed from HEC-HMS, the comprehensive modeling program, or Rational Method Calculations.

This scope includes analyzing the storm drain network with the 10 year design storm and existing land use condition. Schaaf & Wheeler can develop additional land use conditions and design storm hydrology and hydraulics for the City as an additional task. However, we've noticed that the 100-year results generally are not useful to cities because their design criterion is typically based on 10-year rainfall events. City systems simply do not have capacity for 100-year runoff.

Subtask 4.5 – Results Verification

Schaaf & Wheeler will meet with City staff to go over the initial results of the hydraulic model. This will provide an opportunity to verify flooding results and identify any potential errors in the modeling. Ideally the model will verify the institutional knowledge of City staff. The project team will look into any flooding locations not shown in the initial model results to verify drainage boundaries results.

Subtask 4.6 – CIP Development

Schaaf and Wheeler will utilize the hydraulic model to determine the capacity related CIP projects, the team will upsize pipes in order to determine the adequate sizing for the storm drain pipes to meet the 10-year design criteria set in the Contra Costa County Hydrology Manual.

Subtask 4.7 – CCTV

Schaaf & Wheeler recommends all CMP pipes be CCTV'd as this material is the most vulnerable to corrosion. Schaaf & Wheeler has added Presidio Systems Inc. to the project team to provide CCTV and condition assessment for approximately 8,000 linear feet of pipe. This scope may be refined after discussing the anticipated level of effort with the City.

Task 4 Deliverables

- Survey Point Shapefile with Rim and invert data
- City Wide Flood Maps
- Results tables in PDF format identifying MH or CB Rim, Invert, and Max HGL.
- CIP Project location map in PDF format
- CIP Projects in GIS format

Task 5 – Policies and Regulations

Schaaf & Wheeler has completed several Trash Capture Feasibility and Green Infrastructure studies for Bay Area cities and has vast experience understanding the goals for trash capture set by the Regional Water Quality Control Board and how the two are related. We will review the City's trash capture plan and verify that the City's plan is feasible and point out areas where there could be a beneficial project to combine trash capture and a storm drain improvement.

Subtask 5.1 – Trash Capture permit compliance review

Schaaf & Wheeler will review the City's existing policies for compliance with permit requirements. The trash capture plan will be reviewed to identify any potential device locations that could be relocated to a system that needs improvement. This would allow the City to combine the design and lower overall costs for the trash capture and the storm drain improvements

Subtask 5.2 – Green Infrastructure review and incorporation

Schaaf & Wheeler will identify storm drain improvements that can incorporate green infrastructure elements outlined in City's Green Infrastructure Plan. This will help with project funding and speed up the timeline for fixing storm drain deficiencies.

Task 5 Deliverables

- List of projects that can incorporate trash capture
- List of projects that can incorporate green infrastructure

Task 6 – Asset Management Strategy

Schaaf & Wheeler's sub consultant, V. W. Housen & Associates (VWHA), will work with City staff to develop a framework of requirements and specifications for an asset management system. The system will address the stormwater system, but will also be flexible to allow the City to expand its use to other linear and fixed assets. VWHA will meet with staff to understand current and future needs, will evaluate available software as related to the City's needs, will coordinate up to three vendor presentations that are customized to the City's objectives, and will develop a brief technical memorandum summarizing asset management needs, software options and costs, and ongoing software and asset management implementation tasks with estimated staffing commitments.

Task 6 Deliverables

- Asset Management Strategy Memorandum

Task 7 – Financial Evaluation and Prioritization

Subtask 7.1 – Funding Strategy

Task Objectives: Clearly communicate and work with the project team to review study objectives, tasks, schedule, and obtain necessary data.

Task Deliverables:

- Review of initial data provided
- Kick-off meeting with City staff and Schaaf & Wheeler
- Preliminary schedule for deliverables, meetings and workshops

NBS will attend the project kick-off meeting with City Staff and Schaaf & Wheeler, via conference call. In this meeting, NBS will review the scope of work with City staff to clarify study objectives, roles and responsibilities, and develop a preliminary plan for a workshop with the City Council and public.

1. **Project Revenues and Expenditures** – Using a cash-basis reflecting the City's system of accounts, NBS will prepare a 20-year projection of revenue and expenses, including: operations, maintenance and regulatory compliance expenses.
2. **Review Capital Improvement Funding** – NBS will incorporate the capital improvement plan Schaaf & Wheeler will develop, and evaluate the timing and cost of projects, and how the projects can be funded. We will work with the project team to develop a well-conceived approach to funding these capital needs; up to three capital funding scenarios will be developed in the study for comparison purposes, which will include some combination of funding high, moderate and low priority projects.

3. **Establish Reserve Fund Targets and Project Reserve Balances** – NBS will develop preliminary recommendations for reserve policies and target reserves that the City should aim to maintain, depending on the funding mechanisms that will be considered. Related issues such as meeting debt service coverage ratios will also be evaluated. We will also provide a cash-flow projection and year-end reserve fund levels for the 20-year financial planning period.

Task D - Prepare Technical Memorandum

NBS will prepare a Technical Memorandum for review by City staff. Two iterations of this document will be prepared: a draft and final. This document will summarize the findings and recommendations of the evaluation of the various funding options the City should consider for the Storm Drainage system, and provide an overview of the financial plan.

Task E - Meetings with City Staff

NBS will provide two (2) progress meetings with City staff (via conference call) to review work products and gain input from Staff on the direction of the study. We also expect to have regular phone conversations with staff to discuss how the study is proceeding, solicit input on the study, and prior to public meetings to review and discuss the study's results and recommendations.

Subtask 7.2 CIP Cost Estimates

Schaaf & Wheeler has developed multiple cost estimates for storm drain master plan CIPs as well as for design projects going to bid. Cost estimates are developed using the ENR Index, the RSMeans Heavy Construction Cost Data, and engineering judgment based on recent projects that have gone out to bid; having recent bid provides valuable insight as to the what the current construction climate is like and how much a project will actually cost the City.

Subtask 7.3 CIP Prioritization

Once the CIP has been developed and includes condition and capacity related projects, Schaaf & Wheeler will provide a list to the City of the top priority CIP projects based on our current understanding. Once the City has had time to review the projects, it is anticipated that Schaaf & Wheeler will meet to discuss the projects and to reprioritize the CIP projects based on the City's feedback.

Task 7 Deliverables

- Funding Strategy Memorandum
- CIP Cost Estimates PDF
- CIP Prioritization Table

Task 8 Plan Development and Timeline

The Schaaf & Wheeler team will work closely with City staff as the project progresses to get City input during the project development.

8.1 Project Milestones

Schaaf & Wheeler has identified the key project milestones:

- Complete existing conditions hydraulic analysis
- Complete CIP
- Complete Draft Report
- Submit Final Report

Schaaf & Wheeler has also budgeted attend two meetings with the City to present the existing condition results and a to present the CIP projects to the City (meetings outlined in Task 1.2). Feedback from the City will be incorporated into the Storm Drain Master Plan Report.

8.2 Master Plan Report

Once the CIP projects have been developed, the project team will submit a Draft Master Plan for the City to review. Schaaf & Wheeler will revise the report to address the City comments on the Draft, and Submit a Final Draft, at which point the City will review for the final time. When the Final Draft comments have been implemented, Schaaf &

Wheeler will submit the Final Report to the City. Based on our current project understanding, the Storm Drain Master Plan Report will consist of the following sections:

- Executive summary
- Introduction/Background
- Data Summary (Existing, Collected)
- Methodology
- Green Infrastructure/Trash Capture incorporation
- Existing System Results
- CIP (with Green Infrastructure and Trash Capture)
- Cost Estimates
- Funding Strategies
- Asset Management Strategies.

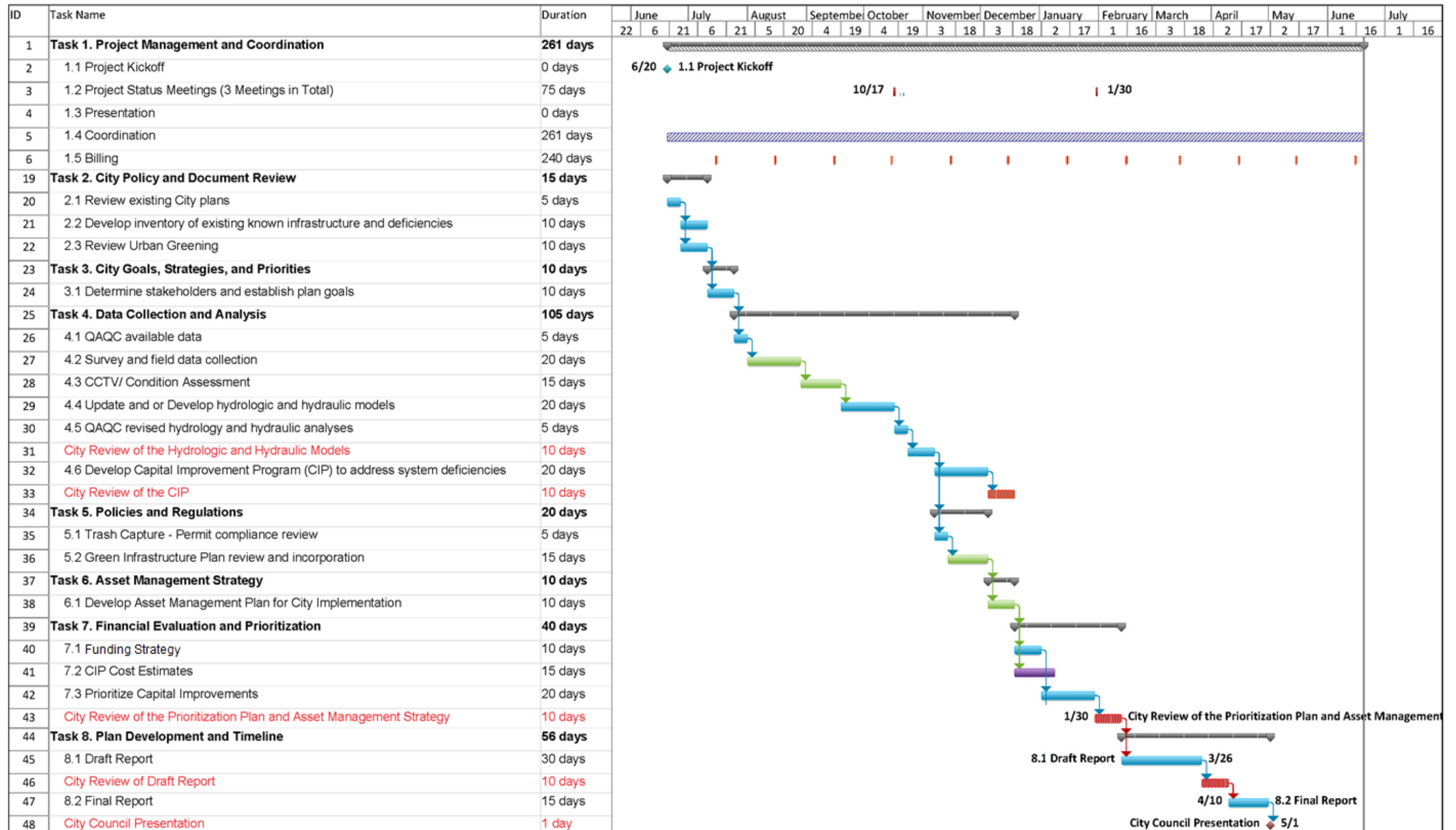
8.3 Timeline

The Schaaf & Wheeler team has a proven track record for completing projects in a timely manner in order to be utilized in City Council meetings. The PM will update project timeline once a month and send it to the appropriate City staff to verify the project is still on schedule. Budget for attendance at public council meetings is not included in this scope.

Task 8 Deliverables

- Storm Drain Master Plan Report

Project Schedule – El Cerrito Storm Drain Master Plan and Integrated Asset Management Strategy



Level of Effort

City of El Cerrito Public Works Department Storm Drain Master Plan and Integrated Asset Management Strategy Schaaf & Wheeler CONSULTING CIVIL ENGINEERS Date: June 7, 2017		Level of Effort					
		Schaaf & Wheeler					
		Project Manager	Senior Engineer	Associate Engineer	Junior Engineer	Engineer Trainee	Total
Task #	Tasks						
Task 1	Project Management and Coordination	40	16	0	8	0	64
1.1	Kick-Off Meeting	4	2				6
1.2	Project Status Meetings	6	6				12
1.3	Presentation	8	8		8		24
1.4	Coordination	18					18
1.5	Billing	4					4
Task 2	City Policy and Document Review	6	8	8	28	0	50
2.1	Review existing City plans	2	4	4	8		18
2.2	Develop inventory of existing known infrastructure & deficiencies	2		4	12		18
2.3	Review Urban Greening	2	4		8		14
Task 3	City Goals, Strategies, and Priorities	2	8	0	0	0	10
3.1	Determine stakeholders and establish plan goals	2	8				10
Task 4	Data Collection and Analysis	16	20	80	216	48	380
4.1	QAQC available data	2		8	8		18
4.2	Survey and Field Data Collection	2			24	24	50
4.3	Condition Assessment	2			12	8	22
4.4	Update and or Develop hydrologic and hydraulic models	2	4	40	120	16	182
4.5	QAQC revised hydrology and hydraulic analyses	4	12	8	8		32
4.6	Develop Capital Improvement Program (CIP) to address system deficiencies	2	4	24	40		70
4.7	CCTV (Assumes8,000 LF at \$.90/LF)	2			4		6
Task 5	Policies and Regulations	2	16	0	16	0	34
5.1	Green Infrastructure Plan review and incorporation	2	16		16		34
Task 6	Asset Management Strategy	4	0	0	12	0	16
6.1	Develop Asset Management Plan for City Implementation	4			12		16
Task 7	Financial Evaluation and Prioritization	6	0	24	40	0	70
7.1	Funding Strategy	2		8			10
7.2	CIP Cost Estimates	2		8	16		26
7.3	Prioritize CIP	2		8	24		34
Task 8	Plan Development and Timeline	6	4	24	52	0	86
8.1	Draft Report	2		12	32		46
8.2	Final Report	4	4	12	20		40
	TOTAL	82	72	136	372	48	710

City of El Cerrito Public Works Department Storm Drain Master Plan and Integrated Asset Management Strategy Schaaf & Wheeler CONSULTING CIVIL ENGINEERS Date: June 7, 2017			Schedule of Hours and Rates by Task												
			Schaaf & Wheeler					Schaaf & Wheeler Subtotal	V. W. Housen & Associates Asset Mamangement Subconsultant	Kier & Wright Survey Sub Consultant	Presidio Systems* CCTV Subconsultant	NBS* Funding & Finance Subconsultant	Total Subconsultant	Subconsultant Markup 10%	Total Cost
			Project Manager	Senior Engineer	Associate Engineer	Junior Engineer	Engineer Trainee								
Task #	Tasks	Hourly Rate	\$225	\$200	\$180	\$150	\$105								
Task 1	Project Management and Coordination		40	16	0	8	0	\$ 13,400	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,400
1.1	Kick-Off Meeting		4	2				\$ 1,300							
1.2	Project Status Meetings		6	6				\$ 2,550							
1.3	Presentation		8	8		8		\$ 4,600							
1.4	Coordination		18					\$ 4,050							
1.5	Billing		4					\$ 900							
Task 2	City Policy and Document Review		6	8	8	28	0	\$ 8,590	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,590
2.1	Review existing City plans		2	4	4	8		\$ 3,170							
2.2	Develop inventory of existing known infrastructure & deficiencies		2		4	12		\$ 2,970							
2.3	Review Urban Greening		2	4		8		\$ 2,450							
Task 3	City Goals, Strategies, and Priorities		2	8	0	0	0	\$ 2,050	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,050
3.1	Determine stakeholders and establish plan goals		2	8				\$ 2,050							
Task 4	Data Collection and Analysis		16	20	80	216	48	\$ 59,440	\$ -	\$ 25,020	\$ 7,200	\$ -	\$ 32,220	\$ 1,611	\$ 93,271
4.1	QAQC available data		2		8	8		\$ 3,090							
4.2	Survey and Field Data Collection		2			24	24	\$ 6,570		\$ 25,020			\$ 25,020	\$ 1,251	
4.3	Condition Assessment		2			12	8	\$ 3,090							
4.4	Update and or Develop hydrylic and hydraulic models		2	4	40	120	16	\$ 28,130							
4.5	QAQC revised hydrology and hydraulic analyses		4	12	8	8		\$ 5,940							
4.6	Develop Capital Improvement Program (CIP) to address system deficiencies		2	4	24	40		\$ 11,570							
4.7	CCTV (Assumes 8,000 LF at \$.90/LF)		2			4		\$ 1,050			\$ 7,200		\$ 7,200	\$ 360	
Task 5	Policies and Regulations		2	16	0	16	0	\$ 6,050	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,050
5.1	Green Infrastructure Framework and Plan review and incorporation		2	16		16		\$ 6,050							
Task 6	Asset Management Strategy		4	0	0	12	0	\$ 2,700	\$ 15,000	\$ -	\$ -	\$ -	\$ 15,000	\$ 750	\$ 18,450
6.1	Develop Asset Management Plan for City Implementation		4			12		\$ 2,700	\$ 15,000				\$ 15,000	\$ 750	
Task 7	Financial Evaluation and Prioritization		6	0	24	40	0	\$ 11,670	\$ -	\$ -	\$ -	\$ 17,450	\$ 17,450	\$ 873	\$ 29,993
7.1	Funding Strategy		2		8			\$ 1,890				\$ 17,450	\$ 17,450	\$ 873	
7.2	CIP Cost Estimates		2		8	16		\$ 4,290							
7.3	Prioritize CIP		2		8	24		\$ 5,490							
Task 8	Plan Development and Timeline		6	4	24	52	0	\$ 14,270	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,270
8.1	Draft Report		2		12	32		\$ 7,410							
8.2	Final Report		4	4	12	20		\$ 6,860							
	TOTAL		82	72	136	372	48	\$ 118,170	\$ 15,000	\$ 25,020	\$ 7,200	\$ 17,450	\$ 64,670	\$ 3,234	\$ 186,074

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS FOR PREPARATION OF THE CITY OF EL CERRITO STORM DRAIN MASTER PLAN AND INTEGRATED ASSET MANAGEMENT STRATEGY IN AN AMOUNT NOT TO EXCEED \$186,074 WITH A CONTINGENCY AMOUNT NOT TO EXCEED \$20,000

WHEREAS, in 1992, City Council adopted a Storm Drain Master Plan that identified deficiencies in the City's storm drain system, provided drainage improvement goals, and recommended a priority list of improvements; and

WHEREAS, in March 1993, the voters of the City of El Cerrito approved issuance of revenue bonds to finance the first phase of the reconstruction of the City's storm drain system (Measure J); and

WHEREAS, in the late 1990's and early 2000s, a major investment to repair, and in some cases replace, storm drain facilities was completed, and although a significant amount of work was done, deficient pipe segments still exist around the City and are in need of rehabilitation; and

WHEREAS, preparation of an updated Storm Drain Master Plan and Integrated Asset Management Strategy will revisit the goals, strategies, and evaluation of the storm drain system first undertaken in the 1990's; and related strategies identified in the city's Urban Greening Plan, Trash Management Plan, and recently approved Green infrastructure Framework; and

WHEREAS, an updated Storm Drain Master Plan and Integrated Asset Management Strategy will result in a framework for understanding the storm drain assets the City owns, risks it assumes, and financial investments it requires to repair, rehabilitate and improve these assets; and

WHEREAS, the City issued a Request for Proposals for consultants to develop a Storm Drain Master Plan and Integrated Asset Management Strategy; and

WHEREAS, the City received four complete and on-time proposals, convened an interview team consisting of Public Works staff, and interviewed three consultant teams on May 23, 2017; and

WHEREAS, Schaaf & Wheeler was determined to be the most qualified firm to develop the Storm Drain Master Plan and Integrated Asset Management Strategy due to their comprehensive approach, usage of expert sub-consultants, and the qualifications of the firm's key personnel; and

WHEREAS, some level of environmental review will be required for the adoption of the Master Plan. As development of the Master Plan progresses, City staff anticipates that the appropriate level will be identified and will prepare the appropriate documentation; and

Agenda Item No. 4(B)
Attachment 3

WHEREAS, this project is identified in the Adopted Fiscal Year 2016-17 Budget and Capital Improvement Program (CIP) in an allocation from the Measure J Storm Drain Fund for the Storm Drain Program.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to execute a professional services agreement with Schaaf & Wheeler Consulting Civil Engineers in an amount not to exceed \$186,074 for preparation of the El Cerrito Storm Drain Master Plan and Integrated Asset Management Strategy with a contingency amount not to exceed \$20,000.

I CERTIFY that at a regular meeting on June 20, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 4(C)

Date: June 20, 2017
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Reject Bids for Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project, City Project No. C3076, Federal Project No. CML-5239(025)

ACTION REQUESTED

Adopt a resolution 1) Rejecting all bids submitted for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project, City Project No. C3076, Federal Project No. CML-5239(025); and 2) Authorizing City staff to amend project scope, if necessary, and rebid the project.

BACKGROUND

Project Description

The Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements (Ohlone ASP) Project will improve the Ohlone Greenway at the El Cerrito del Norte and El Cerrito Plaza BART Stations. Currently, in the two BART Station areas, the Ohlone Greenway becomes narrower than other segments of the Greenway and has an irregular alignment at street crossings. At the same time, it has higher pedestrian, bicycle, automobile and bus traffic that contribute to increased conflicts between all modes of travel. The Ohlone ASP Project will improve and widen the mixed-use path; upgrade and expand existing crosswalks on adjacent streets to create high visibility pedestrian zones with new striping, special pavement, improved signage, curb bulb-outs, upgraded curb ramps and flashing lights; enhance landscaping, lighting, seating, and other amenities; and upgrade and expand the existing camera surveillance system to three key nodes next to the Greenway. The goals of the project are to improve bicycle and pedestrian routes leading to transit, commercial nodes and housing; bring new vibrancy to the areas around the BART Stations to encourage housing development specifically within a regionally-designated Priority Development Area; increase safety and accessibility for BART riders and Greenway users; and improve the integration of the BART Stations with the surrounding community.

Project Funding

In June 2013, the City Council adopted Resolution 2013-29 applying for approximately \$3.47 million in federal grant funds through the Contra Costa County Portion of the Metropolitan Transportation Commission's (MTC) One Bay Area Grant (OBAG) Program for design and construction of the project, committing the necessary non-federal match, and assuring the project would be completed per federal requirements. The Metropolitan Transportation Commission (MTC) formally approved the award in

September 2013. The OBAG Program requires a minimum 11.47% percent local match in non-federal funding for each phase of the project. The local matching funds include \$300,000 from the BART Measure J Project No. 10002-01, "Transit Oriented Development (TOD) and Access Improvements at El Cerrito Plaza & del Norte BART Stations" Project and \$149,387 in funds contributed by Safeway for Ohlone Greenway Improvements as part of development of their del Norte Store.

In July 2016, the City Council adopted Resolution No. 2016-54 authorizing the City Manager to execute a Subregional Transportation Mitigation Program (STMP) Cooperative Funding Agreement between West Contra Costa County Transportation Advisory Committee (WCCTAC) and the City of El Cerrito. At that time, City staff had requested STMP funding in the amount of \$300,000 from WCCTAC to cover additional estimated costs for the construction phase including construction contract, contingency, construction management and engineering, inspection and material testing.

Original Bidding

The project construction was originally advertised for bid in late 2016, and the City received three bids. However, the lowest bid came in significantly above the project budget. As such, in January 2017, the City Council adopted Resolution No. 2017-06 rejecting all bids submitted for the project and authorizing City staff to proceed with value- engineering measures and re-bid the project.

Re-Bidding

City staff worked with the City consultant team to value-engineer and restructure the project during the first quarter of 2017. This included the following elements:

- Eliminate most of the original additive alternatives including elements such as pedestrian light columns matching BART's proposed fixtures (but keeping the base pedestrian light fixtures), decorative bike wall stencil, and concrete mowband; reduce the number of landscape boulders; and replace flagstone paving with decomposed granite paving;
- Reduce the amount of colored and stamped asphalt crosswalk treatments;
- Reduce the amount of enhanced concrete sidewalk treatments;
- Reduce the limit of work to decrease the amount of pavement resurfacing needed to implement crosswalk improvements;
- Simplify and reduce the amount of concrete wall structures at gateway areas;
- Simplify and reduce the amount and types of benches;
- Simplify construction phasing and allow the contractor to propose alternate construction phasing plans, and clarify coordination required with the BART Station Modernization project; and
- Updated Engineer's Estimate to reflect recent bid prices on similar projects.

Concurrently, staff sought additional funding available through WCCTAC and was successful in obtaining a WCCTAC Board recommendation of \$500,000 in West County Sub-regional Transportation Needs category funds (Measure J Program 28b). At its April 18, 2017 meeting, the City Council adopted Resolution No. 2017-25 authorizing

the City Manager to execute Cooperative Agreement No. 28W.03 between the Contra Costa Transportation Authority (CCTA), the Measure J administering agency, and the City of El Cerrito for distribution of these funds.

The project was advertised for bid in the West County Times on May 1 and 8, 2017. Additionally, the Notice Inviting Bids was sent to contractor plan rooms and posted on the City's website. A mandatory pre-bid meeting was held on May 11, 2017.

ANALYSIS

Two bids were received on May 23, 2017. The bid received from Bay Construction Company did not include the required bid bond. The omission provides this bidder with an unfair advantage by giving the bidder the opportunity to withdraw its bid without forfeiting its bond, and therefore the bid is non-responsive. The results of the remaining bid are as follows:

Name and Location of Bidder	Base Bid	Alternative 1
FBD Vanguard Construction, Livermore	\$4,572,153.80	\$640,350.00
Engineer's Estimate	\$2,565,682.85	\$527,250.00

As shown, the sole responsive bid submitted by FBD Vanguard Construction is significantly higher than the Engineer's Estimate. City staff has evaluated the FBD Vanguard Construction bid. Despite staff efforts to reduce the project elements and obtain an additional half-million dollars in funding, the Base Bid came in higher than the original bid (approximately \$3.5 million back in December 2016) and also exceeds the project budget. Based on an analysis of all bid prices, staff cannot justify the bid amount.

City staff recommends that City Council reject all bids submitted for the project. As noted in the January 2017 report to Council, the Ohlone ASP Project is an atypical construction project with a number of challenges including work within the BART operating envelope, limited access, high concentration of pedestrians and bicyclists, and two distinct and large project sites. This is coupled with current trends on lack of available bidders, including subcontractors, and high bid prices for public projects. City staff and our consultant will discuss the bids with contractors to better understand the high bid prices despite value-engineering efforts and then City staff will consider amending the project scope if necessary. For example, it is likely that the upgrade and expansion of the camera surveillance system, which was an additive alternative, will likely need to be eliminated from the project scope. City staff will also evaluate and identify potential sources of additional funding including some of the Ohlone Greenway funds contributed by Safeway, additional State funding resulting from the passage of the Road Repair and Accountability Act of 2017 (Senate Bill 1 Beall) and Measure A Street Improvement funds, as well as, other external sources.

City staff is consulting with its construction management firm, Ghirardelli Associates Inc., to determine the best time to rebid given their current work with the CCTA to generate interest in bidding on the I-80/Central Avenue Interchange Project. At this time, in order to obtain the most interest in the Ohlone ASP project, staff anticipates rebidding in the fall of this year, providing a longer bidding period, and allowing for construction to begin in spring 2018.

STRATEGIC PLAN CONSIDERATIONS

The Ohlone ASP Project is consistent with El Cerrito Strategic Plan Goal D – *Develop and rehabilitate public facilities as community focal points*; Goal C – *Deepen a sense of place and community identity by promoting strong neighborhoods*; and Goal F – *Foster environmental sustainability citywide by encouraging alternative modes of transportation to the single occupancy vehicle*. Consistent with the federal grant goals, the project will improve connectivity, enhance sense of place, bring new vibrancy to the area and support the higher-density transit-oriented neighborhoods adjacent to BART as a place where developers want to build and people want to live, work and visit.

ENVIRONMENTAL CONSIDERATIONS

In 2009, the City completed an Initial Study and Negative Declaration per California Environmental Quality Act (CEQA) Guidelines, Section 15063, to evaluate the cumulative impacts of the improvements identified for the Greenway in the Ohlone Greenway Master Plan. The project is consistent with the Master Plan and will not have a significant effect on the environment.

In addition, because the project is federally-funded, the project design consultant and City staff completed preliminary environmental studies and various technical studies in compliance with the National Environmental Policy Act (NEPA). Caltrans reviewed the studies and determined that the project has no significant impacts on the environment as defined by NEPA and therefore the project is categorically excluded from the requirements of preparing an environment assessment or environmental impact statement.

FINANCIAL CONSIDERATIONS

The design and construction of the Ohlone ASP Project is currently funded by five sources, as described above, including a federal OBAG grant, Measure J BART project and Program 28b funds, STMP funds and City Park In-Lieu funds for Ohlone Greenway. The total funding amount is approximately \$4.7 million as summarized below.

Fund Source	Environmental/ Design	Construction	Total
Federal OBAG	\$442,650	\$3,025,350	\$3,468,000
Measure J BART project	\$34,462	\$265,538	\$300,000
WCCTAC STMP		\$300,000	\$300,000
City Park In-Lieu Funds	\$36,141	\$113,246	\$149,387
Measure J Program 28b		\$500,000	\$500,000
Total	\$513,253	\$4,204,134	\$4,717,387

As noted above, City staff will also evaluate and identify potential sources of additional funding from both internal and external sources in order to fund the construction phase of the project.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed actions and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REJECTING ALL BIDS SUBMITTED FOR THE OHLONE GREENWAY BART STATION AREA ACCESS, SAFETY AND PLACEMAKING IMPROVEMENTS PROJECT, CITY PROJECT NO. C3076, FEDERAL PROJECT NO. CML-5239(025), AND AUTHORIZING CITY STAFF TO PROCEED WITH AMENDING THE PROJECT SCOPE AND REBIDDING THE PROJECT

WHEREAS, the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project is intended to improve bicycle and pedestrian routes leading to transit, commercial nodes and housing; bring new vibrancy to the areas around the BART Stations to encourage housing development specifically within a regionally-designated Priority Development Area; increase safety and accessibility for BART riders and Greenway users; and improve the integration of the BART Stations with the surrounding community; and

WHEREAS, in January 2017, City Council adopted Resolution No. 2017-06 to reject all construction bids submitted for the project in late 2016 because the lowest bid was significantly above the project budget and authorized City staff to proceed with value-engineering measures and re-bid the project; and

WHEREAS, the current project budget is \$4,717,387 and consists of funding from five sources including a One Bay Area Grant (OBAG) Program federal grant, BART Measure J Project No. 10002-01 funds, West Contra Costa County Transportation Advisory Committee Subregional Transportation Mitigation Program funds, City Park In-Lieu funds for the Ohlone Greenway, and Measure J Program 28b funds; and

WHEREAS, the Notice Inviting Bids for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project, City Project No. C3076, Federal Project No. CML-5239(025) was advertised in the West County Times on May 1 and 8, 2017, sent to contractor plan rooms and posted on the City's website; and

WHEREAS, two bids were received on May 23, 2017 and the bid received from Bay Construction Company did not include the required bid bond and therefore is non-responsive; and

WHEREAS, the sole responsive bid submitted by FBD Vanguard Construction significantly exceeded the Engineer's Estimate and project budget; and

WHEREAS, City staff has determined that another re-bid of the project would allow staff to make adjustments to the project, evaluate and identify additional funding available through internal and external sources, and generate interest in bidding on the project; and

WHEREAS, the City completed an Initial Study and Negative Declaration in 2009 per California Environmental Quality Act (CEQA) Guidelines, Section 15063, to evaluate the cumulative impacts of the improvements identified for the Greenway in the Ohlone Greenway Master Plan, and the project is consistent with the Master Plan and will not have a significant effect on the environment.

Agenda Item No. 4(C)

Attachment 1

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby:

- 1) Rejects all bids submitted for the Ohlone Greenway BART Station Area Access, Safety and Placemaking Improvements Project, City Project No. C3076, Federal Project No. CML-5239(025); and
- 2) Authorizes City staff to amend project scope, if necessary, and rebid the project.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on June 20, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 4(D)

Date: June 20, 2017
To: El Cerrito City Council
From: Kristen Cunningham, Senior Human Resources Analyst
Subject: Amendments to the City's Classification Plan

ACTION REQUESTED

Adopt a resolution amending the City's Classification Plan to:

- Re-title and revise the class specification of Fire Secretary to Public Safety Executive Assistant, establish the salary with an initial control point of \$6,411 per month, and abolish the class of Police Executive Assistant.
- Re-title and revise the class specification of Information Services Technician to Information Technology Technician.
- Establish the class of Information Technology Specialist and establish the salary with an initial control point of \$7,022 per month.
- Establish the class of Network Security Engineer and establish the salary with an initial control point of \$8,834 per month.

BACKGROUND

The City's Strategic Plan identifies "Deliver Exemplary Government Services" as a primary goal. The strategies outlined for this goal include recruiting and retaining a talented workforce, and maintaining an emphasis on providing excellent customer service. In order to keep up-to-date with industry standards and to provide an expanded level of service, staff has identified the need to amend classifications in the Police, Fire and City Management departments.

ANALYSIS

The Human Resources Division has worked with Department and Division managers to review class specifications throughout the City to confirm that they are representative of organizational changes and duties performed that have evolved over time.

Public Safety Executive Assistant

The City's classification plan includes the positions of Fire Secretary and Police Executive Assistant. Human Resources has conducted a review of the essential duties of both classifications and determined that due to the similarity of their responsibilities they should be consolidated into one classification. Staff recommends to re-title and revise the Fire Secretary class specification to Public Safety Executive Assistant and to

establish the salary with an initial control point of \$6,411 per month. With this action, the classification of Police Executive Assistant would be abolished and the two budgeted positions within the Police and Fire departments would utilize the same class specification of Public Safety Executive Assistant.

Information Technology

The Information Technology Division is a division of City Management. In collaboration with the City's new Information Technology Manager, Human Resources has conducted a review of the division's classifications as well as how the classifications compare to the functions performed in similar public agencies. Staff has determined that the following actions should take place:

- **Information Technology Technician** – Based on current Information Technology trends, staff recommends to re-title and revise the class specification of Information Systems Technician to Information Technology Technician to better reflect industry standards.
- **Information Technology Specialist** – Staff recommends establishing the classification of Information Technology Specialist and including it in the Confidential unit. This position would be responsible for performing duties of a more complex and sensitive nature than those of the Information Technology Technician. Some of the duties will include administration of California Law Enforcement Telecommunications System (CLETS) and Computer-Aided Dispatch and automated Records Management Systems (CAD/RMS) for the Police and Fire departments. Staff recommends establishing a salary with an initial control point of \$7,022 per month.
- **Network Security Engineer** – As the needs of securing data continue to be a major component of Information Technology stability, staff recommends establishing the classification of Network Security Engineer. Some of the duties of this position will include securing and protecting the City's confidential data and adopting new technologies to maintain a secure network infrastructure. Staff recommends establishing a salary with an initial control point of \$8,834 per month.

STRATEGIC PLAN CONSIDERATIONS

Amending the City's classification plan will help fulfill Strategic Plan Goal A: Delivering Exemplary Public Services and the following objectives:

- Recruit and retain a talented and effective workforce
- Maintain emphasis on providing excellent customer service

FINANCIAL CONSIDERATIONS

There will be no additional costs for the proposed changes to the classification plan as these salary changes are included within the 2017-2018 adopted budgets with the control points to be set per the management/confidential resolution.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
 - Exhibit A – Public Safety Executive Assistant
 - Exhibit B – IT Technician
 - Exhibit C – IT Specialist
 - Exhibit D – Network Security Engineer

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AMENDING THE CITY'S CLASSIFICATION PLAN

WHEREAS, the City Council of the City of El Cerrito has an adopted Classification Plan for positions in the City's service; and

WHEREAS, staff has conducted a review of positions in the Police, Fire and City Management Departments; and

WHEREAS, the Fire Secretary class specification is recommended to be re-titled to Public Safety Executive Assistant and the Information Systems Technician class specification to be re-titled as Information Technology Technician based on a study of the positions and the nature of the duties and responsibilities performed; and

WHEREAS, staff recommends the establishment of the class specifications of Information Technology Specialist and Network Security Engineer based on a study of the Information Technology Division and the need to expand the level of service provided within the division.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby amend the City's Classification Plan to make modifications to the Classification Plan as indicated below and as further specified in Exhibits A, B, C and D to this resolution:

1. Retitle and revise the class specification of Fire Secretary to Public Safety Executive Assistant, with an initial salary control point of \$6,411 per month, and abolish the classification of Police Executive Assistant;
2. Re-title and revise the class specification of Information Systems Technician to Information Technology Technician;
3. Establish the classification of Information Technology Specialist, with an initial salary control point of \$7,022 per month; and
4. Establish the classification of Network Security Engineer, with an initial salary control point of \$8,834 per month.

I CERTIFY that at a regular meeting on June 20, 2017, the El Cerrito City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:

Agenda Item No. 4(D)
Attachment 1

NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

FIRE DEPARTMENT ADMINISTRATIVE ASSISTANT/PUBLIC SAFETY EXECUTIVE ASSISTANT

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

To perform a variety of responsible and complex clerical, ~~secretarial~~ and administrative duties ~~for the Fire Chief, Battalion Chiefs and personnel of the Fire Department.~~ in support of administrative and supervisory staff within the City's public safety departments.

DISTINGUISHING CHARACTERISTICS

This classification is characterized by varied confidential and responsible administrative tasks performed with a high level of independence and discretion in judgement. It is the advanced journey level class in the secretarial/clerical series and is distinguished from other secretarial and clerical classes by the more complex, responsible and sensitive duties assumed related to functioning as the executive administrative secretary assistant for all of the Fire Department public safety staff, and the personal secretary to the Fire Chief. Positions within this classification can be assigned to either the Fire Department or Police Department. This class can be further distinguished by the amount of independence and discretion in judgment with which the incumbent is expected to operate.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the Fire Chief, Police Chief or their designees. ~~and from Fire Department Battalion Chiefs and Captains pursuant to specific staff assignments.~~

May exercise indirect supervision over other clerical positions and ~~and~~ volunteer clerical personnel ~~and over firefighters and fire engineers during certain times when they perform staff assignments using department records, files and departmental administrative resources.~~

ESSENTIAL FUNCTION STATEMENTS

Essential responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

- Screen calls, visitors and mail for assigned staff; compose routing correspondence in response to requests for information.
- Independently respond to letters and general correspondence of a routine nature.
- Transcribe oral dictation from notes and recordings in production of written records.
- Make travel arrangements, maintain appointment schedules and calendars, and arrange meetings and conferences.

- Purchase equipment and supplies and maintain inventories.
- Research, compile, and analyze data for special projects and various reports.
- Initiate and maintain a variety of files and records of a confidential nature.
- Recommend organizational or procedural changes affecting clerical activities.
- Assist department staff in organizing and completing special projects; research and compile information for use in special reports; serve as staff at special events for the public.
- Attend public meetings as a department representative; serve as representative of the department as delegated.

Additionally, When Assigned to the Fire Department:

- Perform a wide variety of complex, responsible and confidential duties for the Fire Chief.
- ~~Screen telephone calls, visitors and mail.~~
- Interpret City policies, rules, regulations and procedures for fire prevention, fire hazard abatement, public education, training and departmental records and reports in response to inquiries and refer as appropriate.
- Preparing and processing Fire Department administered permits, forms, and files.
- ~~Independently respond to letters and general correspondence of a routine nature.~~
- ~~Transcribe oral dictation from notes and recordings in production of written records.~~
- ~~Make travel arrangements, maintain appointment schedules and calendars, and arrange meetings and conferences.~~

Public Safety Executive Assistant Fire Department Administrative Assistant**Essential Functions: (continued)**

- Type a variety of materials including general correspondence and memoranda.
- Participate and assist in the administration of the Fire Department; prepare comprehensive reports, compile annual budget requests, and recommend expenditure requests for designated accounts; manage payroll records for Fire Department personnel, prepare and submit payroll reports to the City Finance Division for bi-weekly disbursement.
- ~~• Purchasing equipment and supplies and maintaining inventories.~~
- ~~• Research, compile, and analyze data for special projects and various reports.~~
- ~~• Initiate and maintain a variety of files and records.~~
- May serve as staff liaison ~~Secretary~~ to a board or commission for which the Fire Department has primary staffing responsibility, preparing the agenda, assembling background materials, taking and transcribing minutes of the meeting, and performing related support services.
- ~~• Recommend organizational or procedural changes affecting clerical activities.~~
- Assist the Police Department in answering telephones and typing confidential memorandums during absences of the ~~Police Secretary~~ department's Executive Assistant.
- Assist with activities related to labor relations and contract negotiation.

Additionally, When Assigned to the Police Department:

- ~~• Perform a wide variety of complex, administrative, and confidential duties in support of sworn administrative and supervisory staff.~~
- ~~• Process and prepare a variety of permits, forms, dispositions, and files including taxi permits, concealed weapons permits, registrant files, extradition forms, and pawn slips~~
- ~~• Operate computers to enter, modify, and retrieve data such as stolen and recovered property, driver license and vehicle registration information, and warrants on wanted persons.~~
- ~~• Process and prepare public records requests~~
- ~~• Process receipts for moneys received for photographs, verifications, fingerprints and photocopies.~~
- ~~• Take and transcribe notes; operate office equipment and computers, use MS Office software suite i.e. Outlook, Word, Excel, Power Point, Publisher; use law enforcement related software, web development utilities, social media and others as assigned.~~
- ~~• Assist the Fire Department in answering telephones and typing confidential memorandums during absences of the department's Executive Assistant.~~
- ~~• Prepare check requests and purchase orders; maintain petty cash and bail fund.~~
- ~~•~~

Public Safety Executive Assistant ~~Fire Department Administrative Assistant~~

- May assist in performing searches of arrested persons.

QUALIFICATIONS

Knowledge of:

- English usage, spelling, grammar, and punctuation.
- Modern office practices, procedures, methods and equipment.
- Business letter writing.
- General City government organization, functions and procedures.
- Organization, functions, and procedures of the Police Fire Department, including basic knowledge of fire prevention, fire hazard abatement and public fire education.

Ability to:

- Understand the organization and operation of the City and of outside agencies as necessary to assume assigned responsibilities.
- Communicate clearly and concisely both orally and in writing.
- Compose general correspondence and letters.
- Work cooperatively with other departments, City officials and outside agencies.
- Interpret and apply administrative and ~~Fire~~ Departmental policies, laws and regulations.

Public Safety Executive Assistant Fire Department Administrative Assistant**Ability to: (continued)**

- Operate and use modern office equipment ~~including the Fire Department's computer network and~~
- ~~word processing (including Microsoft Excel).~~
- Work independently in the absence of supervision to provide administrative continuity within the ~~Fire Department's three platoon~~ public safety system.
- Analyze situations carefully and adopt effective courses of action.
- Plan, organize and schedule priorities in the Police or Fire Department office.
- Compile and maintain complex and extensive records and prepare routine reports.
- Maintain confidential data and information, including Police or Fire Department personnel records.
- Understand and carry out oral and written directions.
- Establish and maintain effective working relationships with those contacted in the course of work.
- Type at a speed necessary for adequate performance of assigned duties.
- Maintain physical and mental capacities appropriate to the performance of assigned duties and responsibilities.

Experience and Training Education Guidelines

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Two years of increasingly responsible ~~secretarial and~~ clerical experience.

Training Education:

Equivalent to the twelfth grade, including or supplemented by specialized clerical courses.

Licenses/Certificates/ Other requirements:

Not applicable.

PHYSICAL DEMANDS

Sitting:	Frequently to Constantly	Lifting:	
Standing:	Occasionally	up to 10 lbs:	Occasionally
Walking:	Occasionally	11 to 25 lbs:	Occasionally
Bending:	Occasionally	26 to 50 lbs:	Never
Crouching:	Never	51 to 75 lbs:	Never
Stooping:	Never	76 to 100 lbs:	Never
Kneeling:	Never	100 + lbs:	Never

PHYSICAL DEMANDS (continued)

Crawling:	Never	Carrying	
Climbing:	Never	up to 10 lbs:	Occasionally
Balancing:	Never	11 to 25 lbs:	Occasionally
Running:	Never	26 to 50 lbs:	Never
Twisting:	Occasionally	51 to 75 lbs:	Never
Turning:	Occasionally	76 to 100 lbs:	Never
Jumping:	Never	100 + lbs:	Never

Pushing/Pulling:

up to 10 lbs: Occasionally
 11 to 25 lbs: Never
 26 to 50 lbs: Never
 51 to 75 lbs: Never
 76 to 100 lbs: Never
 100 + lbs: Never

Grasping – firm: Occasionally

Finger dexterity: Frequently to Constantly

Reaching forward: Occasionally

Pinch grasp: Occasionally

Grasp – light: Occasionally to Frequently

Coordination - Eye-hand: Frequently
 Eye-hand-foot: Occasionally
 Driving: Never

Talking - Face-to-face: Occasionally
 Verbal contact: Occasionally
 Public: Occasionally

Vision - Acuity far: Required
 Acuity, near: Required
 Depth perception: Not Required
 Field of vision: Not Required
 Accommodation: Not Required
 Color vision: Not Required

Hearing - Conversation: Occasionally
 Telephone: Occasionally to Frequently
 Earplugs: Never

MENTAL REQUIREMENTS

Abstract variables, Interpret instructions, Problems-standard, Detailed-uninvolved instructions, One or two-step instructions, Reading-simple, Reading-complex, Writing-simple, Writing-complex, Math skills-simple, Math skills-complex, Clerical, Synthesizing, Coordinating, Analyzing, Computing, Copying, Comparing, Supervising, Serving, Taking instructions-helping, Setting up, Operating-controlling, Comprehend/follow instructions, Perform simple repetitive tasks, maintain work pace, Relate to other people, Influence other people, Perform varied complex tasks, Generalizations/evaluations, Responsibility for direction.

WORK ENVIRONMENT

Indoors, Using computer/computer monitor screen, Works around others, works alone, works with others.

Rev. 12/2002

Rev. 6/2017

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Exhibit B
CITY OF EL CERRITO

INFORMATION ~~TECHNOLOGY~~SYSTEMS_ TECHNICIAN

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

Under general supervision, ~~performs~~, installs, modifies, and trouble-shoots hardware and software of a routine to complex nature for personal computers and networks; performs related work as assigned.

This classification is distinguished from the Information Technology Specialist class in that the latter provides advanced technical support to system users and performs duties of a more complex and sensitive nature.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the Information ~~Technology~~Systems Manager.

ESSENTIAL FUNCTION STATEMENTS

Essential responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

- Gather and analyze information regarding departmental computer hardware, peripheral equipment and software requirements and installs or upgrades single PC or network systems to fulfill these needs; make routine hardware upgrade and repairs, refer other repair work to vendors.
- Work with department staff to assess their needs and to develop word processing, spreadsheets, databases, Internet and other applications specific to their use.
- Configure commercial software to meet specific defined needs; install software and instructs departmental staff in the use of such applications; provide liaison between software and hardware vendors and department user personnel for specialized applications.
- Assist Information ~~Technology~~Systems Manager in all phases of division work, including the heavier labor tasks such as relocating pieces of equipment and the pick up and delivery of supplies.
- Assist department staff in implementing new or upgraded programs and applications.
- Troubleshoot hardware problems and correct or call appropriate service organizations.
- Troubleshoot problems with telephone systems and generally provide support in this area.

CITY OF EL CERRITO
Information Services Technician

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- Provide support for the surveillance camera systems, including hardware and software troubleshooting.
- Confer with department management staff regarding assigned program areas.
- Maintain records and prepare periodic and special reports of work performed.
- Analyze, diagnose, and correct routine network problems.
- Resolve routine user "how to" problems with hardware and software, either in person, phone, or e-mail.

Marginal/Non-essential Functions:

- Performs related duties as required.

QUALIFICATIONS

Knowledge of:

- Microsoft operating systems, networking, hardware and software.
- ~~Personal computer hardware and operating systems.~~
- Computer networks hardware, cabling principles, network operating systems, and principles of network architecture.
- Basics of Internet featuresfunctioning and architecture.
- ~~Standard PC applications including database, word processing, spreadsheets, Web browsers, and similar computer software.~~
- Policies, procedures, concepts and terminology related to the work of the department to which assigned.
- Job planning, prioritizing and scheduling techniques.

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Ability to:

- Troubleshoot PC hardware and software problems and make modifications and repairs, telephone systems, and surveillance camera systems.
- Prepare clear and concise program documentation, user procedures, reports of work performed, and other written materials.
- Provide guidance and technical support to PC users either in person, or by phone.

CITY OF EL CERRITO

Information Services Technician

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- Instruct departmental staff in the operation of computer applications, including explaining system concepts to non-technical users.
- Make sound independent decisions within established guidelines.
- Establish and maintain effective working relationships with those encountered in the course of the work.
- Relocate a variety of equipment and supplies.
- Maintain physical and mental capacities appropriate to the performance of assigned duties and responsibilities.

Special Requirements:

- May be required to perform work outside of normal business hours.

Experience and Training-Education Guidelines:

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

~~One year experience in developing computer applications similar to those described above. Two~~
~~(2) years of experience performing information technology support and equipment installation~~
~~duties.~~

Education/Training:

Equivalent to a Bachelor's Degree from an accredited college or university with major coursework in computer science or a related field. Additional experience may substitute for some of the ~~education/training~~.

License:

Possess and maintain a valid California driver's license.

PHYSICAL DEMANDS

Sitting:	Frequently	Lifting:	
Standing:	Occasionally	up to 10 lbs:	Occasionally
Walking:	Occasionally	11 to 25 lbs:	Occasionally
Bending:	Occasionally	26 to 50 lbs:	Occasionally
Crouching:	Occasionally	51 to 75 lbs:	Never
Stooping:	Occasionally	76 to 100 lbs:	Never
Kneeling:	Never	100 + lbs:	Never
Crawling:	Never	Carrying:	
Climbing:	Never	up to 10 lbs:	Occasionally
Balancing:	Never	11 to 25 lbs:	Occasionally
Running:	Never	26 to 50 lbs:	Occasionally

CITY OF EL CERRITO**Information Services Technician**

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Twisting:	Occasionally	51 to 75 lbs:	Never
Turning:	Occasionally	76 to 100 lbs:	Never
Jumping:	Never	100 + lbs:	Never

Pushing/Pulling:	
up to 10 lbs:	Occasionally
11 to 25 lbs:	Occasionally
26 to 50 lbs:	Occasionally
51 to 75 lbs:	Never
76 to 100 lbs:	Never
100 + lbs:	Never

Grasping – firm:	Occasionally
Finger dexterity:	Occasionally to Frequently
Reaching forward:	Occasionally
Reaching overhead:	Occasionally
Pinch grasp:	Occasionally
Grasp – light:	Occasionally

Coordination -	Eye-hand:	Frequently
	Eye-hand-foot:	Never
	Driving:	Occasionally

Talking -	Face-to-face:	Occasionally
	Verbal contact:	Occasionally
	Public:	Occasionally

Vision -	Acuity far:	Required
	Acuity, near:	Required
	Depth perception:	Required
	Field of vision:	Required
	Accommodation:	Required
	Color vision:	Required

Hearing -	Conversation:	Occasionally
	Telephone:	Occasionally
	Earplugs:	Never

MENTAL REQUIREMENTS

Abstract variables, Interpret instructions, Problems-standard, Reading-simple, Reading-complex, Writing-simple, Writing-complex, Math skills-simple, Math skills-complex, Spatial, Form, Clerical, Coordination, Analyzing, Compiling, Computing, Copying, Comparing, Mentoring, Negotiating, Instructing, Supervising, Diverting, Persuading, Speaking-signaling, Serving, Taking instructions-helping, Precision Working, Operating-controlling, Driving-operation, Manipulation, Tending, Handling, Comprehend/follow instructions, Perform simple-repetitive tasks, Maintain work pace, Relate to other people, Influence other people, Perform varied-complex tasks, Generalizations/evaluations, Responsibility for direction.

CITY OF EL CERRITO
Information Services Technician

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WORK ENVIRONMENT

Exposure to: Indoors, Outdoors, Slippery/uneven surfaces, Using computer/computer monitor screen, Works around others, Works alone, Works with others.

~~Rev 6/2008~~
Rev. 6/2017

INFORMATION TECHNOLOGY SPECIALIST

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

Under general supervision, performs technical duties to support the daily operations of the Information Technology Division including setup, maintenance and troubleshooting of servers, storage and network; manages backup and restores processes; supports and coordinates IT-related projects with various stakeholders as well as vendors; performs related work as assigned.

This classification is distinguished from the Information Technology Technician class by the level of responsibility assumed, and by the complexity and sensitivity of duties assigned.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the Information Technology Manager.

ESSENTIAL FUNCTION STATEMENTS

Essential responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

- Manage systems operations and assess infrastructure on a regular basis to ensure it continues to meet necessary demands including protection of data through secure data storage and anti-virus and malware solutions.
- Oversee the integration of servers, including database, email, print and backup servers and their associated applications into the operating environment.
- Proactively monitor and test systems and infrastructure performance; prepare and delivery statistics and reports as required.
- Verify the accuracy of existing documentation and take corrective measures where needed. Create and maintain documentation as it relates to enterprise configuration, mapping and processes.
- Develop new strategies and IT procedures to increase efficiency, enhance workflow and improve customer satisfaction.
- Coordinate the needs of departmental computer hardware, peripherals; hardware and software requirements such as install, upgrade and repairs.

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Information Technology Specialist

- Configure commercial software to meet specific defined needs; install software and help train employees on its use; provide liaison between software and hardware vendors and department user personnel for specialized applications.
- Assist Information Technology Manager in all phases of division work, including the heavier labor tasks such as relocating pieces of equipment and the pick up and delivery of supplies.
- Assist department staff in implementing new or upgraded programs and applications.
- Troubleshoot hardware problems including telephone systems and correct or call appropriate service organizations.
- Provide support for the surveillance camera systems, including hardware and software troubleshooting.
- Confer with department management staff regarding assigned program areas.
- Analyze, diagnose, and correct routine network problems.
- Resolve routine user "how to" problems with hardware and software, either in person, phone, or e-mail.

Marginal/Non-essential Functions:

- Performs related duties as required.

QUALIFICATIONS

Knowledge of:

- Basic operational characteristics of technology related to area of assignment such as for computers, mobile devices, audiovisual, network, and communication systems.
- Basic methods, tools, and techniques of testing, troubleshooting, problem solving, and maintaining hardware and software related to computers, mobile devices, audio visual, network, and communication systems.
- Microsoft operating systems, networking, hardware and software.
- Computer networks hardware, cabling principles, network operating systems, and principles of network architecture.
- Job planning, prioritizing and scheduling techniques.

Ability to:

- Troubleshoot problems related to area of assignment such as to computers, mobile devices, audio visual, network, and communication systems; identify and locate the source of the problem; diagnosis the problem and develop logical, reliable solutions; and initiate corrective

CITY OF EL CERRITO
Information Technology Specialist

actions

- Prepare clear and concise program documentation, user procedures, reports of work performed, and other written materials.
- Provide guidance and technical support to system users either in person, via email or by phone, including explaining system concepts to non-technical users; and relocation of equipment and supplies.
- Make sound independent decisions within established guidelines.
- Establish and maintain effective working relationships with those encountered in the course of the work.
- Maintain physical and mental capacities appropriate to the performance of assigned duties and responsibilities.

Special Requirements:

- May be required to perform work outside of normal business hours.

Experience and Education Guidelines:

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Three (3) years of experience performing information technology support and software/hardware installation duties that included working with LAN/WAN networks.

Education:

Equivalent to a Bachelor's Degree in Information Technology, Computer Science or a related field. Additional experience may substitute for some of the education.

License:

Possess and maintain a valid California driver's license.

PHYSICAL DEMANDS

Sitting:	Frequently	Lifting:	
Standing:	Occasionally	up to 10 lbs:	Occasionally
Walking:	Occasionally	11 to 25 lbs:	Occasionally
Bending:	Occasionally	26 to 50 lbs:	Occasionally
Crouching:	Occasionally	51 to 75 lbs:	Never
Stooping:	Occasionally	76 to 100 lbs:	Never
Kneeling:	Never	100 + lbs:	Never
Crawling:	Never	Carrying:	
Climbing:	Never	up to 10 lbs:	Occasionally
Balancing:	Never	11 to 25 lbs:	Occasionally

CITY OF EL CERRITO
Information Technology Specialist

Running:	Never	26 to 50 lbs:	Occasionally
Twisting:	Occasionally	51 to 75 lbs:	Never
Turning:	Occasionally	76 to 100 lbs:	Never
Jumping:	Never	100 + lbs:	Never

Pushing/Pulling:	
up to 10 lbs:	Occasionally
11 to 25 lbs:	Occasionally
26 to 50 lbs:	Occasionally
51 to 75 lbs:	Never
76 to 100 lbs:	Never
100 + lbs:	Never

Grasping – firm:	Occasionally
Finger dexterity:	Occasionally to Frequently
Reaching forward:	Occasionally
Reaching overhead:	Occasionally
Pinch grasp:	Occasionally
Grasp – light:	Occasionally

Coordination -	Eye-hand:	Frequently
	Eye-hand-foot:	Never
	Driving:	Occasionally

Talking -	Face-to-face:	Occasionally
	Verbal contact:	Occasionally
	Public:	Occasionally

Vision -	Acuity far:	Required
	Acuity, near:	Required
	Depth perception:	Required
	Field of vision:	Required
	Accommodation:	Required
	Color vision:	Required

Hearing -	Conversation:	Occasionally
	Telephone:	Occasionally
	Earplugs:	Never

MENTAL REQUIREMENTS

Abstract variables, Interpret instructions, Problems-standard, Reading-simple, Reading-complex, Writing-simple, Writing-complex, Math skills-simple, Math skills-complex, Spatial, Form, Clerical, Coordination, Analyzing, Compiling, Computing, Copying, Comparing, Mentoring, Negotiating, Instructing, Supervising, Diverting, Persuading, Speaking-signaling, Serving, Taking instructions-helping, Precision Working, Operating-controlling, Driving-operation, Manipulation, Tending, Handling, Comprehend/follow instructions, Perform simple-repetitive tasks, Maintain work pace, Relate to other people, Influence other people, Perform varied-complex tasks, Generalizations/evaluations, Responsibility for direction.

CITY OF EL CERRITO
Information Technology Specialist

WORK ENVIRONMENT

Exposure to: Indoors, Outdoors, Slippery/uneven surfaces, Using computer/computer monitor screen, Works around others, Works alone, Works with others

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NETWORK SECURITY ENGINEER

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

DEFINITION

The Network Security Engineer position is responsible for provisioning, deployment, configuration, administration and troubleshooting of network and security-related hardware and software. These include firewalls, routers, switches, various network monitoring tools and virtual private networks (VPN).

SUPERVISION RECEIVED AND EXERCISED

The Network Security Engineer will receive general supervision from the Information Technology Manager.

ESSENTIAL FUNCTION STATEMENTS

Essential responsibilities and duties may include, but are not limited to, the following:

Essential Functions:

- Maintain, support and upgrade the City's existing data and voice network infrastructure.
- Maximize network performance by monitoring, troubleshooting issues and outages; and scheduling network maintenance. Ensure that platforms and circuits are configured for optimum performance and in accordance with standards. Manage network and equipment capacities at a level that can support customer voice and data applications.
- Secure network systems by establishing and enforcing policies and procedures; and defining access permissions.
- Evaluate and make recommendations for proper sizing of existing network, new technologies and future equipment updates and upgrades. Develop network technology refresh plan, propose systems upgrades, adjustments and new technology applications.
- Act as single point of contact for voice, video and data networks and equipment. Establish common design criteria for use of telecommunications and computer equipment for new projects. Coordinate with local voice and data providers for proper engineering resources.

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Resolution No. 2017-XX
Exhibit D

- Negotiate telecommunications services and contracts with providers, including WAN, Analog/Digital and fiber to all remote locations such as Community Center, Senior Center, Recycling Center, Corporation Yard and Public Safety Police Department.
- Manage and support the AV system including microphones, digital controlled audio processing, video mixer and cameras in the Council chamber and coordinate with City Clerk, Comcast and Granicus the live broadcast, webcast and recording of the City Council meeting.
- Manage the operational and fiscal activities of the IT network operations to include software licensing, hardware maintenance and support service level agreements.
- Manage IT customer support functions. Develop, implement and manage Service Level Agreements (SLAs) which will include coordinating discussions with stakeholder management regarding current and anticipated service requirements and alternative approaches in providing a secure and highly available operational computing environment
- Provide exemplary customer service to end-users and stakeholders by determining the requirements and monitor the level of customer service provided by the IT department.
- Identify benchmarks and best practices for the implementation of a world class IT support function. Proactively review the network infrastructure and critical systems to ensure maximum uptime and supportability.
- Participate in the selection, evaluation and management of vendors and external consultants providing support, maintenance and project activities.
- Provision and maintain QA testing environments, which include support of HP hardware and MS Windows operating systems; troubleshoot and resolve issues that arise in AD, Exchange and DHCP.
- Coordinate departmental activities and special projects to ensure quality, cost effectiveness and meeting of timetables.
- Participate in the development of the information technology strategy, and plans including IT-based Disaster Recovery Plan; and Policies and Procedures Plan. Develop and manage IT policies and procedures related to network to improve the operating quality and efficiency.
- Update job knowledge by participating in educational opportunities, reading profession publications, maintaining personal networks, participating and attending webinars and conferences.

Marginal/Non-essential Functions:

- Perform related duties as required.

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Experience and Education Guidelines:

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Four (4) years of experience in implementing, maintaining and integrating corporate WAN, LAN and server architecture; administration of network security software and hardware; and analyzing, troubleshooting and resolving network issues.

Education: The equivalent of a Bachelor's degree in Computer Science, Information Technology or a related field.

License/Certification:

Possess and maintain a valid California driver's license.

PHYSICAL DEMANDS

Sitting:	Frequently	Lifting:	
Standing:	Occasionally	up to 10 lbs:	Frequently
Walking:	Occasionally	11 to 25 lbs:	Occasionally
Bending:	Occasionally	26 to 50 lbs:	Occasionally
Crouching:	Occasionally	51 to 75 lbs:	Occasionally
Stooping:	Occasionally	76 to 100 lbs:	Rarely
Kneeling:	Rarely	100 + lbs:	Never
Crawling:	Rarely	Carrying:	
Climbing:	Never	up to 10 lbs:	Frequently
Balancing:	Never	11 to 25 lbs:	Occasionally
Running:	Never	26 to 50 lbs:	Occasionally
Twisting:	Occasionally	51 to 75 lbs:	Occasionally
Turning:	Occasionally	76 to 100 lbs:	Rarely
Jumping:	Never	100 + lbs:	Never
Pushing/Pulling:			
up to 10 lbs:	Occasionally		
11 to 25 lbs:	Occasionally		
26 to 50 lbs:	Occasionally		
51 to 75 lbs:	Rarely		
76 to 100 lbs:	Rarely		
100 + lbs:	Rarely		
Grasping – firm:	Occasionally		
Finger dexterity:	Occasionally to Frequently		
Reaching forward:	Occasionally		
Reaching overhead:	Occasionally		
Pinch grasp:	Occasionally		
Grasp – light:	Occasionally		
Coordination -	Eye-hand:	Frequently	
	Eye-hand-foot:	Never	
	Driving:	Occasionally	
Talking -	Face-to-face:	Frequently	
	Verbal contact:	Frequently	
	Public:	Occasionally	

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Exhibit D

Vision	-	Acuity far:	Required
		Acuity, near:	Required
		Depth perception:	Required
		Field of vision:	Required
		Accommodation:	Required
		Color vision:	Required
Hearing	-	Conversation:	Occasionally
		Telephone:	Occasionally
		Earplugs:	Never

MENTAL REQUIREMENTS

Abstract variables, Interpret instructions, Problems-standard, Reading-simple, Reading-complex, Writing-simple, Writing-complex, Math skills-simple, Math skills-complex, Spatial, Form, Clerical, Coordination, Analyzing, Compiling, Computing, Copying, Comparing, Mentoring, Negotiating, Instructing, Supervising, Diverting, Persuading, Speaking-signaling, Serving, Taking instructions-helping, Precision Working, Operating-controlling, Driving-operation, Manipulation, Tending, Handling, Comprehend/follow instructions, Perform simple-repetitive tasks, Maintain work pace, Relate to other people, Influence other people, Perform varied-complex tasks, Generalizations/evaluations, Responsibility for direction.

WORK ENVIRONMENT

Exposure to: Indoors, Outdoors, Slippery/uneven surfaces, Using computer/computer monitor screen, Works around others, Works alone, Works with others.

Est. 6/2017



AGENDA BILL

Agenda Item No. 4(E)

Date: June 20, 2017
To: El Cerrito City Council
From: Pete Salazar, Information Technology Manager
Karen Pinkos, Assistant City Manager
Subject: Agreement with Tyler Technologies for Software as a Service ERP system

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into an agreement with Tyler Technologies to provide Software as a Service (SaaS) for the City's Enterprise Resource Planning (ERP) system in an amount not to exceed \$290,355.

BACKGROUND

The City's Enterprise Resource Planning (ERP) system, New World, is provided by Tyler Technologies and integrates the City's Finance and Human Resources functions. The City currently contracts with Tyler Technologies for the ERP System software at an average cost of \$37,000 per year, but owns and maintains the hardware and software for this system in-house.

The City-owned onsite hardware for the system, including servers and network equipment, is at the end of its useful life. Excluding in-house maintenance and support, the City would have to address the following: new hardware, software updates, upgrades and licenses, and professional services for setup and installation support to refresh the infrastructure every 4-5 years.

Tyler Technologies offers a Software as a Service (SaaS) system known as Tyler Cloud. Using this system would mean the City would no longer have to procure the required hardware and software to support the New World ERP System. This solution will address one of the most critical applications at the City and provide a cost effective application and systems infrastructure hosting that will bring systems up to date in a stable and reliable condition, provide security, and compliance with any required state or federal regulations.

ANALYSIS

The Tyler Cloud SaaS agreement would cost \$57,271 annually, an increase of approximately \$20,000 per year over the current onsite system. However, the City would no longer have to purchase servers, routers, switches, firewalls, and software licenses associated with the ERP System or engage a third party vendor for professional services and in-house support, saving approximately \$200,000 in the next five years. Tyler will perform the required regular hardware patches and fixes including browser compatibility with Internet Explorer, Firefox, and Chrome; freeing up staff time by approximately 12 hours per month in monitoring and performing maintenance on

both test and production systems. Tyler will also perform the required regular New World software updates, patches, fixes, and version upgrades as they are released in both the test and production environments and will perform routine database maintenance and regular indexing and rebuilding of database files; freeing up staff time by approximately 20 hours per month in software monitoring and maintenance. Additionally, the City would improve its disaster recovery procedures since with Tyler Cloud, the system is unaffected if the City's Data Center is down, and the ERP could be accessed anywhere using any computer with an Internet connection.

Tyler service specializes in the New World application and is staffed with necessary expertise in all areas of the ERP system; including server, application, database, and storage with 24x7 automation and staff monitoring with dedicated teams devoted to meeting and maintaining compliance. Finally, since security is complex and expensive, Tyler can leverage economy of scale to provide security beyond anything the City could probably do on its own. With the cloud system, IT staff can focus more on other projects and initiatives to improve the stability, reliability, and performance of the City's computing environment.

STRATEGIC PLAN CONSIDERATIONS

Procurement of the Tyler Cloud SaaS System meets El Cerrito Strategic Plan Goal A: Deliver Exemplary Government Services, and Goal B: Achieve Long-Term Financial Sustainability.

FINANCIAL CONSIDERATIONS

The total investment for this five year agreement is \$290,355. The increase in costs associated with this proposal over the City's current onsite hardware and software system will be \$22,575 for the first year plus \$4,000 in a one-time VPN fee, bringing the total cost to \$26,575. In the negotiated agreement, the City will receive a 4.62% discount for the 2nd year, 9.36% discount in the 3rd year, a 17.52% discount in the 4th year, and a 26.08% discount on the final year of the contract, as shown in the table below.

Year	SaaS Managed Service	Discount Amount	Discount Rate
1	\$22,575.00*		
2	\$21,533.00	\$1,042.00	4.62%
3	\$20,461.00	\$2,114.00	9.36%
4	\$18,620.50	\$3,954.50	17.52%
5	\$16,687.98	\$5,887.03	26.08%
Total	\$99,877.48	\$12,997.53	

*Plus \$4,000 One-time VPN fee

Funding is available in the current FY 2017-18 operating budget; no additional appropriation is necessary.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the agreement.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Tyler Technologies Agreement

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE A FIVE YEAR SERVICE AGREEMENT WITH TYLER TECHNOLOGIES FOR SOFTWARE AS A SERVICE FOR THE CITY'S ERP SYSTEM IN AN AMOUNT NOT TO EXCEED \$290,355

WHEREAS, the City's Enterprise Resource Planning (ERP) system, New World, is provided by Tyler Technologies and integrates the City's Finance and Human Resources functions; and

WHEREAS, the City currently contracts with Tyler Technologies for the ERP System software, and owns the hardware and maintains the software for this system in-house; and

WHEREAS, the City-owned onsite hardware for the system, including servers and network equipment, is at the end of its useful life, and the City would need to purchase new hardware and address software updates, upgrades and licenses, and professional services for setup and installation support to refresh the infrastructure every 4-5 years; and

WHEREAS, Tyler Technologies offers a Software as a Service (SaaS) system that would allow the City's ERP system to be hosted by Tyler Technologies instead of onsite at the City, providing a cost effective application and systems infrastructure hosting that will bring systems up to date in a stable and reliable condition, provide security, and compliance with any required state or federal regulations; and

WHEREAS, staff estimates that the City would realize a savings of approximately \$200,000 over five years in equipment, software updates, in-house maintenance and support by staff, and professional services; and

WHEREAS, funding is available in the current Fiscal Year 2017-18 Adopted Budget.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of El Cerrito that it hereby authorizes the City Manager to enter into a five year service agreement with Tyler Technologies for Software as a Service for the City's ERP system in an amount not to exceed \$290,355.

I CERTIFY that at a regular meeting on June 20, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this Software as a Services Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means City of El Cerrito, CA.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Concurrent Users"** means the number of concurrent users that are authorized to use the SaaS Services. The Defined Concurrent Users for the Agreement are Thirty-Two [32].
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date on which your authorized representative signs the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as Exhibit A.
- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"SaaS Fees"** means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and

includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.

- **“SLA”** means the service level agreement. A copy of our current SLA is attached hereto as Exhibit C.
- **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **“Third Party Terms”** means, if any, the end user license agreement(s) or similar terms for the Third Party Software, as applicable and attached as Exhibit D.
- **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
- **“Third Party Products”** means the Third Party Software and Third Party Hardware.
- **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
- **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. Rights Granted. We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Concurrent Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(8).
2. SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Concurrent Users and amount of Data Storage Capacity. You may add additional concurrent users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Concurrent Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. Ownership.
 - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.
 - 3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

3.3 You retain all ownership and intellectual property rights to the Data.

4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.
5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(8), below, the SLA and our then current Support Call Process.
6. SaaS Services.
 - 6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 16, Type 2. We have attained, and will maintain, Type II SSAE compliance, or its equivalent, for so long as you are timely paying for SaaS Services. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information.
 - 6.2 You will be hosted on shared hardware in a Tyler data center, but in a database dedicated to you, which is inaccessible to our other customers.
 - 6.3 We have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event any of your data has been lost or damaged due to an act or omission of Tyler or its subcontractors or due to a defect in Tyler's software, we will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which your data may be lost, measured in relation to a disaster we declare, said declaration will not be unreasonably withheld.
 - 6.4 In the event we declare a disaster, our Recovery Time Objective ("RTO") is twenty-four (24) hours. For purposes of this subsection, RTO represents the amount of time, after we declare a disaster, within which your access to the Tyler Software must be restored.
 - 6.5 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the

event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.

6.6 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule.

6.7 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned data. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.

6.8 We provide secure data transmission paths from each of your workstations to our servers.

6.9 For at least the past ten (10) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies. Our data centers are accessible only by authorized personnel with a unique key entry. All other visitors must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

SECTION C – OTHER PROFESSIONAL SERVICES

1. Other Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in our industry standard implementation plan. We will finalize that documentation with you upon execution of this Agreement.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
3. Cancellation. If travel is required, we will make all reasonable efforts to schedule travel for our personnel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
4. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
5. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide

implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.

6. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
7. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:
 - 7.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (limited to the then-current version and the immediately prior version);
 - 7.2 provide telephone support during our established support hours;
 - 7.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
 - 7.4 make available to you all major and minor releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
 - 7.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with our then-current release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-

current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

SECTION D – THIRD PARTY PRODUCTS

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.
3. Third Party Products Warranties.
 - 3.1 We are authorized by each Developer to grant access to the Third Party Software.
 - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
 - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).
2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. Term. The initial term of this Agreement is five (5) years from the first day of the first month following the Effective Date, unless earlier terminated as set forth below. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at

our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.

2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).
 - 2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
 - 2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).
 - 2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
 - 2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.
 - 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
 - 1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.
 - 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you

may continue to use the Tyler Software consistent with the terms of this Agreement.

- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate this Agreement and refund you the prepaid but unused SaaS Fees for the year in which the Agreement terminates. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

- 2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
4. **LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(2), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).**
5. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. Additional Products and Services. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S.

Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
18. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
20. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
21. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.
22. Contract Documents. This Agreement includes the following exhibits:
- | | |
|-----------|------------------------------------|
| Exhibit A | Investment Summary |
| Exhibit B | Invoicing and Payment Policy |
| | Schedule 1: Business Travel Policy |
| Exhibit C | Service Level Agreement |
| | Schedule 1: Support Call Process |

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

City of El Cerrito

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notices:

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Associate General Counsel

Address for Notices:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530-2323
Attn: IT Manager



Exhibit A

Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

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New World ERP - Investment Summary

TO: City of El Cerrito, California

FROM: Terri Minter, Account Representative

PHONE: 248-269-1000 x 1639

EMAIL: terriminter@tylertech.com

DATE: May 23, 2017 **PRICING EFFECTIVE:** 90 days

Item Code	Description	Tyler Cloud
<i>Financial Applications</i>		
FM	Add'l FM Standard Users .NET	\$1,629
FM	Financial Management Base Suite .NET	\$14,657
FM	Misc. Billing & Receivables .NET	\$1,629
FM	Position Budgeting .NET	\$2,606
FM	Project Accounting .NET	\$2,281
FM	Purchasing Base .NET	\$4,236
<i>HR/Payroll</i>		
HR	Human Resources Mgt. Base Suite .NET	\$11,730
HR	Add'l HR Standard Users .NET	\$3,259
HR	Benefits Administration	\$811
<i>Decision Support</i>		
DSS	Finance Analytics .NET	\$2,281
DSS	HR/Payroll Analytics .NET	\$2,281
DSS	Dashboards for Financial Mgt .NET	\$3,371
DSS	Dashboards for HR .NET	\$3,371
<i>eSuite Applications</i>		
eSuite	eSuite Base	\$748
eSuite	eBenefit Admin	\$1,632
eSuite	eEmployee	\$748
Annual Hosted Fee (Based on 5 Years)		\$57,271
VPN Fee - (One Time Cost)		\$4,000
Total 5 Year Investment		\$290,355

Recurring SaaS fee is based on a five (5) year commitment for up to thirty two (32) concurrent users.

Additional concurrent users will be billed at our then current rate which is currently \$1,750 per user per year.



Exhibit B

Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. **SaaS Fees.** SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.
2. **Other Tyler Software and Services.**
 - 2.1 *Project Planning Services:* Project planning services are invoiced upon delivery of the implementation planning document.
 - 2.2 *VPN Device:* The fee for the VPN device will be invoiced upon installation of the VPN.
 - 2.3 *Implementation and Other Professional Services (including training):* Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
 - 2.4 *Consulting Services:* If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Business System Design document, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
 - 2.5 *Conversions:* Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
 - 2.6 *Requested Modifications to the Tyler Software:* Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.

2.7 *Other Fixed Price Services*: Other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where “Project Planning Services” are provided, payment will be due upon delivery of the Implementation Planning document.

2.8 *Change Management Services*: If you have purchased any change management services, those services will be invoiced in the following amounts and upon the following milestones:

Acceptance of Change Management Discovery Analysis	15%
Delivery of Change Management Plan and Strategy Presentation	10%
Acceptance of Executive Playbook	15%
Acceptance of Resistance Management Plan	15%
Acceptance of Procedural Change Communications Plan	10%
Change Management Coach Training	20%
Change Management After-Action Review	15%

3. Third Party Products.

3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

3.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

3.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

4. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B at Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.
5. Credit for Prepaid Maintenance and Support Fees for Tyler Software. Client will receive a credit for the maintenance and support fees prepaid for the Tyler Software for the time period commencing on the first day of the SaaS Term.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is:

Bank: Wells Fargo Bank, N.A.
420 Montgomery
San Francisco, CA 94104
ABA: 121000248
Account: 4124302472
Beneficiary: Tyler Technologies, Inc. – Operating



Business Travel Policy

1. Air Travel

A. Reservations & Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of Defense and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

☐ Breakfast	15%
☐ Lunch	25%
☐ Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



Exhibit C

SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Attainment: The percentage of time the Tyler Software is available during a calendar quarter, with percentages rounded to the nearest whole number.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during which the Tyler Software is not available for your use. Downtime does not include those instances in which only a Defect is present.

Service Availability: The total number of minutes in a calendar quarter that the Tyler Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

III. Service Availability

The Service Availability of the Tyler Software is intended to be 24/7/365. We set Service Availability goals and measures whether we have met those goals by tracking Attainment.

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support incident number.

You must document, in writing, all Downtime that you have experienced during a calendar quarter. You must deliver such documentation to us within 30 days of a quarter's end.

The documentation you provide must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). We will also work with you to resume normal operations.

Upon timely receipt of your Downtime report, we will compare that report to our own outage logs and support tickets to confirm that Downtime for which we were responsible indeed occurred.

We will respond to your Downtime report within 30 day(s) of receipt. To the extent we have confirmed Downtime for which we are responsible, we will provide you with the relief set forth below.

c. Client Relief

When a Service Availability goal is not met due to confirmed Downtime, we will provide you with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 5% of one quarter of the then-current SaaS Fee. The total credits confirmed by us in one or more quarters of a billing cycle will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, we will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following Client relief will apply, on a quarterly basis:

Targeted Attainment	Actual Attainment	Client Relief
100%	98-99%	Remedial action will be taken.
100%	95-97%	4% credit of fee for affected calendar quarter will be posted to next billing cycle
100%	<95%	5% credit of fee for affected calendar quarter will be posted to next billing cycle

You may request a report from us that documents the preceding quarter's Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

IV. **Applicability**

The commitments set forth in this SLA do not apply during maintenance windows, Client Error Incidents, and Force Majeure.

We perform maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

V. **Force Majeure**

You will not hold us responsible for not meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, we will file with you a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting our request for relief pursuant to this Section. You will not unreasonably withhold its acceptance of such a request.



Exhibit C

Schedule 1

Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support:

- (1) Tyler Community – an on-line resource, Tyler Community provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (2) On-line submission (portal) – for less urgent and functionality-based questions, users may create unlimited support incidents through the customer relationship management portal available at the Tyler Technologies website.
- (3) Email – for less urgent situations, users may submit unlimited emails directly to the software support group.
- (4) Telephone – for urgent or complex questions, users receive toll-free, unlimited telephone software support.

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – www.tylertech.com – for accessing client tools and other information including support contact information.
- (2) Tyler Community – available through login, Tyler Community provides a venue for clients to support one another and share best practices and resources.
- (3) Knowledgebase – A fully searchable depository of thousands of documents related to procedures, best practices, release information, and job aides.
- (4) Program Updates – where development activity is made available for client consumption

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Clients may receive coverage across these time zones. Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

Issue Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique incident number. This system tracks the history of each incident. The incident tracking number is used to track and reference open issues when clients contact support. Clients may track incidents, using the incident number, through the portal at Tyler's website or by calling software support directly.

Incident Priority

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the client towards clearly understanding and communicating the importance of the issue and to describe generally expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

Incident Escalation

Tyler Technology's software support consists of four levels of personnel:

- (1) Level 1: front-line representatives
- (2) Level 2: more senior in their support role, they assist front-line representatives and take on escalated issues
- (3) Level 3: assist in incident escalations and specialized client issues
- (4) Level 4: responsible for the management of support teams for either a single product or a product group

If a client feels they are not receiving the service needed, they may contact the appropriate Software Support Manager. After receiving the incident tracking number, the manager will follow up on the open issue and determine the necessary action to meet the client's needs.

On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

- (1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
- (2) Email – clients can send an email to software support in order to escalate the priority of an issue
- (3) On-line Support Incident Portal – clients can also escalate the priority of an issue by logging into the client incident portal and referencing the appropriate incident tracking number.

Remote Support Tool

Some support calls require further analysis of the client's database, process or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Support is able to quickly connect to the client's desktop and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.



AGENDA BILL

Agenda Item No. 4(F)

Date: June 20, 2017
To: El Cerrito City Council
From: Paul Keith, Chief of Police
Subject: Police Dispatch Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager or his designee to enter into an agreement with the City of Richmond for the provision of police dispatch services from July 1, 2017 to June 30, 2022.

BACKGROUND

The City of Richmond operates a public safety communications center that currently serves as the public safety answering point for the communities of Richmond, San Pablo, El Cerrito and Kensington. The center provides police and fire dispatch services for Richmond, El Cerrito and Kensington and police dispatch for San Pablo. The center operates 24 hours a day and offers text-to-911 services for those in need and who are unable to speak.

The El Cerrito Police Department and El Cerrito Fire Department currently contract with the City of Richmond for the provision of dispatch and records management services. The most recent agreement expired on June 30, 2014. Since June 30, 2014, the City of Richmond continues to provide dispatch and records management services as outlined in the Consolidated Communications Agreement and the Consortium Records Management Agreement.

In July 2016, representatives from the City of Richmond and the Richmond Police Department held a meeting to inform the partner agencies in the West County Consortium that the City of Richmond was withdrawing from the consortium. The City of Richmond expressed an interest in continuing to provide dispatch services under a different cost and contract structure. The City of Richmond also informed the City of El Cerrito that it intended to stop providing after-hours records support and police data hosting. The City of Richmond informed the City of El Cerrito that it intended to increase the cost of dispatch services for the police department and begin charging for fire dispatch services.

The City of Richmond intends to stop providing dispatch services on July 1, 2017, unless the City of El Cerrito signs a new dispatch agreement.

Following the July 2016 meeting, staff explored dispatch options with other emergency dispatch centers in the region. Staff also evaluated the costs associated with switching dispatch software and records management software.

In 2016, the City of Richmond provided cost information to the City of El Cerrito for the provision of dispatch and records management services. The initial cost for these services was \$803,257 for dispatch and \$91,408 for records management services for combined total of \$894,665

On December 20, 2016, the City Council approved a resolution to allow the City Manager to enter into negotiations with the Office of the Sheriff and the County of Contra Costa for the provision of dispatch services. In January 2017, the City of El Cerrito began negotiating with the Office of the Sheriff.

In March 2017, the City Council approved a contract with the Office of the Sheriff for dispatch services. In April 2017, the Office of the Sheriff did not sign the contract citing political disunity with the City of El Cerrito.

In April and May, 2017, staff entered into contract discussions with the City of Richmond for the provision of dispatch and records management services. After discussions, the City of Richmond presented a new cost structure, reducing the first year cost from \$894,665 to \$760,456, a reduction of \$134,209. The City of Richmond presented a contract that included for a 5% increase in each contract year.

ANALYSIS

Staff has identified the City of Richmond as the provider that best meets the needs of the El Cerrito Police Department. The City of Richmond is offering a contract that covers a multiyear period, allowing the City of El Cerrito to plan out expenses and reevaluate dispatch services as needed. Because the City of Richmond already provides dispatch services to the City of El Cerrito, continuing to use the Richmond communication center will not have an effect on the continuity of dispatch services.

The Richmond Police Department has informed the El Cerrito Police Department that they plan to transition to a new records management system and computer aided dispatch system in the 2017/18 fiscal year. This transition will create an additional projected cost of \$47,000 each year for the purchase of the records management and dispatch software subscription, paid to the software vendor.

A few minor aspects of the agreement were still being worked out at the time that the materials for the City Council meeting were being finalized. The attached version of the agreement may be revised slightly prior to execution. The proposed resolution authorizes minor changes to the attached version, subject to review and approval by the City Attorney.

STRATEGIC PLAN CONSIDERATIONS

Approving the attached resolution will allow the City Manager to enter into an agreement with the City of Richmond for police dispatch services. This agreement will

create a long term solution for police dispatching in El Cerrito. Staff will continue to ensure the public's health and safety by preventing a lapse in dispatch services.

FINANCIAL CONSIDERATIONS

Approval of this resolution will authorize the City Manager to enter into an agreement for police dispatch services. Staff has identified the City of Richmond as the preferred solution for dispatch services. The funding required for these agreements is authorized in the FY 2017/2018 budget.

The City of Richmond identified the cost for El Cerrito Police Dispatch services as being no greater than \$760,456 for fiscal year 2017/2018.

The budgeted amount for dispatch services in FY 2017/18 is \$760,000. The agreement for police dispatch is for a period of 5' years ending June 30, 2022 and may be terminated by either party without cause, with 9 months written notice.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the attached agreements and has approved them as to form.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. City of Richmond Communications Contract

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE CITY OF RICHMOND FOR THE PROVISION OF POLICE DISPATCH SERVICES FROM JULY 1, 2017 TO JUNE 30, 2022

WHEREAS, the City of Richmond has communicated its intent not to renew the Consolidated Communication Agreement, under which it provided public safety dispatch services to the City of El Cerrito; and

WHEREAS, the City of Richmond has offered a new agreement for the provision of police dispatch services; and

WHEREAS, Staff has identified the City of Richmond as the preferred police dispatch service; and

WHEREAS, an agreement with the City of Richmond will ensure continuity of emergency 911 services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to enter into an agreement with the City of Richmond for the provision of police dispatch services, in substantially the form attached as Exhibit A, allowing for minor changes agreed upon between the City of El Cerrito and the City of Richmond, if any, with approval of the City Attorney..

I CERTIFY that at a regular meeting on June XX, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF RICHMOND AND THE CITY OF EL CERRITO

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the City of Richmond, "Richmond" and the City of El Cerrito, "El Cerrito."

For and in consideration of the mutual promises herein exchanged the parties do hereby agree as follows:

1. TERM

1.1 Effective Dates: This Agreement shall be effective from July 1, 2017 through June 30, 2022 unless terminated as provided herein.

1.2 Renewal: At any time during the term of this Agreement the parties may evaluate the terms of this Agreement and modify the agreement. Any amendment shall be in writing and approved by both parties to this Agreement.

1.3 Termination: Notwithstanding the provisions of Paragraphs 1.1 and 1.2 above, either party may terminate this Agreement to not less than nine (9) months written notice to the other party. In the event that this Agreement is terminated for any reason, the obligations of El Cerrito to make payments to Richmond for services provided, and obligations of El Cerrito and Richmond for mutual indemnification shall continue after any such termination. El Cerrito's obligation to pay the City of Richmond for services ends at the termination of the agreement.

2. SCOPE OF SERVICES

2.1 Duties of Richmond: Richmond agrees, through the Richmond Police Department, to provide comprehensive police dispatch services, twenty-four (24) hours per day, three hundred sixty-five (365) days per year, for the El Cerrito Police Department. These services shall include the following:

2.1.1 Emergency and Non-Emergency Telephone Services: Richmond will receive and process all emergency and non-emergency telephone calls for El Cerrito Police Department, including those received on 9-1-1 telephone lines and on published seven-digit emergency telephone lines at the Richmond Police Department Communications Center.

2.1.2 Computer Aided Dispatch: Richmond shall provide dispatch services utilizing a modern Computer Aided Dispatch (CAD) System at the Richmond Police Department Communications Center. Richmond agrees to authorize El Cerrito to have unlimited access to amend, enter, or view their data within this system. The El Cerrito Police Department shall be responsible for any/all hardware or software costs necessary for access to the CAD System. The El Cerrito Police Department agrees not to release any confidential information from, or grant access to any third party without prior written

AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF RICHMOND AND THE CITY OF EL CERRITO

authorization from Richmond, except that the El Cerrito Police Department may release information that describes El Cerrito Police Department operational activity. In the event that El Cerrito believes that information contained in the CAD System would be responsive to a request for records made under the California Public Records Act, El Cerrito shall confer with Richmond prior to disclosing the information.

2.1.3 California Law Enforcement Telecommunications System Database Support:

Richmond will provide limited California Law Enforcement Telecommunications System Database (CLETS) support for El Cerrito Police Department field activities. For the purposes of this Agreement, the hours during which Richmond shall provide CLETS support will be: Monday-Friday, 1800-0700 hours, Saturday and Sunday, 24 hours per day. CLETS support will consist of entering or removing: stolen/recovered vehicles, vehicle tows/impounds, missing persons, and locating wanted persons in the CLETS.

2.1.4 CLETS Access: Richmond will provide access to CLETS during the term of this Agreement; however, El Cerrito Police Department shall be responsible for managing and obtaining CLETS mnemonics, as well as any/all hardware or software costs associated with accessing this database.

2.1.5 Richmond Criminal Justice Information Network System (ACCJIN) Access: Richmond shall provide access to ACCJIN during the term of this Agreement; however, the El Cerrito Police Department shall be responsible for any/all hardware or software costs associated with accessing this database.

2.1.6 Technical Services: The El Cerrito Police Department will be responsible for any/all hardware or software costs associated with secondary hardware or software applications. The Richmond Police Department will not provide support for El Cerrito Police Department owned or other El Cerrito on-premise equipment.

2.1.7 Records Management Services: The Richmond Police Department currently hosts and manages El Cerrito Police Department electronic records (RMS). Both the Richmond Police Department and El Cerrito Police Department intend to transfer their electronic records to a records management system platform provided by Mark 43, Inc. The Richmond Police Department shall continue to provide RMS services to the El Cerrito Police Department until the transfer of both agencies' electronic records to the Mark 43, Inc. platform is completed.

2.1.8 RMS, CAD, and Related Dispatch Hardware and Software Costs: During the period described in Section 2.1.7 prior to the Richmond Police Department and the El Cerrito Police Department both transitioning to the Mark 43, Inc. platform, El Cerrito shall obtain and pay directly for any software licenses that are necessary for the El Cerrito Police Department to access the Richmond Police Department RMS and CAD platforms. Costs that the Richmond Police Department incurs during that period to operate the RMS and CAD platforms, including but not limited to software license fees, or to repair or replace computer hardware that supports the RMS and CAD platforms shall not be separately reimbursable, such costs being covered by the fee for services described in Section 7.1.

AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF RICHMOND AND THE CITY OF EL CERRITO

3. OPERATIONAL ISSUES

3.1 Policies and Procedures: The Richmond Police Department Communications Center shall be under the direction and management control of the Richmond Police Chief. Matters concerning communication procedures, operations, complaints, requests for changes and/or similar operational matters provided for under this Agreement shall be submitted, in writing, to the Richmond Police Chief by the El Cerrito Police Chief or his/her designee.

3.2 Conflict Resolution: During regular business hours, the supervisory personnel from the El Cerrito Police Department should attempt to resolve problems involving dispatch by contacting the on-duty Communications Shift Supervisor (CSS). If the matter remains unresolved after contacting the on-duty CSS, the El Cerrito supervisory personnel should contact the on-duty Lieutenant at the Richmond Police Department.

3.3 Special Events: Whenever possible, the El Cerrito Police Department shall notify the Richmond Police Department Communications Center of any planned special events at least thirty (30) days in advance of the event. If extra personnel are required, the El Cerrito Police Department agrees to reimburse Richmond for this additional cost. The cost of and whether extra personnel are required shall be reviewed and agreed upon by the parties to this Agreement at least thirty (30) days in advance of the event.

4. LEVEL OF SERVICE

4.1 Level of Service: Richmond shall provide police dispatch services twenty-four (24) hours per day, 365 days per year.

4.2 Staffing: Richmond agrees to maintain the appropriate staffing levels within the Richmond Police Department Communications Center to deliver the services set forth in this Agreement.

5. PROVISION OF LABOR AND EQUIPMENT

5.1 Labor and Equipment: Richmond shall supply all labor and supplies necessary to maintain the level of service required by this Agreement. Any equipment purchased by the El Cerrito Police Department to be utilized by the Richmond Police Department Communications Center staff shall meet the Richmond Police Chief's specifications (hereafter "El Cerrito Equipment"). Any El Cerrito Equipment shall remain within the Richmond Police Department Communications Center during the term of this Agreement but shall be owned by El Cerrito. Richmond and El Cerrito shall meet and confer before the installation of El Cerrito Equipment to discuss installation, maintenance and security protocols. Richmond Police Department Communications Center staff shall use reasonable care when operating El Cerrito Equipment. El Cerrito

AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF RICHMOND AND THE CITY OF EL CERRITO

shall be responsible for routine maintenance, repairs, and upgrades of El Cerrito Equipment. Richmond shall allow El Cerrito employees and contractors reasonable access to the Richmond Police Department Communications Center to perform maintenance, repair, and upgrades of El Cerrito Equipment, subject to any standard security measures employed by Richmond at the Richmond Police Department Communications Center. In the event of damage to El Cerrito Equipment beyond normal wear-and-tear, Richmond and El Cerrito shall meet and confer in good faith to determine responsibility for any such damage and whether reimbursement by Richmond, if applicable, shall be direct or a credit against a monthly payment by El Cerrito, as provided for in Section 7.1 of this Agreement.

6. PERSONNEL

6.1 Status of Employees: All persons employed by Richmond to perform services pursuant to this Agreement are Richmond employees and shall at all times be under the direction and control of Richmond.

6.2 Hiring, Supervising and Managing Employees: Richmond is responsible for hiring, supervising and managing communication employees. Richmond is bound to abide by bargaining agreements covering Richmond employees performing services pursuant with this Agreement. The El Cerrito Police Chief will be provided an opportunity to provide comments to the Richmond Police Chief concerning the performance of dispatch personnel performing services for the El Cerrito Police Department under the terms of this Agreement.

7. PAYMENT

7.1 Cost Structure: El Cerrito will pay Richmond the dollar amounts referenced in the table listed below:

July 1, 2017-June 30, 2018	July 1, 2018-June 30, 2019	July 1, 2019-June 30, 2020	July 1, 2020-June 30, 2021	July 1, 2021-June 30, 2022	Total
\$760,456	\$798,479	\$838,403	\$880,323	\$924,339	\$4,202,000

Richmond will invoice El Cerrito monthly based on a proration of the annual amount. The monthly cost will be 1/12 of the annual cost, payable by the 10th day of the month, for services rendered under this Agreement.

AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF RICHMOND AND THE CITY OF EL CERRITO

7.2 Payment of Costs: Nonpayment by El Cerrito of a properly charged and invoiced monthly bill for services within the time provided for payment shall be an event of default of this Agreement. In the event of nonpayment, Richmond shall provide notice of default to El Cerrito. If El Cerrito does not cure the default within 10 calendar days of notice from Richmond, or any extension granted by Richmond in writing, Richmond's remedy shall be to terminate this Agreement upon thirty (30) days written notice, and discontinue the provision of services under this Agreement. Richmond shall be entitled to nine (9) months' notice of termination of this Agreement without cause and associated payments for services, consistent with the provisions of 1.3 Termination. In the event of termination of this Agreement related to a billing dispute, the parties shall meet and confer in good faith on an urgency basis to resolve any outstanding issues.

8. INDEMNIFICATION AND HOLD HARMLESS

8.1 Indemnification by El Cerrito: El Cerrito shall indemnify and hold Richmond, its officers, agents, employees, volunteers, and independent contractors free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of El Cerrito, its officers, agents, employees, volunteers, subcontractors, and independent contractors, for property damage, bodily injury or death, or any other element of damage of any kind or nature, occurring in the performance of the Agreement to the extent that such liability is imposed on Richmond by the provisions of California Government Code Section 895.2, and El Cerrito shall defend at its expense, including attorney fees, its officers, agents, employees, volunteers, and independent contractors in any legal action or claim of any kind based upon such alleged acts or omissions.

8.2 Indemnification by Richmond: Richmond shall indemnify and hold El Cerrito, its officers, agents, employees, volunteers, and independent contractors free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of Richmond, its officers, agents, employees, volunteers, subcontractors, and independent contractors, for property damage, bodily injury or death, or any other element of damage of any kind or nature, occurring in the performance of the Agreement to the extent that such liability is imposed on El Cerrito by the provisions of California Government Code Section 895.2, and Richmond shall defend at its expense, including attorney fees, its officers, agents, employees, volunteers, and independent contractors in any legal action or claim of any kind based upon such alleged acts or omissions.

9. RIGHT TO AUDIT

Upon reasonable notice, either party shall have the right to inspect and audit any records maintained by the other party relevant to this Agreement, to the extent allowed by

**AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF
RICHMOND AND THE CITY OF EL CERRITO**

law.

10. INTERNAL POLICIES

If requested by the Richmond Police Chief or the El Cerrito Police Chief, an internal policy memorandum may be entered into by and between said Richmond Police Chief and the El Cerrito Police Chief with respect to questions relating to the provision of service under this Agreement. The policy will set forth the question raised and agreements reached in resolution of the question. The intent and purpose of each such policy shall be to administratively implement, interpret, or clarify one or more provisions of this Agreement. No such policy shall have the effect of amending this Agreement unless an amendment to this Agreement is approved in writing by the El Cerrito City Council and Richmond City Council. In the event of any inconsistency between the terms of such policy and the terms of this Agreement, the terms of this Agreement shall prevail.

11. DISPUTE RESOLUTION

(a) Any controversy, claim or dispute arising out of or relating to this Agreement shall be settled first by non-binding negotiations. Either party may initiate negotiation proceedings by giving written notice to the other party, setting forth the particulars of the dispute and requesting that the parties meet to resolve the dispute. Within ten (10) days after receipt of such letter, the parties shall meet on at least two occasions to attempt to resolve the matter. If the controversy is not resolved by informal negotiations within thirty (30) days after the receipt of the written notice, the matter shall be referred to a retired judge or justice selected in accordance with the rules of JAMS (the "Mediator") for non-binding mediation. Such mediation shall occur in an informal, non-binding conference or conferences between the parties in which the Mediator shall seek to guide the parties to resolution on the matter. At least ten (10) days before said mediation, each party shall submit to the Mediator a written statement of not more than ten (10) pages setting forth the dispute. All fees and costs incurred in connection with this mediation shall be equally borne by the parties.

(b) Notwithstanding anything to the contrary, Section 11 is not intended to limit or restrict the rights of either party to seek any judicial remedy.

(c) Governing Law; Venue. This Agreement shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of California. Any action to enforce or interpret the provisions of this Agreement must be commenced in the courts of the State of California, and venue for purpose of any action in connection with this Agreement or any document referred to herein shall be in the County of Contra Costa.

**AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF
RICHMOND AND THE CITY OF EL CERRITO**

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

13. ENTIRE AGREEMENT

This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understanding, oral or written, in connection therewith.

14. NO OBLIGATION TO THIRD PARTIES

Nothing in this Agreement, or any of the addenda hereto, is intended to nor shall it create any right in any person, firm, corporation, or entity, other than in the parties hereto, including but not limited to the employees of the parties, to any of the benefits hereunder. Nothing in this Agreement is intended to expand the duties and obligations of El Cerrito and/or Richmond with regard to third parties.

15. CONSTRUCTION OF AGREEMENT

This Agreement shall be constructed and enforced pursuant to the laws of the State of California.

16. ADDITIONAL DOCUMENTS AND AGREEMENTS

The parties agree to cooperate in the execution of any additional documents or agreements that may be required to carry out the terms of this Agreement.

17. ASSIGNMENT/DELEGATION

Neither party hereto shall assign, sublet, or transfer any interest in this Agreement or any duty hereunder without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

**AGREEMENT FOR COMMUNICATION SERVICES BETWEEN THE CITY OF
RICHMOND AND THE CITY OF EL CERRITO**

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

By: _____
Bill Lindsay, City Manager
City of Richmond

By: _____
Scott Hanin, City Manager
City of El Cerrito

By: _____
Allwyn Brown, Chief of Police
Richmond Police Department

By: _____
Paul Keith, Chief of Police
El Cerrito Police Department

1079.3001 2811397.9



AGENDA BILL

Agenda Item No. 4(G)

Date: June 20, 2017
To: El Cerrito City Council
From: Paul Keith, Chief of Police
Subject: Agreement with Mark 43, Inc. to provide Computer Aided Dispatch and Records Management Software

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into an agreement with Mark 43, Inc. to provide computer aided dispatch and records management software for an amount not to exceed \$46,170 annually, from June 30, 2017 through June 30, 2022.

BACKGROUND

Since 1996, the El Cerrito Police Department has been engaged in a joint endeavor with Richmond, San Pablo, and Kensington Police Departments to fund a regional public safety dispatch center. An agreement between the agencies authorized the funding of computer hardware, software, Information Technology staff, licensing costs and dispatchers. The most recent agreement between the agencies expired on June 30, 2014. Since that time, the joint agreement has remained in effect through mutual understanding of the parties. Each month, the City of El Cerrito pays the City of Richmond for its shared cost of equipment maintenance, personnel, and contributions to a contingency fund. This fiscal year, El Cerrito has paid \$634,817 to the City of Richmond for Public Safety Dispatch and Records Management related expenses.

The West County Consortium, as the agencies were commonly referred to, used products from Tyler Technologies, formerly New World Systems (Tyler Tech), for dispatch and records management.

On July 27, 2016, the City of Richmond hosted a meeting with the member agencies to discuss the future of the West County Consortium, the Records Management Agreement and Communication Agreement. At that meeting Richmond informed the other consortium agencies that it no longer intended to host public safety records for outside agencies; was no longer interested in continuing the existing Records Management agreement; gave notice to the consortium agencies that it did not plan to renew the expired Communications Agreement; and planned to cease providing dispatch and records management services on June 30, 2017, unless cities signed new agreements at increased rates.

The City of El Cerrito entered negotiations with the Office of the Sheriff for police dispatch services. On March 20, 2017, the City Council approved a contract with Tiburon, Inc. for computer aided dispatch software and with the Office of the Sheriff for police dispatch. The Office of the Sheriff used dispatch software from Tiburon, Inc. In April 2017, the Office of the Sheriff notified the City of El Cerrito that the Sheriff would

not sign the police dispatch contract citing political disunity with the City of El Cerrito. Staff notified Tiburon, Inc. that the City of El Cerrito would not be moving ahead with the dispatch project with the Sheriff and cancelled the service agreement.

The City Council is reviewing a dispatch and records management agreement with the City of Richmond. The Richmond Police Department intends to transition to a software subscription with Mark 43, Inc. for records management and dispatch software. The Richmond Police Department requires that agencies use software that is compatible with the products from Mark 43, Inc. The Richmond Police Department selected Mark 43, Inc. as their vendor based on a competitive bid process.

ANALYSIS

Staff has identified Mark 43, Inc. computer aided dispatch and records management software as acceptable programs. The use of these programs will positively affect the provision of police services to the City of El Cerrito, making the reporting of crimes more efficient. Mark 43 records management software is compatible with other dispatch products, allowing the City to contract with other dispatch vendors in the future. The Mark 43, Inc. software service is compatible with the Mobile Data Computers (MDCs) used in El Cerrito Police vehicles. In addition, the Mark 43, Inc. software product is a cloud based system that will eliminate the need for a dedicated software server.

STRATEGIC PLAN CONSIDERATIONS

Approving the attached resolution will help the City in achieving goals related to ensuring the public's health and safety. The use of Mark 43, Inc. records management and computer aided dispatch software will ensure a system transition with limited disruption.

FINANCIAL CONSIDERATIONS

Funding for this project is included in the FY 2017-18 budget.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the resolution and the service agreement in substantially the form as attached.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Mark43, Inc. Software License and Services Agreement

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MARK43, INC. TO PROVIDE COMPUTER AIDED POLICE DISPATCH AND RECORDS MANAGEMENT SOFTWARE FOR AN AMOUNT NOT TO EXCEED \$46,170 ANNUALLY.

WHEREAS, the City of El Cerrito is negotiating with the City of Richmond for the provision of police dispatch services; and

WHEREAS, the City of Richmond will require that the City of El Cerrito utilize a dispatch and records management system compatible with Mark43, Inc.'s police dispatch software; and

WHEREAS, Mark43, Inc. has demonstrated that its product meets the operational requirements of the El Cerrito Police Department for computer aided dispatch and records management software; and

WHEREAS, the El Cerrito Police Department has a need for reliable and proven dispatch and records management software.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to enter into an agreement with Mark43, Inc. to provide computer aided dispatch and records management software for an amount not to exceed \$46,170 annually, from June 30, 2017 through June 30, 2022, in substantially the form attached as Exhibit A, allowing for changes agreed upon between the City of El Cerrito and Mark43, if any, with approval of the City Attorney.

I CERTIFY that at a regular meeting on June XX, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

SOFTWARE LICENSE AND SERVICES

This Software License and Services Agreement (this “**Agreement**”) is effective as of **June 30, 2017** (the “**Effective Date**”) by and between Mark43, Inc. (“**Mark43**”), with a place of business at 28 E. 28th 12th Floor, New York, NY 10016, and **El Cerrito Police Department** (“**Subscriber**”), with a place of business at 10900 San Pablo Ave, El Cerrito, CA 94530.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 “**Affiliate**” means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.3 “**Applicable Law**” means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 “**Applications**” means the Records Management System, Computer-Aided Dispatch and Evidence Management Applications, as described in Schedule A.
- 1.5 “**Authorized User**” means an Affiliate, employee or independent contractor of Subscriber (solely to the extent such contractor is providing services to Subscriber), who has been authorized by Subscriber to use the SaaS Services.
- 1.6 “**Documentation**” means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 “**Integration Control Document**” means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.8 “**Intellectual Property Rights**” means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.9 “**Professional Services**” means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.
- 1.10 “**SaaS Services**” means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.11 “**Services**” means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.
- 1.12 “**Software**” means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.13 “**Statement of Work**” means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.

- 1.14 “**Subscriber Data**” means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.
- 1.15 “**Term**” means the Initial Term and any Renewal Term.
- 1.16 “**Third Party Application**” means a third-party service **approved by Mark43** to which Subscriber and any Authorized User facilitates Mark43’s access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.17 “**Third Party Components**” means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.18 “**Third Party Data**” means any data owned by a third party that Mark43 provides to Subscriber via the SaaS Service.
- 1.19 “**Third Party Provider**” means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.20 “**Updates**” means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.21 “**Vendors**” means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.22 “**Website**” means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. SERVICES.

- 2.1 **SaaS Services.** During the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber’s internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website through the Internet as set forth in **Schedule C, “Technical Requirements.”** Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 offers Professional Services in connection with the SaaS Services as further described in **Schedule A.** To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 also provides a 24/7 email based help desk for the SaaS Services as set forth in **Schedule A.**
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber’s or any Authorized User’s login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data other than in connection with this Agreement; (iv) make the SaaS Services available on a “service bureau” basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive

legends placed on the SaaS Services or the Third Party Data; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services an viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with additional restrictions on use of the Services in Additional Terms, as defined in Section 2.10 below.

- 2.6 Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. [In addition, Authorized Users may log into the SaaS Service from only one location at any given time – concurrent usage (or sign in) under a single username is prohibited.] Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors retain title to and ownership of the Third Party Data and the Third Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall have no obligation to incorporate such suggestion into its products or Services.
- 2.8 Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data to: provide the SaaS Services to Subscriber and other Mark43 subscribers; analyze the Subscriber Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this aggregate data to Affiliates, agents, business partners, and other third parties; for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under the Agreement or any statement of work.
- 2.9 Third Party Applications.** If Subscriber installs or enables a Third Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third Party Application as required for the interoperability of that Third Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third Party Application, or for any failure of a Third Party Application to properly interoperate with the SaaS Services. If Mark43 receives information that a Third Party Application may violate any Applicable Laws or Third Party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such

connection, Mark43 shall have the right to do so). In addition, in the event that Subscriber fails to properly obtain the grant of rights to Mark43 to access and use Third-Party Data as required for the interoperation of that Third-Party Application, Subscriber shall defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Application.

2.10 Third Party Components.

(a) **Use of Third-Party Components.** Mark43 may use Vendors to subcontract the performance of its duties and obligations hereunder and to provide certain functions of the Services, including without limitation, hosting and data analysis. Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or in writing from time to time, "**Additional Terms**." If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Service, shall be subject to such Additional Terms. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third Party Component.

(b) **DISCLAIMER REGARDING THIRD PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.11 Third Party Data. Subscriber shall access and use the Third Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.12 Agreements with Third Party Providers. Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

2.13 Changes to Services. Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.

3. FEES AND PAYMENT TERMS.

3.1 Fees for Mark43 Services. Subscriber will pay Mark43 fees as stated on **Schedule A** (the "**Fees**") attached hereto in accordance with the payment schedule set forth on **Schedule A**. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under Applicable Law, from due date until paid. Subscriber will pay any sales, use or other tax related to the license and services provided hereunder, exclusive of income taxes and payroll taxes relating to Mark43's employees. Subscriber agrees that its use of and payment for Services constitutes its inspection and acceptance of such Service.

3.2 Third-Party Data and Third-Party Components. Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee may be included within the Fees. Mark43 may pass through any increase in such fees for Third Party Components or Third Party Data, relating to any existing Services, by giving Subscriber thirty (30) days' advance notice.

3.3 Taxes. Subscriber will be responsible, as required under applicable law, for identifying and paying all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If Subscriber is

exempt from paying Indirect Taxes, it shall provide to Mark43 exemption certificates, or a direct payment permit certificate, or such information to Mark43 as reasonably required and requested to determine whether Mark43 is obligated to collect Indirect Taxes from Subscriber. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement.

4. TERM AND TERMINATION.

4.1 Term.

- (a) Initial Term. The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule A, unless and until terminated in accordance with Section 4.2 (the “**Initial Term**”).
- (b) Renewal Terms. Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule A (each, a “**Renewal Term**”) at the rates set forth on Schedule A, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

4.2 Temporary Suspension and Termination.

- (a) Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- (b) If Mark43 reasonably determines that Subscriber's use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible liability, then Mark43 may immediately upon notice temporarily suspend Subscriber's and any Authorized User's right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services.

4.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

- (a) Subscriber will pay Mark43 all amounts payable hereunder as of the effective date of termination or expiration;
- (b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
- (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services (“**Transition Assistance**”) as set forth in Schedule B.
- (d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 2.7 (“Subscriber Data”), Section 2.9 (“Third Party Components”), Section 2.10 (“Third Party Data”), Section 4.3 (“Effect of Termination”), Section 5 (“Confidentiality”), Section 6.2 (“Disclaimer”), Section 7 (“Limitation of Liability”), Section 8 (“Indemnification”), Section 9 (“Miscellaneous Provisions”), Schedule B (“Transition Assistance”) and this Section 4.4 (“Survival”).

5. CONFIDENTIALITY.

- 5.1 **Definition of Confidential Information.** For the purposes of this Agreement, “**Confidential Information**” means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the “**Receiving Party**”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the “**Disclosing Party**”); (iii) is independently developed by the Receiving Party without reference or

access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

- 5.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 5.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
- 5.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 5.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 5.5 Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given. If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal. Without limiting the foregoing, Subscriber shall notify Mark43 of any requests for records relating to Mark43 (including, without limitation, user guides or Documentation, or documents submitted by Mark43 in response to the RFP) within 24 hours of receipt of the request and provide Mark43 with at least twenty-one (21) days' notice before disclosing any such records. Without limiting the foregoing, Subscriber further agrees to indemnify and hold harmless Mark43, its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from all claims, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and expert and consulting fees), incurred or expended by Mark43 in connection with a request for the disclosure of Confidential Information of Mark43 or Subscriber Data.
- 5.6 Information Collected Through SaaS Services.** Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1 Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and

authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement. Subscriber further represents that it has not received federal funding in connection with procurement under this Agreement.

- 6.2 No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. MARK43 MAKES NO WARRANTY THAT THE SERVICES WILL BE COMPLIANT WITH ANY REQUIREMENTS OF CJIS (CRIMINAL JUSTICE INFORMATION SERVICES) OR CLETS (CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM) OR ANY EQUIVALENT. DUE TO THE NATURE OF SOFTWARE AND THE INTERNET, MARK43 CANNOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

7. LIMITATION OF LIABILITY.

- 7.1 Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF, OF THE SERVICES, THE THIRD PARTY COMPONENTS OR THE THIRD PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.
- 7.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. INDEMNIFICATION.

- 8.1 Indemnification by Mark43.** Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third party claim arising after the Effective Date that the use of the SaaS Services (excluding any open source software) in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of third party;

provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, Mark43 shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (s) claims arising out of acts or omissions of Subscriber or its users, employees or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions software after receipt of modified or updated versions of software; (v) claims arising from the use of Third Party Applications, Third Party Components or Third Party Data; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

8.2 Indemnification by Subscriber. Subscriber will defend, indemnify and hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by Subscriber hereunder, including, without limitation, the Subscriber Data and Third Party Applications, when used in connection with the SaaS Services: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual or alleged violation of Applicable Law by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (iii) Subscriber's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Mark43 (x) promptly notifying Subscriber of the claim, (y) providing Subscriber with reasonable cooperation in the defense of the claim and (z) providing Subscriber with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Subscriber shall not enter into any such settlement without Mark43's prior written consent, which consent will not be unreasonably withheld, and that Mark43 shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at Subscriber's request; (III) Subscriber's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy; (IV) any request pursuant to a judicial or governmental order or other similar process, including but not limited to a subpoena or FOIA request or discovery request, seeking the disclosure of any Subscriber Data or other information collected or maintained by Mark43 in connection with the SaaS Services. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described in Clause (IV) of this subsection unless and until Subscriber reaffirms that it will honor its indemnification obligations as provided herein.

9. MISCELLANEOUS.

9.1 Notices. Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

If to Subscriber:_____

Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: _____

Copy to:
Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: General Counsel

Copy to: _____

9.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

9.3 Dispute Resolution. In the event of a dispute arising under or relating to this Agreement, the parties agree to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act ("FAA"). All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect, which is available at the AAA website www.adr.org. If those rules conflict with this provision, this provision shall control. The arbitration shall be conducted before a panel of one or more arbitrators. The arbitrator(s) shall be selected from the AAA's National Roster of Arbitrators pursuant to agreement between the parties or through selection procedures administered by the AAA. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in New York, New York. The arbitrator(s) shall determine the matters in dispute strictly in accordance with the terms of this Agreement and the substantive law of the State of New York, excluding its principles of conflicts of laws, except that the interpretation and enforcement of this arbitration provision shall be governed by the FAA. The parties agree that New York, New York, USA is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision herein is found to be unenforceable.

The award of the arbitrator(s) shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators, provided that THE ARBITRATOR(S) SHALL HAVE NO AUTHORITY TO AWARD EITHER PARTY ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS), OR ATTORNEYS' FEES OR COSTS. The parties may litigate in court and shall submit to the personal jurisdiction of the federal and state courts located in New York, New York, USA, for any action to do the following: (i) to compel arbitration; (ii) to stay proceeding pending arbitration; (iii) seek injunctive or other equitable relief to prevent the actual or threatened infringement, misappropriation or violation of a its copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, including any provisional relief required to prevent irreparable harm; (iv) to protect or defend the ownership, validity or enforcement of any intellectual property rights; (v) or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties agree that New York, NY USA is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision herein is found to be unenforceable.

The arbitration award and record, and any Confidential Information that is used at or in connection with the arbitration shall not be disclosed to third parties by the arbitrator(s) or the parties without the prior written consent of both parties. Neither the fact that the arbitration occurred nor the result of the arbitration shall be admissible in evidence in a subsequent proceeding brought on the same claims that were presented at the arbitration.

9.4 Force Majeure. Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the

nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

- 9.5 No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 9.6 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 9.7 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 9.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 9.9 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 9.10 Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.
- 9.11 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.12 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
- 9.13 Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. “**Applicable Laws**” means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any governmental authority and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other applicable laws and regulations. In connection with its performance under the Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this

provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.

9.14 Entire Agreement. This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

EL CERRITO POLICE DEPARTMENT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A
Services Schedule

1. **Services.** The Services covered by this Agreement consists of the following:

a. **Professional Services:**

Statement of Work attached. (Mark43 SOW_El Cerrito SOW)

b. **SaaS Services:**

i. The Applications to be provided are described as follows:

Records Management System

- Field Contact & Offense Reporting
- Incident Reporting
- Arrest & Booking
- DUI Arrest
- Automatic UCR & NIBRS coding
- Exported PDF Forms
- Custom Units, Teams and User Roles
- Configurable Report Approval Chains
- Dynamic Master Entity Profiles
- Image, Video, and Audio file uploads
- Permission-based Read/Write Privileges
- User Specific Reports Dashboard
- Advanced Search
- Rich Text Formatting
- Auto-Validation of Fields, Locations and People
- Configurable Fields
- Smart Duplicate Data Entry Logic and Prevention
- Configure all mandated NCIC Masks for Mark43 RMS

Computer Aided Dispatch

- Call Taking and Dispatching
- Event Management
- Call Processing
- Automatic Vehicle Location Mapping (Integration)
- Unit Management and Monitoring
- Call Management
- Silent Dispatch
- Command Line Functionality
- FireCAD Run Card and Dispatch Capabilities

Mark43 Evidence

- Immutable Chain of Custody
- Master Item Profile
- Chain of Custody Validations and Guardrails
- Digitally capture signatures and photo ID's
- Batch Label Printing
- Support for Zebra Printing
- Storage Location Setup and Customization
- Mobile Application (barcode scanning)
- Automated disposition approval process with customizable retention periods

Mark43 Case Management

The Mark43 RMS case management module interfaces directly with reports written in the RMS and enables pulling of data from multiple disparate incidents into one investigation.

ii. Mark43 will provide Subscriber with the SaaS Services for the Fees set forth in Section 4 below (the **"Regular Usage Period"**). Regular Usage Periods shall last for 12 months and renew in accordance with the terms of this Agreement. The parties anticipate that the Regular Usage Period will commence on or about **September 15, 2017**.

2. **Initial Term.** The Initial Term is 5 years commencing on the Effective Date.
3. **Renewal Terms.** Any Renewal Terms shall be for a period of 1 year.
4. **Fees.** \$46,170.00 per year.

Mark43 Pricing is based on the number of sworn officers employed directly or indirectly by Subscriber at the time the Order Form is signed. In the event that Subscriber increases its number of employed sworn officers during the Term by more than 10 percent (10%), then the annual fee shall increase by \$1000 per sworn officer in excess of 45.

5. **Payment Schedule.** Subscriber will pay the Fees on the following schedule:
 - a. Initial Term: **\$46,170.00 per year.** The annual fee for the first full year of the Regular Usage Period is due in full in advance on the first day of the Regular Usage Period, and for subsequent years the annual fee is due in full on the anniversary of such date.
 - b. Renewal Term: Fees for any Renewal Term will be paid on the first day of the Renewal Term.
6. **Support Services.** As part of the SaaS Services, subject to Section 2.4, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and Mark43 will notify Subscriber in writing of any changes no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its known-problem database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or primary point of contact for Subscriber with respect to this Agreement will be Matt Neal (matt.neal@mark43.com) .
7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following services levels.
 - a. **Service Levels for the Records Management System and Evidence Management Applications (hereinafter, "RMS").**
 - i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("RMS Scheduled Downtime"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 7I below ("Service Levels for Integrated Third Party Software"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.
 - ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

“RMS Unavailability” is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for Subscriber’s use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Mark43, by a vendor, or by Subscriber); (b) acts or omissions of Subscriber or any Subscriber user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or Subscriber internal network problems; (d) defects or bugs in the Applications or Software caused by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (e) any other cause(s) beyond Mark43’s reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. Subscriber will be responsible for immediately notifying Mark43 of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

“Credit Percentage” means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber has paid Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month’s portion of the Fee, or: $\$1,000/12 = \83.33 per month, and $10\% \text{ of } \$83.33 = \8.33 . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, Subscriber must notify Mark43 in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Mark43 prior to any credits being granted. Mark43 will acknowledge credit requests within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied. The issuance of RMS Service Credit by Mark43 hereunder is Subscriber’s sole and exclusive remedy for any failure by Mark43 to satisfy the service levels set forth in this Section 7(a).

b. **Service Levels for the Computer Aided Dispatch Application (CAD).**

- i. **CAD Availability.** During any calendar month of a Regular Usage Period, CAD shall be available to Subscriber no less than 99.95% of the time on a 24x7 basis, excluding scheduled maintenance of CAD (“**CAD Scheduled Downtime**”); provided, however, that Mark43 shall not be responsible for downtime of CAD under this section caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein. Any CAD Scheduled Downtime shall be scheduled on minimal traffic days whenever possible. The parties agree that the total amount of CAD Scheduled Downtime shall not exceed 60 minutes during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Agreement as soon as it becomes aware of any actual or potential unavailability of CAD other than CAD Scheduled Downtime (“**CAD Unscheduled Downtime**”), as well as continual periodic updates during the CAD Unscheduled Downtime regarding Mark43’s progress in remedying the unavailability and the estimated time at which the CAD shall be available.
- ii. **Error Response and Resolution.** When reporting a failure of the CAD to Mark43 (a “**CAD Error**”), Subscriber shall identify the CAD Error as a Severity Level 1, 2, or 3 (each defined below) based on Subscriber’s initial evaluation. If Mark43 becomes aware of a Severity Level 1 or 2 CAD Error, Mark43 shall promptly, but in no event to exceed the Initial Response timeframe in the chart set forth below, notify Subscriber, and such notice shall identify the CAD Error as a Severity Level 1 or 2 CAD Error based on Mark43’s initial evaluation. Mark43 and Subscriber shall cooperate in good faith to jointly determine whether a CAD Error is a Severity Level 1, 2, or 3 CAD Error; provided, however, that in the event that Mark43 and Subscriber cannot come to such joint determination despite such good faith cooperation, Mark43’s determination shall control. Subscriber may report to Mark43 any Severity Level 1 or 2 CAD Error 24 hours per day, 7 days per week, and any Severity Level 3 CAD Error during Mark43’s normal business hours. Upon notification by Subscriber of a CAD Error, Mark43 shall commence and diligently pursue correction of such CAD Error, at all times employing at least the level of effort (“**Level of Effort**”) designated in the chart set forth below and in all instances providing an Initial Response, temporary resolution or fix (a “**Work Around**”) and a permanent fix (a “**Permanent Correction**”) to Subscriber within the timeframes in the chart set forth below, as measured from the earlier of the time that Subscriber notifies Mark43 or Mark43 first becomes aware of a CAD Error. Mark43 shall provide Subscriber with updates to the status of Mark43’s efforts (the “**Status Updates**”) by telephone, email or such other means as may be reasonably designated by Subscriber from time to time, no less frequently than the timeframes identified in the chart set forth below. For the avoidance of doubt, a CAD Error does not include, and

Mark43 will not be responsible for, any feature or functionality of the CAD that is not set forth in Section 1(b)(i)(2) of this Schedule A or in a project plan created for Subscriber by Mark43.

1. **"Severity Level 1 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, renders the CAD or any material portion thereof inoperative, or materially impairs use of the CAD in a production environment. Examples of Severity Level 1 CAD Errors include, without limitation, situations in which the CAD are inoperable and causing dispatchers to experience a total loss of service, continuous or frequent instabilities, a loss of connectivity or inability to communicate as intended, or there is an inability to process transactions, the creation of a hazard or emergency, or the inability to use a primary feature or function of the CAD.
2. **"Severity Level 2 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, substantially impairs use of one or more features or functions of the CAD, which constitute less than a material portion thereof, in a production environment, or any CAD Error occurring in a testing or other non-production environment that, if occurring in a production environment, would constitute a Severity Level 1 CAD Error. Examples of Severity Level 2 CAD Errors include, without limitation, situations in which a CAD Error is causing intermittent impact to dispatchers, loss of redundancy, loss of routine administrative or diagnostic capability, or inability to use a secondary feature or function of the CAD.
3. **"Severity Level 3 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, has a minimal impact on the performance or operation of the CAD. Examples of Severity Level 3 CAD Errors include, without limitation, a CAD Error having only a minimal impact on dispatchers and CAD Errors seen in a test or other non-production environment that, if deployed in a production environment, would not constitute a Severity Level 1 CAD Error.

Severity Level	Level of Effort	Initial Response	Work Around	Permanent Correction	Status Updates
1	Continuous best efforts, 24 hours per day, 7 days per week	Immediate, but in no event to exceed 30 minutes	6 hours	3 calendar days	Every 3 hours prior to a Work Around and every calendar day thereafter
2	Commercially reasonable efforts, 24 hours per day, 7 days per week	1 hour	24 hours	5 calendar days	Every 6 hours prior to a Work Around and every calendar day thereafter
3	Commercially reasonable efforts, during normal business hours	1 Business Day	10 Business Days	20 Business Days	Every 2 Business Days prior to a Work Around and every 5 Business Days thereafter

CAD Service Credits. Mark43's failure to meet the CAD services levels set forth in Section 7(b) during any calendar month of a Regular Usage Period entitles Subscriber to Fee credits (the **"CAD Service Credit(s)"**) calculated as set forth below. Any CAD Service Credits owed to Subscriber hereunder shall offset against any subsequent Fees owed by Subscriber and shall be Subscriber's sole and exclusive remedy with respect to Mark43's failure to provide the CAD. If Mark43 fails to meet the CAD service levels set forth in this Section 7(b) in any applicable calendar month during the Regular Usage Period, then Mark43 shall credit Subscriber five percent (5%) of the portion of the Fees attributable to CAD Services in the calendar month in which such CAD service level failure occurs. The applicable CAD Service Credits will be applied to the next invoice. Only one CAD Service Credit for failure to meet the applicable service level shall be granted for each Service in a calendar month of the Regular Usage Period.

- c. **Service Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.

- i. **Availability of Third Party Applications.** The Statement of Work will outline specific Third Party Application integrations (the “**Integrated Third Party Software**”) to be performed by Mark43 during the Professional Services Period, and the Subscriber’s and Mark43’s respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Mark43 or by the third party provider, the “**Integration Scheduled Downtime**”); provided, however, that Mark43 shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Mark43 does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Mark43 agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Mark43 shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime (“**Integration Unscheduled Downtime**”), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Mark43’s progress in remedying the unavailability and the estimated time at which the Integration shall be available.
- ii. **Responsibilities for Planned Updates.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than forty-five (45) days’ advance notice, of any update by the Third Party provider of Integrated Third Party Software. Mark43 shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.
- iii. **Responsibilities for Planned Upgrades.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than ninety (90) days’ advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. Mark43 shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Mark43 would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

SCHEDULE B

Transition Assistance

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Mark43 will create searchable PDFs of each record (each, a “**Record**”) and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43’s sole discretion. Records can be uploaded to Subscriber’s new records management system by the Subscriber or its new vendor.

1. Preparation

- a. The Subscriber will provide the desired cutoff date of the SaaS Services (the “**Cutoff Date**”), at which time all existing user accounts will be terminated.
- b. Mark43 will provide one (1) account for the Subscriber to access a web-based storage platform to retrieve Subscriber documents and Records (the “**Transition Account**”). The Transition Account will be available to Subscriber for thirty (30) days prior to the Cutoff Date.

2. Content

- a. Each Report in Cobalt will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Cobalt format then in use.
- b. All archive files will be accessible via the internet on the Cutoff Date.

3. Support

- a. Mark43 will maintain Subscriber data in Cobalt for up to 1 year following the Cutoff Date.
- b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.
- c. Mark43 will resolve any issues it deems to be the result of errors in the Cobalt platform or export process for a period of six (6) months after the Cutoff Date.

Transition Assistance as outlined in this Schedule B is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees have not been paid as required in this Agreement, Mark43 may retain all Records and decline to provide the support outlined in Section 3 of Schedule B above until such Fees are paid in full.

SCHEDULE C

Technical Requirements

Workstation Requirements

	CAD Dispatch Workstation	RMS Dispatch Workstation
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Quad-core Intel processor	Single, quad-core Intel processor
Memory	4 GB	4 GB
Network Card Speed	2 Mbps	2 Mbps
Screen Resolutions Supported	1920x1080	1024x768
Hard Disk Space Required	256GB SSD Disk Drive	80GB
Monitor	Dual 24 inch, flat panel, monitors	Dual 24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	CAD Non-Dispatch Workstation	RMS Non-Dispatch Workstation
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Single, quad-core Intel processor	Single, quad-core Intel processor
Memory	4GB	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1920x1080	1024x768
Hard Disk Space Required	256GB SSD Disk Drive	80GB
Monitor	24 inch, flat panel, monitors	24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	CAD Non-Dispatch Mobile Laptop	RMS Non-Dispatch Mobile Laptop
Operating Systems Supported	Windows 7 and higher	Windows 7 and higher
Processor	Single, quad-core Intel processor	Single, quad-core Intel processor

Memory	4GB	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1024x768	1024x768
Hard Disk Space Required	80GB	80GB
Monitor	13"	13"
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.	Mark43 systems do not require any 3rd party software or plugins.

Browser Requirements

Since the Mark43 platform is web-based, it can be accessed from any web browser. Mark43 requires using a modern web browser to access the system. IE 9+, Edge, Safari (latest), Firefox (latest), Chrome (latest) are all supported. However, we recommend Chrome as it updates to the latest version automatically and is proven high performance. As far as devices that work with Mark43, we are hardware agnostic as long as a modern browser is supported. Deployed departments have used Panasonic Toughbooks as well as Getac tablets.

Interface Server Requirements

If 3rd party integrations are required, an interface server may be installed on site. The requirements of this server are:

	Requirements
Sever Purpose	Servers only required for interfacing with 3rd party applications. Mark43 systems are cloud based and require no server hardware on-premise.
Operating System	RHEL 7, CentOS 7
Processor speed & quantity	3.1 Ghz
Cores per processor	2
Memory	8GB
Network Card Speed	2 Mbps
Network Card Quantity	1 NIC (2 NICs at 1 GBPS or greater preferred)
Screen Resolution	1024x768
Hard Disk Space Required	250GB
Hard Disk Space Drive Configuration	500GB

Networking/Firewall:

Inbound	Outbound	VPN	User Accounts
SSH over client VPN	All	Mark43 needs ability to SSH to the interface server over our client VPN	Admin user accounts for personnel with client VPN access.

Internet Connectivity Requirements

Mark43's software-as-a-service platform is accessed via web browser and requires Subscriber to connect via an active internet connection.

In office, Mark43 requires a 1 GB internet connection along with a backup internet service provider line for redundancy purposes. In the field, Mark43 recommends a 4G LTE connection for best performance.

Mark43 Pricing for the El Cerrito Police Department

Sign-by date of June 30, 2017

This purchase price is for Mark43's RMS, Evidence and CAD Software-as-a-Service (SaaS) offering as set forth in any relevant contract(s), including any Statement(s) of Work, entered into by Mark43 and the El Cerrito Police Department (the "Department").

The Department has the option to add on other integrations after launch. Rates for additional integrations (if any) will be set forth in the contract.

Mark43 Subscription – Recurring Expense	Price
1 Year Subscription to Mark43 RMS and CAD <i>Pricing is for El Cerrito Police Department and includes usage for all authorized personnel employed by the El Cerrito Police Department. No other agencies are included in this pricing.</i>	\$46,170 per year
Proposed Interface Development	Price
County Message Switch (CLETS queries from within CAD and RMS)	Included
Cop Logic	Included
Contra Costa ARIES	Included
Crime Reports	Included
Zoll Tablet PCR	Included
First Watch	Included
Crime Mapping	Included
Zoll FireRMS	Included
Priority Dispatch ProQA	Included
Mobile PD	Included
Tri-Tech AMR	Included
Rip-N-Run Interface or similar feature	Included
Zetron Ringdown	Included
Cogent Livescan	Included
Temporary interface from New World CAD to Cobalt RMS	Included
Provision of two servers to be installed at El Cerrito Police Department	Included
Data conversation from one existing database to Mark43 RMS	Included

Proposed Key Milestones	Date
Contract Signing	June 30, 2017
Data Migration Complete	July 31, 2017
Interfaces Complete	July 31, 2017
Testing Starts	August 1, 2017
Training Starts	August 15, 2017
Go Live RMS and Evidence	September 15, 2017
Go Live CAD	July 1, 2018
Supplemental Information	
Contract duration: June 30, 2017 through June 30, 2022 Renewals: Automatic renewal thereafter for one-year terms unless either party opts out	
Payment for first year of service due September 15, 2017 (or go-live date, whichever is later)	
Price locked for contract years 2017 - 2022	



AGENDA BILL

Agenda Item No. 4(H)

Date: June 20, 2017
To: El Cerrito City Council
From: Will Provost, Environmental Analyst
Maria Sanders, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Support of the Paris Climate Agreement and Joining the Mayors National Climate Action Agenda

ACTION REQUESTED

Adopt a resolution authorizing the Mayor to sign on to support the Paris Climate Protection Agreement through the Mayors National Climate Action Agenda and to support, in consultation with the City Manager or his designee, other similar initiatives that are consistent with City policy.

DISCUSSION

The Paris Agreement on Climate Change went into force on November 4, 2016, when the agreement had been ratified by more than 55 countries, accounting for more than 55% of global greenhouse gas (GHG) emissions. Since then, the number has grown to a total of 148 countries having ratified the agreement, representing a landmark commitment to combat climate change across the globe.

The agreement requires parties to put together their own plan to reduce greenhouse gas emissions, with a goal of keeping global temperature rise below 2 degrees Celsius above pre-industrial levels, while also striving to limit the increase to just 1.5 degrees Celsius. Meeting this goal, scientists hope, would moderate the most devastating effects of climate change, including extreme weather events (e.g. droughts, floods, etc.) and adverse impacts on ecosystems.

The City of El Cerrito is committed to reducing the pollution that causes global warming, and since 2006 the El Cerrito City Council has consistently supported local, regional, and state initiatives to reduce greenhouse gas emissions. In 2011, the City Council passed Resolution No. 2011-12 adopting GHG emission reduction targets of 15% below 2005 levels by the year 2020 and 30% below 2005 levels by 2035. In 2013, the City Council passed Resolution No. 2013-27 to adopt the El Cerrito Climate Action Plan, outlining policies and actions the City could take to meet its reduction targets. The State of California has mandated similar targets, aiming for a 15% reduction by 2020, with an even more ambitious target of 80% below 1990 levels by 2050.

In spite of the strong support from scientists, global leaders, business groups, and states and municipalities across the country, on June 1, 2017, President Donald Trump announced that he would withdraw the United States from the Paris Agreement. Since

then, more than 300 mayors across the United States have joined the Mayors National Climate Action Agenda (also known as Climate Mayors), supporting the goals of the Paris Agreement and making their own commitments to combat climate change. Climate Mayors is a network of "U.S. mayors working together to strengthen local efforts for reducing greenhouse gas emissions and supporting efforts for binding federal and global-level policymaking." More information about Climate Mayors can be found on-line at www.climate-mayors.org.

Given El Cerrito's strong commitment to climate protection, the Mayor has received multiple requests to join Climate Mayors, as well as other similar statements in support of climate protection. Joining the network and supporting the Paris Agreement is non-binding and is consistent with the City's Climate Action Plan, as well as other climate policy passed by the City Council.

STRATEGIC PLAN CONSIDERATIONS

Support for the Paris Climate Agreement is consistent with the following El Cerrito Strategic Plan Goals:

Goal E – *Ensure the public's health and safety* by supporting initiatives that decrease pollution and improve the health and prosperity of future generations; and

Goal F – *Foster environmental sustainability citywide* by supporting implementation of the Climate Action Plan and legislation that would help the City, and the State, meet its GHG reduction targets.

ENVIRONMENTAL CONSIDERATIONS

There is no direct environmental impact of supporting the Paris Agreement.

FINANCIAL CONSIDERATIONS

There is no financial obligation associated with the requested action.

LEGAL CONSIDERATIONS

There is no legal obligation associated with the requested action.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO IN SUPPORT OF
THE PARIS CLIMATE AGREEMENT

WHEREAS, consensus exists among the world's leading climate scientists that global warming caused by emissions of greenhouse gases (GHG) from human activities is among the most significant problems facing the world today; and

WHEREAS, documented impacts of climate change include but are not limited to increased occurrences of extreme weather events (e.g. droughts and floods), adverse impacts on ecosystems, demographic patterns and economic value chains; and

WHEREAS, almost every nation in the world signed onto the Paris Climate Agreement, committing to take action and enact programs to limit global temperature increase to less than 2 degrees Celsius, with an expectation that this goal would be reduced to 1.5 degrees in the future; and

WHEREAS, the Paris Climate Agreement is voluntary and commitments under the agreement are crafted by each party of the agreement based on their own goals and abilities to reduce greenhouse gas emissions; and

WHEREAS, the State of California has mandated statewide reduction of GHG emissions to 80% below 1990 levels by 2050; and

WHEREAS, the City of El Cerrito has adopted a Climate Action Plan with GHG emission reduction targets of 15% below 2005 levels by the year 2020 and 30% below 2005 levels by 2035; and

WHEREAS, responding to climate change also encourage innovation solutions that propel economic opportunities that transitioning to a climate-compatible future brings; and

WHEREAS, the Mayors' National Climate Action Agenda (also known as "Climate Mayors") is a coalition of U.S. Mayors working together to strengthen local efforts for reducing GHG emissions and to support efforts for binding federal and global-level policymaking, such as the Paris Climate Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it:

1. Reiterates its commitment to reducing GHG emissions through implementation of the El Cerrito Climate Action Plan;
2. Commits to exploring the potential benefits and costs of adopting policies and programs that promote the long-term goal of GHG emissions reduction while maximizing economic and social co-benefits of such action; and
3. Joins other US cities in the Mayors' National Climate Action Agenda in adopting and supporting the goals of the Paris Agreement.

Agenda Item No. 4(H)

Attachment 1

BE IT FURTHER RESOLVED that the El Cerrito City Council supports and endorses the Paris Climate Agreement and authorizes the Mayor and designated City staff to join the Mayors' National Climate Action Agenda on behalf of the City and authorizes the Mayor, in consultation with the City Manager or designee, to support other similar initiatives that are consistent with City policy.

I CERTIFY that at a regular meeting on June 20, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Contra Costa Animal Services El Cerrito City Council Presentation

June 20, 2017



Our Department

- **Field Services** – Protecting public health & safety through enforcement of the County's Animal Ordinance, rabies control, field patrols and dead animal impounds.
- **Shelter Operations** – Adoptions, transfers, intake and daily care, behavior assessment and maintenance of animals and kennels.
- **Medical Services** – Care and treatment of animals, spay/neuter surgeries, low-cost vaccination clinic,
- **Clerical Division** – Dispatch and frontline support staff, the hub of the department.
- **Volunteers** – Animal socialization, adoption counseling, lost and found, mobile adoptions, transfer partner coordination.
- **Administration** – Director, Deputy Director, Administrative Services Officer, Community & Media Relations Coordinator, Personnel Mgr.

CCAS Serving El Cerrito

Highlights of Services Provided to El Cerrito in 2016

- 163 Stray Animal Impounds
- 188 Deceased Animal Impounds
- 47 Noise/Animal/Inhumane Ordinance Investigations
- 36 Rabies Exposure Investigations
- *11 Local Agency Assists (Police, Fire, Code Enforcement etc.)

2017 Rate Increase

- Contra Costa Animal Services implemented an \$0.20 per capita rate increase for FY 2017-2018 (from \$5.74 to \$5.94).

**Most Bay Area municipalities pay approx. \$8.70 per capita for animal services.



2016 At A Glance

- Animal Intake = 11,243
- Animals Reunited with Owners = 1,269
- Public Adoptions = 3,412
- Adoptions to Transfer Partners = 3,556
- Cats Returned to Field = 520
- Over 2,000 Low-Cost Vaccinations
- Over 5,000 Spay/Neuter Surgeries
- Police, Fire & Code Enforcement Assists = 599

Are you harboring a fugitive?



1'0"
6"

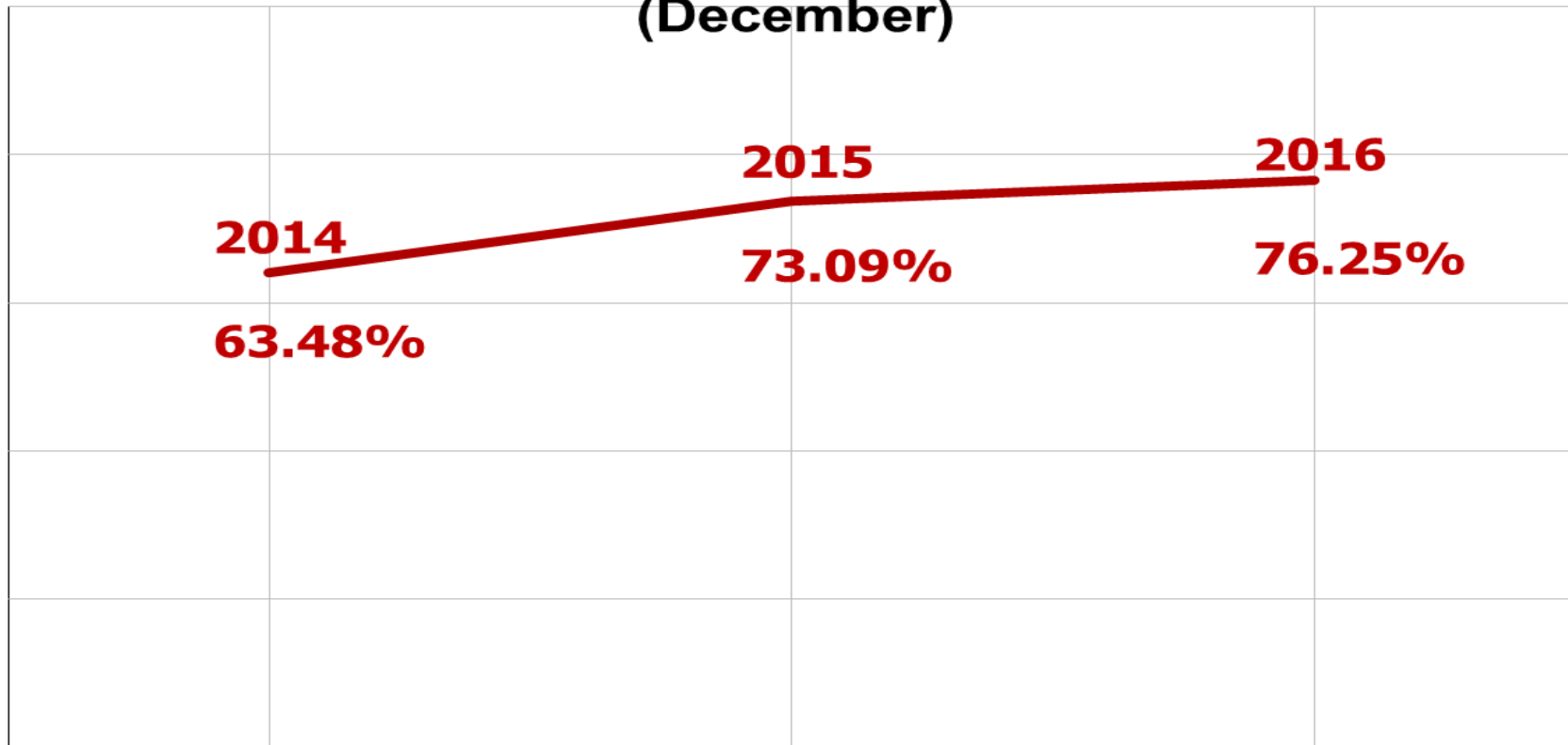
Make your pet legal!
PET LICENSE AMNESTY PERIOD
License your dog or cat, renew an expired license, and late fees/fines will be waived!
\$10 microchip fee at Vaccination Clinic (with appointment)
June 1-30, 2016!



Contra Costa County Animal Services
4800 Imhoff Place Martinez CA (925) 335-8300
910 San Pablo Ave Pinole CA (510) 374-3966
Tues - Sat 10 am - 5 pm | Wed 10 am - 7 pm
www.facebook.com/ccasd www.ccasd.org

2014 -2016 Live Release Rate Comparison

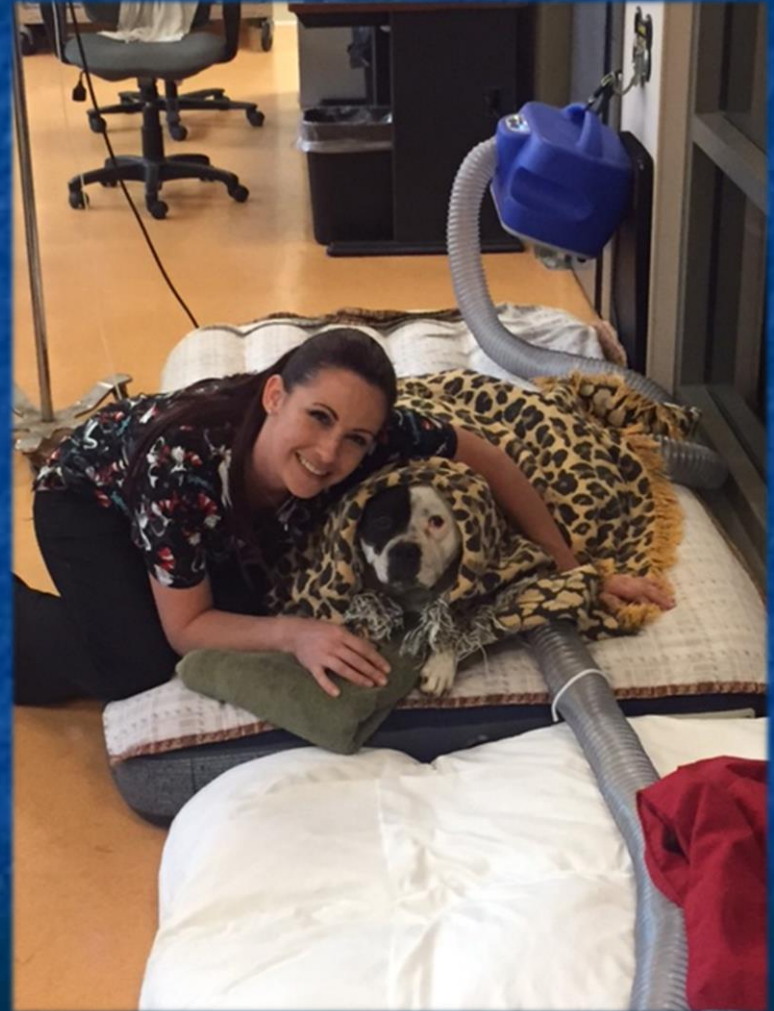
**All Animals Live Release Rate - Year up to Date
(December)**



New Policies & Programs in 2016

Policies

- Updated Mission Statement
- Night Deposit Boxes Closed
- Increased Staff for Deceased Animal Pickups
- Hired First Ever Chief of Shelter Medicine
- Barking Dog Ordinance Update



New Policies & Programs in 2016

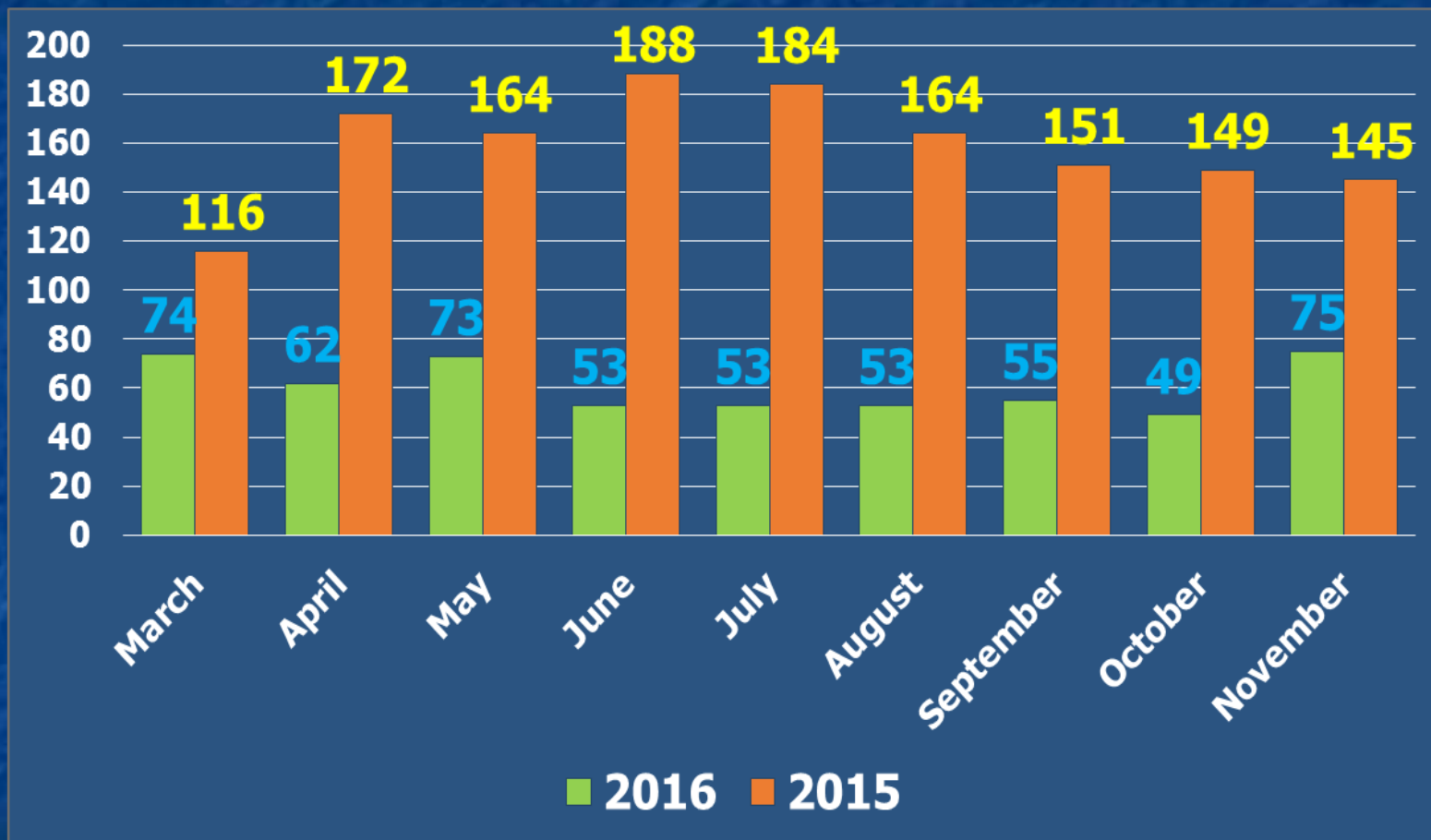
Programs

- Return to Field Program
- Book Buddies Program
- Running Dog Program
- Increased Marketing & Public Education
- License Amnesty Program
- Pet Retention Program





Owner Surrendered Dogs & Cats 2016 vs. 2015



2016 total: 547

2015 total: 1288

CONTRA
COSTA
ANIMAL
SERVICES

Opportunities & Challenges

■ Opportunities

- Increase Low-Cost Spay/Neuter and Vaccination Programs to Address Pet Overpopulation and Animal Disease.
- Environment Ripe for Collaboration with Local Animal Welfare Groups.
- Hard-Working, Committed Staff and Volunteers.
- A Supportive and Engaged Community.

■ Challenges

- Balancing Life Saving with Length of Stay and Quality of Care.
- Need to Update Process/Procedures to Bring the Department into the 21st Century.
- Need to Increase Staffing.
- Volume of Animals.
- Physical Facility Constraints.
- Continuous Population Growth (Including Pets).

Go all in, we're not bluffing!

We've got a
FULL HOUSE



This Saturday & Sunday Only!
All Adoptable Animals
FREE!!

Saturday Jan. 16th 10am - 5pm
Sunday Jan. 17th 12pm - 3pm
(Sunday at Martinez Shelter Only)

Martinez - 4800 Inhoff Place
(925) 335-8300
Pinole - 910 San Pablo Ave
(510) 374-3666
Please visit our website
WWW.CCASD.ORG



Five Easy Steps to Support Your Local Shelter

- Adopt from your local shelter!
- Ensure your pets are licensed and microchipped! Licensed and microchipped pets have higher percentages of being reunited with their owners and are less likely to become shelter residents.
- Volunteer at the Martinez or Pinole Shelter. We have a broad range of volunteer opportunities that allow us to place volunteers in areas where they are most suited or most want to help.
- Sign up to take a tour of the Martinez or Pinole Shelter. Come learn about the amazing things that our staff and volunteers do every day. The tour will take you through the various aspects of what CCAS does, including field, medical, sheltering and adoptions.
- Like us on Facebook

Questions & Answers



AGENDA BILL

Agenda Item No. 7(A)

Date: June 20, 2017
To: El Cerrito City Council
From: Christopher Jones, Recreation Director
Subject: One Year Extension and Termination of the Lease for Open House Senior Center

ACTION REQUESTED

Receive community comments regarding the recent action of the West Contra Costa Unified School District to end the City's use of the Open House Senior Center, located at 6500 Stockton Ave on the Fairmont Elementary School Campus, by June 30, 2018 and provide staff with direction on the proposed one year lease extension and lease termination.

BACKGROUND

The City of El Cerrito and the then Richmond Unified School District first entered into a joint use facilities agreement in 1958. In 1965, the two organizations entered into an agreement to jointly develop Fairmont Park which included a lease for the Fairmont Clubhouse to serve as El Cerrito's Senior Center. In 1982, El Cerrito and the RUSD agreed to a twenty-five year lease for the El Cerrito Senior Center with an option to extend upon mutual agreement for an additional ten years. In that same agreement, RUSD gave permission for the City to expand the senior center utilizing grants pursuant to the Housing and Community Development Act of 1974. In 2004, the City requested to exercise the option to extend the lease of the Senior Center for ten years until June 30, 2017. The terms of this lease have no further extension options.

Over the course of that period, the City Council has continually supported numerous ballot initiatives supporting the District operations and bond program. Implicit in that support was that Fairmount School would be rebuilt to address its current inadequacies and overcrowding. More recently, City Staff participated in the Districtwide Facilities Master Plan and at no time did the possibility of using the Senior Center as an option to address Fairmount's overcrowding ever come up.

After many years of discussion between the City and the District, on March 1, 2016, the City Council voted to identify the lower parcel of the former Portola Middle School as the preferred option for the location of a new library and directed staff to enter discussions with the West Contra Costa Unified School District. The library, as envisioned by the City Council, would have contained sufficient community and programming space to accommodate senior programming when combined with available space at the El Cerrito Community Center. This option also would have allowed Fairmont Elementary School to expand into the spaces occupied by the Senior Center and current library. At no time during the process did the District Board or staff raise any serious concerns regarding that proposal and both bodies had met jointly and gave tacit support for the project that would benefit both constituencies. Shortly after the City Council's action, the WCCUSD Board of Education met in closed session and informed the City that their preferred site would not be available to house a library.

In March of 2017, the City was informed by WCCUSD that negotiations should begin for a new lease of the Senior Center. Initial discussions had always presumed another long-term lease at similar terms. City Staff was also told that some community members may be organizing in opposition to a new lease. In May of 2017, the City was informed that an informational item on the Senior Center lease had been requested by the WCCUSD Facilities Sub-Committee for their May 16, 2017 meeting. With the endorsement of the Committee on Aging, Mayor Abelson sent a letter (attached) to the Facilities Sub-Committee acknowledging the need for more space at Fairmont Elementary School and requesting a lease extension of three years for the Senior Center to allow the City enough time seek funding and support for a new facility to accommodate senior programming. At the May 16th Facilities Sub-Committee Meeting, the board members decided to refer the lease discussion to the full WCCUSD Board of Education in a closed session meeting on May 24, 2017. Following the meeting, Staff again requested a three-year lease extension option with an option to end sooner if an alternate site could be found.

Following the Board of Education Meeting on May 24th, the City was informed that “The Board took action to approve a one-year extension for the lease agreement at 6500 Stockton Ave for the city’s continued use of the site for a senior center and give a 1 year termination notice to the city at this time.” The City has also received a one year lease extension agreement for the Senior Center building.

ANALYSIS

At no time during the weeks leading up to the May 24, 2017 Board of Education Meeting was the City made aware of the potential for a lease termination. While District staff has indicated that they are open to future talks around site issues, it is not known what, if any, direction has been given by the Board of Education beyond the lease terms.

Given the very distinct possibility that the City will have to abandon the current Senior Center by June 30, 2018, Staff has begun the process of researching possible locations and scenarios to house the City’s senior programs. The City neither has an ideal property to house a new senior center nor the resources to build or purchase a comparable building. While the possibility exists to place portables on City owned property, it is not yet clear that all the Senior Center’s current programs could be maintained in such a scenario and participation will likely decline due to space limitations and lack of parking. The City’s General Fund Reserves would also be reduced further away from the City Council’s goal of 10-15% to fund temporary programming space.

After receiving public testimony, staff requests direction from the City Council regarding the proposed one year lease extension for the Senior Center.

STRATEGIC PLAN CONSIDERATIONS

Several goals and identified strategies in the City’s Strategic Plan demonstrate the need for the Senior Center to either have a reasonable amount of time to transition out of their current location and/or securing new facilities for the programs to remain intact. A one year deadline to vacate the senior center and secure temporary facilities, absent additional funding options or other resources, will greatly impact the City’s budget reserves and constitutes a set-back in fulfilling the Strategic Plan Goals.

Goal A: Deliver exemplary government services

- Ensure City programs and services are inclusive of people of diverse background
- Develop and strengthen relationships with public and private partners, residents, businesses, schools and community groups.
- Maintain emphasis on providing excellent customer service.

Goal B: Achieve long-term financial sustainability

- Develop a plan to ensure that Citywide revenue meets the cost of providing Citywide services, including adequate reserves for unanticipated revenue shortfalls.

Goal C: Deepen a sense of place and community identity

- Identify, promote, and/or develop entertainment, recreational, and leisure activities for people of all ages and demographics.
- Be a strong partner with the schools.

Goal D: Develop and rehabilitate public facilities as community focal points

- Continue the facilities assessment to prioritize and strategize investment (i.e., library, public safety facility, senior center, community center).

FINANCIAL CONSIDERATIONS

There are no immediate financial implications, however, it is likely that the City will soon incur significant relocation expenses, possible building and site preparation costs, possible lease expenses or land acquisitions. This does not include the possibility of a new Senior Center as no funds currently exist. It is unclear at this point, what if any impact this will have on operational expenses.

LEGAL CONSIDERATIONS

The City Attorney has been involved in these discussions and has reviewed the new proposed lease.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Letter
2. WCCUSD Proposed Lease Extension



**Office of the Mayor &
Committee on Aging**

Elizabeth Block, Board President
Madeline Kronenberg, Board Member
West Contra Costa Unified School District
1108 Bissell Ave
Richmond, CA 94801

May 10, 2017

Dear Board President Block and Board Member Kronenberg,

On behalf of the Office of the Mayor of the City of El Cerrito, with the consent of the El Cerrito Committee on Aging, we request that the West Contra Costa Unified School District (WCCUSD) Facilities Subcommittee direct district staff to extend the current lease on the Open House Senior Center, located at 6500 Stockton Ave in El Cerrito, for at least three years with options to extend on an annual basis and at least a one year notice of intent to terminate by either party. These terms allow the City to adequately plan for a transition to a new space while minimizing undue stress on our Senior Center Community.

The Open House Senior Center has served older adults from El Cerrito and surrounding communities at this location since 1965. The Center offers several programs and services that help older adults maintain and enhance their quality of life. Essential services include the Alzheimer's Respite Program (a WCCUSD Adult School Program), the CoCo Café which serves up to 80 lunches daily, free tax preparation, Medi-Cal and Medicare consulting, and the Easy Ride Paratransit Service. Maintaining strong social connections are vital to the physical and mental well-being of older adults, one of our most vulnerable populations. The wide range of programs and services offered at the Open House Senior Center helps prevent hundreds of older adults each day from becoming disconnected and isolated.

As you may be aware, the City Council selected a desired alternative for building a new library on a portion of the Portola Playfield. This facility was proposed to have included space to house the current senior center programs and activities. This item was rejected by the School Board in closed session at the recommendation of the former superintendent. As a result, there were no further public discussions, nor was the City given the opportunity to adequately describe the proposal which would have allowed Fairmont School to expand into the current senior center and library spaces. As a

reminder, the District also went through the 7-11 process to surplus the land for City purchase but the sale fell apart due to circumstances beyond our control.

Additionally, it is our understanding that the senior center building does not meet the Division of State Architect's (DSA) requirements for housing students, nor does WCCUSD have the funding necessary to meet DSA standards. Realistically, this situation will likely continue for many years and would only change should the voters approve another construction bond. The El Cerrito City Council continues to urge WCCUSD to rebuild Fairmont School as soon as possible. We understand the burdens placed on the students in their current overcrowded location and the frustrations that are caused as a result. We believe that by working together, the City and WCCUSD can find a solution that benefits both the Fairmont School Community and the older adults of El Cerrito and surrounding communities who depend on the programs and services provided by the Open House Senior Center.

During the 50 plus years at the current location, there has never been any reason for concern that the Open House Senior Center would be forced to seek another location without the mutual agreement of the City and the District. Given our current situation, we strongly urge you to end the uncertainty and direct district staff to move forward with a three year lease extension, with options to extend annually, of the City of El Cerrito's lease for the Open House Senior. Thank you in advance for your consideration.

Respectfully,


Janet Abelson, Mayor
City of El Cerrito


Steve Lipson, Chair
El Cerrito Committee on Aging

CC: Valerie Cuevas, Board Member
Tom Panas, Board Member
Mister Phillips, Board Member
Matthew Duffy, Superintendent
Lisa LeBlanc, Associate Superintendent
El Cerrito City Council Members



WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
Facilities Operation Center
1400 Marina Way South
Richmond, CA 94804

Lisa LeBlanc, Associate Superintendent
Operations & Bond Program

Tel: (510) 231-1105
Fax: (510) 234-1891

May 31, 2017

via: E-Mail and US Mail

Scott Hanin, City Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

RECEIVED

JUN 05 2017

CITY OF EL CERRITO
CITY MANAGER'S OFFICE

Re: Open House Senior Center – 6500 Stockton Avenue, El Cerrito, CA

Dear Mr. Hanin,

On May 24, 2017, the Board of Education approved a one-year extension to the Lease for the above property. Additionally, the Board also approved a one (1) year advance written notice of termination to the City due to the facility and/or grounds being needed for school district purposes. Accordingly, enclosed is an amendment extending the current lease to June 30, 2018. This letter also serves as written notice to the City of El Cerrito that the above property is needed for school district use effective July 1, 2018.

Please return a fully executed copy of the amendment to our office. As discussed during our recent meeting, we would like to continue our discussions with regard to the possibility of future partnerships.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa LeBlanc", is written over a horizontal line.

Lisa LeBlanc
Associate Superintendent

cc: Matt Duffy, Superintendent, WCCUSD
Chris Jones, Director of Recreation, City of El Cerrito
Luis Freese, Engineering Officer, WCCUSD Bond Program

**FIRST AMENDMENT TO
AGREEMENT BETWEEN THE WEST CONTRA COSTA UNIFIED
SCHOOL AND CITY OF
EL CERRITO FOR USE OF FAIRMONT PARK**

THIS FIRST AMENDMENT to Facilities Use Agreement ("First Amendment") is made as of _____ May____, 2017 ("Effective Date"), by and between **West Contra Costa Unified School District**, a California public school district ("District"), and the **City of El Cerrito**, a California municipal corporation ("City"). District and City may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District and City entered into that certain Facilities Use Agreement dated May 1, 1982, ("Lease") to provide for the City's use of the real property and buildings and improvements thereon located at 6500 Stockton Avenue, in the City of El Cerrito, County of Contra Costa, California, to provide senior services, park and recreational programming ("Property"); and

WHEREAS, the term of the Lease expires on June 30, 2017 ("Term"); and

WHEREAS, on May 24, 2017, the District's governing board approved extending the Term of the Lease for one (1) year ("Extended Term"); and

WHEREAS, the Parties agree that this First Amendment shall also serve as written notice to the City, pursuant to section 5 of the Lease that upon expiration or earlier termination of the Extended Term, the Lease will terminate and all rights and obligations of the City with respect to the Property will end;

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and City agree as follows:

AGREEMENT

1. Defined Terms. All capitalized terms not defined herein will have the definition meaning given those terms in the Lease.
2. Term. Section 2 of the Lease is hereby deleted in its entirety and replaced with the following:
 2. The term of this lease shall commence on July 1, 2017, and expire on June 30, 2018. On or before June 30, 2018, the City shall have removed all personal property from the Property and vacated the premises.
3. Miscellaneous. This First Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this First Amendment, all other terms and provisions of the Lease are and remain in full force and effect. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

[Remainder of Page Intentionally Blank. Signatures on Following Page.]

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017

Dated: _____, 2017

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT CITY OF EL CERRITO

By: _____
Lisa LeBlanc

Title: Associate Superintendent

By: _____
City Manager

Signature: _____
Authorized Signing Officer

ATTEST:

City Clerk, City of El Cerrito



AGENDA BILL

Agenda Item No. 7(B)

Date: June 20, 2017
To: El Cerrito City Council
From: Mark R Rasiah, Finance Director/City Treasurer
Subject: Tax and Revenue Anticipation Notes – FY 2017-18 Short Term Cash Flow Financing

ACTION REQUESTED

Adopt a resolution approving the borrowing of funds for Fiscal Year 2017-18 and the issuance and sale of 2017-18 tax and revenue anticipation notes (“TRAN”).

Incorporated into the resolution is the authorization for the City Manager to execute an agreement to sell the TRAN in an amount not-to-exceed \$6,000,000 and authorize staff to enter into agreements with NHA Advisors, LLC, as the City’s Municipal Advisor and Jones Hall, as bond counsel, to prepare and execute appropriate legal documents related to said financing.

BACKGROUND

Each year many public agencies that depend on property tax revenues collected through the county, experience decreases in general fund cash balances while waiting for property tax installments in December and April of each year. As part of managing cash flows and meeting monthly obligations, public agencies normally issue short-term notes known as a tax revenue anticipation note (TRAN). A TRAN provides the necessary cash to cover expenses while waiting for the larger property tax receipts to transfer to the City.

The City has issued a TRAN in each of the last five years to tide through cash flow pressures. Staff has projected cash flow shortfalls, as in previous years, typically in the fall of each year. A facility such as the TRAN will help bridge the dip in cash flow pending receipt of property tax revenues that staff anticipates in mid-December 2017.

The City has previously issued its TRAN and sold it to Westamerica Bancorporation. NHA Advisors, working with Hilltop Securities (serving as the City’s Placement Agent), has negotiated with Westamerica Bancorporation to purchase the TRAN at an interest rate of 1.75% (0.25% higher than last year). By selling the TRAN directly to a single investor, the City avoids the costs associated with rating agencies, disclosure counsel, and underwriting firms. Based on a financial analysis performed by the NHA Advisors, the all-in cost of the TRAN will be lower through the sale directly to Westamerica Bancorporation than publicly offering the TRAN.

ANALYSIS

City staff, working with NHA Advisors, developed a financial model during FY 2014-15 to examine the City's fund balances, monthly revenue and expenditure projections and anticipated cash flow deficits. This analysis shows that the projected FY 2017-18 revenues and expenditures would create monthly deficits in the first half of the fiscal year and therefore would require cash flow support in the form of a TRAN. It is hoped that at some point enough reserves will be built up so as to obviate a TRAN.

Based on the financial markets and preliminary pricing, staff recommends that the City issue the TRAN and sell the note directly to Westamerica Bancorporation with the following terms:

- Principal Amount - \$6,000,000
- Interest Rate – 1.75%
- Final Maturity – July 11, 2018

FINANCIAL CONSIDERATIONS

The City is working with NHA Advisors and Jones Hall, Bond Counsel, to draft the necessary financial documentation to execute and complete the financing in July 2017. The total interest on the TRAN over the fiscal year is anticipated to be approximately \$105,000.

Financing fees are lower than in prior years and are budgeted at \$32,500. A breakdown of these costs is included below.

Role	Firm	Amount
Financial Advisor	NHA Advisors	\$20,000
Bond Counsel	Jones Hall	10,688
Placement Agent	Hilltop Securities	1,250
Miscellaneous	Contingency	562
Total:		\$32,500

LEGAL CONSIDERATIONS

The City Attorney has reviewed the terms proposed and will approve the final documents including the issuance of an attorney's letter in regards to the form as required documentation for the TRAN.

STRATEGIC PLAN CONSIDERATIONS

Approving the attached resolution will permit the City Manager to develop a plan to ensure that Citywide Revenues meet the cost of providing Citywide services, including adequate reserve for unanticipated revenue shortfalls. It will further ensure procedures that represent best practices in financial management.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution
2. Form of Bond Counsel Opinion

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING
THE BORROWING OF FUNDS FOR FISCAL YEAR 2017-18 AND THE ISSUANCE
AND SALE OF 2017-18 TAX AND REVENUE ANTICIPATION NOTES

WHEREAS, pursuant to Article 7.6 (commencing with section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Law"), this City Council (the "Council") has found and determined that moneys are needed for the requirements of the City, a municipal corporation and general law city duly organized and existing under the laws of the State of California, to satisfy obligations payable from the General Fund of the City (the "General Fund"), and that it is necessary that said sum be borrowed for such purpose at this time by the issuance of temporary notes therefor in anticipation of the receipt of taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to the fiscal year of the City beginning July 1, 2017 and ending June 30, 2018 ("Fiscal Year 2017-18"); and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of El Cerrito approves the following:

Section 1. Limitation on Maximum Amount. The principal amount of notes issued pursuant hereto, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts and other moneys of the City for the General Fund attributable to Fiscal Year 2017-18, and available for the payment of said notes and the interest thereon (as hereinafter provided).

Section 2. Authorization and Terms of Notes. Solely for the purpose of anticipating taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to Fiscal Year 2017-18, and not pursuant to any common plan of financing, the City hereby determines to and shall borrow the principal amount of not-to-exceed Six Million Dollars (\$6,000,000) by the issuance of temporary notes under the Law, designated "City of El Cerrito, California 2017-18 Tax and Revenue Anticipation Notes" (the "Notes"). The Notes shall be dated the date of initial delivery, shall mature (without option of prior redemption) no later than thirteen months after their date of issuance, and shall bear interest, payable at maturity and computed on a 30-day month/360-day year basis, at a rate not in excess of one and three-quarter percent (1.75%) per annum. Both the principal of and interest on the Notes shall be payable in lawful money of the United States of America, as described below.

Section 3. Form of Notes. The Notes shall be issued in fully registered form, without coupons, and shall be substantially in the form and substance set forth in Exhibit A attached hereto and by reference incorporated herein, the blanks in said form to be filled in with appropriate words and figures. The Notes shall be numbered from 1

consecutively upward in order of issuance, shall be in the denomination of \$5,000 each or any integral multiple thereof.

Section 4. Use of Proceeds. The proceeds of the sale of the Notes shall be deposited in a segregated account in the General Fund and used and expended by the City for any purpose for which it is authorized to expend funds from the General Fund.

Section 5. Security. The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts and other moneys which are received by the City for the General Fund for Fiscal Year 2017-18. As security for the payment of the principal of and interest on the Notes the City hereby pledges the first "unrestricted moneys" (as hereinafter defined) to be received by the City as follows: (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of February, 2018; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2018; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2018 (such pledged amounts being hereinafter called the "Pledged Revenues"). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient "unrestricted moneys" received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term "unrestricted moneys" shall mean taxes, income, revenue, cash receipts, and other moneys intended as receipts for the General Fund for Fiscal Year 2017-18 and which are generally available for the payment of current expenses and other obligations of the City.

Section 6. Special Account. There is hereby created, within the General Fund, a special account to be designated the "2017-18 Tax and Revenue Anticipation Note Special Account" (the "Special Account") and applied as directed in this Resolution. Any money placed in the Special Account shall be for the benefit of the owners of the Notes and, until the Notes and all interest thereon are paid or until provision has been made for the payment of the Notes at maturity with interest to maturity, the moneys in the Special Account shall be applied solely for the purposes for which the Special Account is created.

During the months of February, May, and June 2018, the City shall deposit all Pledged Revenues in the Special Account. On the maturity date of the Notes, the City shall use the moneys in the Special Account to pay the principal of and interest on the Notes at maturity and to the extent said moneys are insufficient therefor an amount of moneys from the General Fund which will enable payment of the full principal of and interest on the Notes at maturity. Any moneys remaining in the Special Account after

the Notes and the interest thereon have been paid, or provision for such payment has been made, shall be transferred to the General Fund.

Section 7. Deposit and Investment of Special Account. All moneys held by the City in the Special Account, if not invested, shall be held in time or demand deposits as public funds and shall be secured at all times by bonds or other obligations which are authorized by law as security for public deposits, of a market value at least equal to the amount required by law.

Moneys in the Special Account shall, to the greatest extent possible, be invested by the City directly, or through an investment agreement, in investments as permitted by the laws of the State of California as now in effect and as hereafter amended, and the proceeds of any such investments shall be deposited in the Special Account.

Section 8. Execution of Notes. The Mayor of the City, the City Manager, and the Finance Director (each an "Authorized Officer") are each hereby authorized to execute the Notes by manual or facsimile signature, and the City Clerk of the City is hereby authorized to countersign the same by manual or facsimile signature (although at least one of such signatures shall be manual) and to affix the seal of the City thereto by facsimile impression thereof, and said officers are hereby authorized to cause the blank spaces thereof to be filled in as may be appropriate.

Section 9. Transfer of Notes. Whenever any Note or Notes shall be surrendered for transfer, the City shall execute, authenticate and deliver a new Note or Notes, for like aggregate principal amount.

Section 10. Exchange of Notes. Any Note may be exchanged at the office of the City Clerk for a like aggregate principal amount of Notes of authorized denominations and of the same maturity.

Section 11. Note Register. The City shall keep or cause to be kept sufficient books for the registration and transfer of the Notes and the City Clerk shall register or transfer or cause to be registered or transferred, on said books, Notes as herein before provided.

Section 12. Temporary Notes. The Notes may be initially issued in temporary form exchangeable for definitive Notes when ready for delivery. The temporary Notes may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Resolution as may be appropriate. Every temporary Note shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Notes. If the City issues temporary Notes it will execute and furnish definitive Notes without delay, and thereupon the temporary Notes may be surrendered, for cancellation, in exchange therefor at the office of the City Clerk and the City Clerk shall deliver in exchange for such temporary Notes an equal aggregate principal amount of definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall be

entitled to the same benefits pursuant to this Resolution as definitive Notes executed and delivered hereunder.

Section 13. Notes Mutilated, Lost, Destroyed or Stolen. If any Note shall become mutilated the City, at the expense of the owner of said Note, shall execute and deliver a new Note of like maturity and principal amount in exchange and substitution for the Note so mutilated, but only upon surrender to the City Clerk of the Note so mutilated. Every mutilated Note so surrendered to the City Clerk shall be canceled and delivered to, or upon the order of, the City. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to the City and indemnity satisfactory to it shall be given, the City, at the expense of the owner, shall execute and deliver a new Note of like maturity and principal amount in lieu of and in substitution for the Note so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Note issued under this Section 13 and of the expenses which may be incurred by the City in the premises. Any Note issued under the provisions of this Section 13 in lieu of any Note alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Resolution with all other Notes issued pursuant to this Resolution.

Section 14. Covenants and Warranties. It is hereby covenanted and warranted by the City that all representations and recitals contained in this Resolution are true and correct, and that the City and its appropriate officials have duly taken all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for the prompt collection and enforcement of the taxes, income, revenue, cash receipts and other moneys pledged hereunder in accordance with law and for carrying out the provisions of this Resolution.

Section 15. Tax Covenants.

(a) *No Arbitrage*. The City shall not take, nor permit nor suffer to be taken any action with respect to the proceeds of the Notes which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Notes (the "Closing Date") would have caused the Notes to be "arbitrage bonds" within the meaning of section 148 of the Internal Revenue Code of 1986 (the "Code").

(b) *Rebate Requirement*. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government.

(c) *Private Activity Note Limitation*. The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private business tests of section 141(b) of the Code.

(d) *Private Loan Financing Limitation.* The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private loan financing test of section 141(c) of the Code.

(e) *Federal Guarantee Prohibition.* The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Notes to be “federally guaranteed” within the meaning of section 149(b) of the Code.

(f) *Maintenance of Tax-Exemption.* The City shall take all actions necessary to assure the exclusion of interest on the Notes from the gross income of the owners of the Notes to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the Closing Date.

Section 16. Sale of Notes. If applicable, an Authorized Officer is hereby authorized to cause Bond Counsel (as defined below) to prepare and to execute and deliver a Note Purchase Agreement with Westamerica Bank (or such other purchaser identified by the Finance Director) in such form as an Authorized Officer shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof.

An Authorized Officer is further authorized to determine the maximum principal amount of Notes not to exceed Six Million Dollars (\$6,000,000) and the maximum interest rate on the Notes not to exceed one and three-quarter percent (1.75%) per annum.

Section 17. Engagement of Professional Services. The City hereby approves the engagement of NHA Advisors, LLC as Municipal Advisor, Jones Hall, A Professional Law Corporation, as Bond Counsel, and Hilltop Securities as Placement Agent to the City in connection with the issuance and sale of the Notes. An Authorized Officer is hereby directed and authorized to negotiate and execute agreements with Bond Counsel, the Municipal Advisor and the Placement Agent.

Section 18. Preparation of Notes; Official Action. Bond Counsel is directed to cause suitable Notes to be prepared showing the interest rate determined in accordance with the manner of sale of the Notes, to procure their execution by the proper officers, and to cause the Notes to be delivered when so executed to the purchaser upon the receipt of the purchase price by the City.

An Authorized Officer is further authorized and directed to make, execute and deliver such certificates, agreements and other closing documents as are necessary to consummate the transactions contemplated by this Resolution.

Section 19. Effective Date. This Resolution shall take effect upon its adoption.

I CERTIFY that at the regular meeting on June 20, 2017 the El Cerrito City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAINED: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

EXHIBIT A
FORM OF NOTE

No. 1

*****\$6,000,000*****

CITY OF EL CERRITO, CALIFORNIA
2017-18 TAX AND REVENUE ANTICIPATION NOTE

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:	CUSIP:
1.75%	July __, 2018	July __, 2017	

REGISTERED OWNER:

PRINCIPAL SUM: *****SIX MILLION DOLLARS*****

The CITY OF EL CERRITO, a municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State of California (the “City”), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the “Owner”), on the Maturity Date stated above, the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money at the rate per annum stated above, payable on the Maturity Date stated above, calculated on the basis of 360-day year composed of twelve 30-day months. Both the principal of and interest on this Note shall be payable at maturity to the Owner.

It is hereby certified, recited and declared that this Note is one of an authorized issue of Notes in the aggregate principal amount of Six-Million Dollars (\$6,000,000), all of like tenor, issued pursuant to the provisions of Resolution No. _____ of the City Council of the City duly passed and adopted on June 20, 2017 (the “Resolution”), and pursuant to Article 7.6 (commencing with section 53850) of Chapter 4, Part 1, Division 2, Title 5, of the California Government Code, and that all things, conditions and acts required to exist, happen and be performed precedent to and in the issuance of the Notes exist, have happened and have been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts and other moneys which are received by the City for the General Fund of the City for Fiscal Year 2017-18. As security for the payment of the

principal of and interest on the Notes the City has pledged the first “unrestricted moneys” (as hereinafter defined) to be received by the City as follows: (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of February, 2018; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2018; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2018 (such pledged amounts being hereinafter called the “Pledged Revenues”). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient “unrestricted moneys” received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term “unrestricted moneys” shall mean taxes, income, revenue, cash receipts, and other moneys intended as receipts for the General Fund of the City for Fiscal Year 2017-18 and which are generally available for the payment of current expenses and other obligations of the City.

The Notes are issuable as fully registered Notes, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions as provided in the Resolution, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations and of the same maturity.

The Notes are not subject to redemption prior to maturity.

This Note is transferable by the Owner hereof, but only under the circumstances, in the manner and subject to the limitations provided in the Resolution. Upon registration of such transfer a new Note or Notes, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City may treat the Owner hereof as the absolute owner hereof for all purposes, and the City shall not be affected by any notice to the contrary.

[Unless this Note is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

IN WITNESS WHEREOF, the City of El Cerrito has caused this Note to be executed by the City Manager and countersigned by the City Clerk of the City, all as of the Issue Date stated above.

CITY OF EL CERRITO

By: _____

[S E A L]

Countersigned:

City Clerk

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT
TEN ENT --	as tenants by the entireties	____ Custodian
JT TEN --	as joint tenants with	____ Minor
	right of survivorship and	Under Uniform Gifts to Minc
	not as tenants in	Act
	common	_____ (State)

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED
THOUGH NOT IN THE LIST ABOVE

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Note and do(es) hereby irrevocably constitute and appoint

_____,
attorney, to transfer the same on the registration books of the City with full power of substitution
in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor

NOTICE: The signature on this Assignment must correspond with the name(s) as written on the face of the within Note in every particular without alteration or enlargement or any change whatsoever.

July 12, 2017

City Council
City of El Cerrito
10940 San Pablo Avenue
El Cerrito, California 94530

OPINION: \$6,000,000 City of El Cerrito, California
 2017-18 Tax and Revenue Anticipation Notes

Members of the City Council:

We have acted as bond counsel in connection with the issuance by the City of El Cerrito, California (the "City"), of \$6,000,000 City of El Cerrito, California 2017-18 Tax and Revenue Anticipation Notes, dated the date hereof (the "Notes"), pursuant to Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5 of the California Government Code (the "Act"), and a resolution of the City adopted on June 20, 2017 (the "Resolution"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Resolution and in the certified proceedings of public officials and others furnished to us, without undertaking to verify such facts by independent investigation.

Based upon our examination, we are of the opinion, under existing law, as follows:

1. The City is a duly created and validly existing municipal corporation with the power to adopt the Resolution, to perform the agreements on its part contained therein and to issue the Notes.
2. The Resolution has been duly adopted by the City and constitutes a valid and binding obligation of the City enforceable upon the City.
3. Pursuant to the Act, the Resolution creates a first lien on funds pledged by the Resolution for the security of the Notes.
4. The Notes have been duly authorized, executed and delivered by the City and are valid and binding general obligations of the City.

5. The interest on the Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The Notes are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986 (the "Code"), and, in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code, a deduction is allowed for 80 percent of that portion of such financial institutions' interest expense allocable to interest payable on the Notes. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Notes in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes, and in order for the Notes to be "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Notes in gross income for federal income tax purposes to be retroactive to the date of issuance of the Notes, or may cause the Notes not to be "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. We express no opinion regarding other federal tax consequences arising with respect to the ownership, sale or disposition of the Notes, or the amount, accrual or receipt of interest on the Notes.

6. The interest on the Notes is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Notes and the enforceability of the Notes and the Resolution may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in appropriate cases.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation



AGENDA BILL

Agenda Item No. 7(C)

Date: June 20, 2017
To: El Cerrito City Council
From: Kristen Cunningham, Senior Human Resources Analyst
Karen Pinkos, Assistant City Manager
Subject: Update of Management and Confidential Employee Resolution

ACTION REQUESTED

Adopt a resolution modifying salaries, benefits, and conditions of employment for Management and Confidential Employees.

BACKGROUND/ANALYSIS

The City's Strategic Plan identifies "*Deliver Exemplary Government Services*" as a primary goal. The strategies outlined for this goal include recruiting and retaining a talented workforce, and maintaining an emphasis on providing excellent customer service.

The salaries, benefits, and conditions of employment for the City's Management and Confidential employees are governed by resolution of the City Council. The most recent updates to the Management/Confidential Employees Resolution were Resolution Nos. 2014-22 and 2015-71.

The following is a summary of changes to the Management/Confidential Employees Resolution, in line with the authority provided to the City's management team by the City Council (shown as underlined in the attachment):

- A Cost of Living Adjustment (COLA) of 3% effective the first full pay period of July 2017, reflected in the control points listed in the resolution
- A COLA of 3% effective the first full pay period of July 2018
- Modifications to language clarifying benefits for employees in a non-pay status
- Modifications to language providing for vacation cash outs, in accordance with IRS regulations
- Addition of recently updated classification amendments approved by the City Council

STRATEGIC PLAN CONSIDERATIONS

Adopting the proposed resolution for Management and Confidential Employees fulfills Goal A, *Deliver Exemplary Government Services*, including the strategies of "Recruiting and retaining a talented and effective workforce" and "Maintain emphasis on providing excellent customer service."

FINANCIAL CONSIDERATIONS

Funding for the COLAs for management and confidential employees is included within the adopted FY 2017-18 Budget.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Management/Confidential Employees Resolution

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ESTABLISHING SALARIES, BENEFITS AND CONDITIONS OF EMPLOYMENT FOR MANAGEMENT AND CONFIDENTIAL EMPLOYEES EFFECTIVE JULY 1, 2017; AND RESCINDING RESOLUTIONS 2014-22- AND 2015-71

WHEREAS, it is in the City's best interest to recruit and retain high quality employees for the City; and

WHEREAS, an effective means for achieving this objective is to provide competitive salaries, benefits, and conditions of employment for said employees.

NOW, THEREFORE, BE IT RESOLVED that the El Cerrito City Council hereby establishes the salaries, benefits, and conditions of employment for the City's management and confidential employees, as follows:

CHAPTER 1
EMPLOYEES

1.1 Management employees are, for purposes of this section, those actively involved in the following classifications:

- Accounting Supervisor
- Assistant City Manager
- Assistant to the City Manager
- Associate Engineer
- Building Official
- City Clerk
- Community Development Director
- Development Services Manager
- Finance Director/City Treasurer
- Human Resources Manager
- Information Technology Manager
- Maintenance Services Superintendent
- Management Analyst I,II,III
- Network Security Engineer
- Operations and Environmental Services Manager
- Program Manager
- Public Works Director/City Engineer
- Recreation Director
- Recycling Operations Supervisor
- Senior Engineer
- Senior Human Resources Analyst
- Senior Planner
- Senior Program Manager

1.2 Confidential employees are, for the purposes of this section, those actively involved in the following classifications:

- Accountant II
- Human Resources Technician
- Information Technology Specialist
- Public Safety Executive Assistant

CHAPTER 2
SALARIES AND BENEFITS

2.1 Effective the first full pay period in July 2017, the following control points shall apply and serve as the midpoint of approved monthly salary ranges for management employees:

Accounting Supervisor	9,148
Assistant City Manager	16,367
Assistant to the City Manager	9,076
Associate Engineer	9,283
Building Official	11,539
City Clerk	13,550
Community Development Director	14,285
Development Services Manager	12,117
Finance Director/City Treasurer	14,264
Human Resources Manager	12,905
Information Systems Manager	12,905
Environmental Services Manager	10,318
Maintenance Services Superintendent	8,495
<u>Management Analyst I</u>	7,022
<u>Management Analyst II</u>	7,723
<u>Management Analyst III</u>	8,495
<u>Network Security Engineer</u>	8,834
Operations and Environmental Services Manager	10,318
Program Manager	8,495
Public Works Director/City Engineer	14,440
Recreation Director	14,157
Recycling Operations Supervisor	7,678
Recreation Supervisor	8,495
Senior Engineer	11,513
Senior Human Resources Analyst	9,436
Senior Planner	8,834
Senior Program Manager	9,436

- 2.2 Effective the first full pay period in July 2017, control points shall apply and serve as the midpoint of approved monthly salary ranges for confidential employees are as follows:

Accountant II	7,118
Human Resources Technician	6,668
Information Technology Specialist	7,022
Public Safety Executive Assistant	6,411

- A. A salary range of 25% above and below the control point shall be created, within which a Department Head or the City Manager may approve salary adjustments of up to 5% or 10% per calendar year, respectively.
- B. Effective the first full pay period in July 2018, the City will increase the salaries of management and confidential employees by 3.0%.

2.3 Pension Plan Benefits

Employees are members of the California Public Employees Retirement System (CalPERS) plan, with a 2.7% at 55 retirement formula integrated with Social Security, which has an eight percent (8%) employee contribution, the PERS single highest year option and service credit for unused sick leave option.

Effective January 1, 2013, newly hired employees that are considered “new members” in accordance with the Public Employees’ Pension Reform Act (PEPRA), will be enrolled under the CalPERS Miscellaneous Employee 2% at 62 retirement formula integrated with Social Security, average of highest three (3) years compensation earnable, in accordance with applicable law and PEPRA.

Effective July 1, 2014, the City no longer contributes toward the PERS employee contribution rate.

2.4 Flexible Benefits Plan

The City has a Flexible Benefits Plan that provides for the following:

- A. The City will contribute the equivalent of the cost of the lowest cost medical plan rate, according to dependent status, regardless of which medical plan is chosen. *“According to dependent status”* means that if an employee is single he or she shall receive the lowest cost single premium in his or her flexible spending account. If an employee and a dependent are enrolled in a City medical plan, the employee shall receive the lowest cost two party premium in his or her flexible spending account. If an employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the lowest cost family premium in his or her flexible spending account.

Effective July 2017, the lowest cost medical plan rate is Kaiser HMO.

Agenda Item No. 7(C)
Attachment 1

- B. In the event that an employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. In this event, the City shall contribute the equivalent to the lowest cost medical premium to the Flexible Benefits Plan and the employee may receive this amount in cash. In that case, the amount is treated as taxable income, or may be reallocated toward the purchase of other benefits in the Plan, or a combination of both.
- C. Employees may contribute salary of up to the maximum by law on a pre-tax basis in order to purchase the following benefits:
- Medical premiums, co-payments, and deductibles
 - Dental premiums, co-payments, and deductibles
 - Unreimbursed medical and dental expenses
 - Dependent care Mental health counseling services
- Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.
- D. Health plans will become effective the first of the month following the date of hire.
- E. Health benefit programs recognize the participation of domestic partners of eligible employees. Please refer to the City's Citiflex document for details.
- F. The City may establish a Citywide task force for the purpose of exploring alternate health plans, including PERS Health, for both active and retired employees. The City will include members of the un-represented management.

2.5 Dental Plan

The City will pay the full cost of family coverage under the Delta Dental Plan.

2.6 Life Insurance

The City will provide a term life insurance policy for management and confidential employees. The principal sum shall be equal to the annual salary rounded to the nearest \$1,000 (up to a maximum of \$100,000), effective the first day of the month following City Council adoption of any changes in the Pay Plan.

2.7 Auto Allowance

The City will supply an automobile to management employees who, in the opinion of the City Manager, require a City vehicle as an integral part of their work. Alternately, the City will provide a cash allowance of up to \$325 per month

in lieu of use of a City automobile. Confidential employees required to use their own automobiles for City business shall be reimbursed at the Internal Revenue Service allowable rate.

2.8 Short-term/Long term Disability Insurance

The City shall provide employees with short-term/long term disability insurance with coverage of two-thirds salary up to the maximum monthly salary limit of \$10,000 and a thirty day elimination period. Like regular wages, this benefit is taxable.

2.9 Benefit Status

- A. The salary and benefits contained within this Resolution are granted only to employees who are in a current pay status. The City shall incur no cost, nor shall benefits accrue, for retirees, survivors, or employees in a non-pay status. Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), and Military Leave, however, shall be granted in accordance with the applicable provisions of state and federal law.

- B. In the event an employee is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

CHAPTER 3
HOLIDAYS

3.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes:

New Year's Day	Veteran's Day
Dr. M.L. King Jr. Birthday	Thanksgiving Day
President's Day	Day after Thanksgiving
Memorial Day	Christmas Eve Day
Independence Day (July 4)	Christmas Day
Labor Day	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. (Department Heads may make changes in the above schedule in accordance with the needs of their departments.) The afternoon of New Year's Eve, commencing at 12 noon, shall be considered a

holiday for pay purposes. In the event New Year's Eve falls on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes. Some adjustments may be made if necessitated by an alternative work schedule.

3.2 Birthday and Floating Holidays

In addition to the recognized municipal holidays, employees shall receive annually three (3) floating holidays, subject to the same requirements for scheduling vacation under Section 5.2 of this agreement. For new employees, the floating holidays are pro-rated quarterly based on date-of-hire. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

Employees are allowed an additional holiday in recognition of their birthday. This birthday holiday shall be posted upon appointment to City service and at the beginning of each fiscal year thereafter.

3.3 Compensation for Municipal Holidays

- A. An employee on leave of absence without pay shall not receive any compensation for holidays occurring during such leave.
- B. Regular employees must be in a pay status on the workday preceding a holiday to be eligible to be compensated for the holiday.

CHAPTER 4
SICK LEAVE, WORKERS' COMPENSATION, FAMILY SICK LEAVE, AND OTHER LEAVES

4.1 Accrual of Sick Leave Rate

- A. Sick leave shall accrue at the rate of eight hours and 45 minutes per calendar month worked, providing the employee has worked or been authorized leave with pay for at least ten working days in the month.
- B. Employees with 20 or more years of service shall accrue sick leave at the rate of 11 hours and 25 minutes per calendar month worked, provided the employee has worked or been authorized leave with pay for at least ten working days in the month.

4.2 Sick Leave Maximum Accrual

Accumulation of sick leave is unlimited.

4.3 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity that would interfere with the employee's ability to return to work to perform regular duties.

4.4 Retirement Benefit

Upon retirement from City service, an employee shall be entitled to compensation for one fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to twenty-five (25) days pay, at the employee's option. Actual sick leave remaining on the books will be reported to PERS in accordance with PERS regulations governing the sick leave credit contract option. In no case will unearned sick leave be reported for the purpose of increasing the member's retirement as prohibited by PERS.

4.5 On the Job Injury

When an employee is off work as a result of an on the job injury, the City shall continue to pay full salary for up to 90 calendar days.

4.6 Workers' Compensation Disability Payments

An employee receiving disability payments under the Workers' Compensation laws may use accumulated sick leave and vacation leave in order to maintain regular income. Under these circumstances, the employee shall be paid the difference between full salary and the disability payments received. Such sick leave and vacation leave shall be drawn in proportion to the salary payments required to provide the employee with his/her regular income.

4.7 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse or parent. The City has extended this provision to include domestic partners and their dependent children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts. However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. Additional family sick leave may be taken subject to departmental regulations and approval of the Department Head and City Manager.

4.8 Bereavement Leave

Employees are entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the Department Head, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the Department Head shall make the decision as to qualification for bereavement leave.

4.9 Administrative Leave

Management employees shall receive administrative leave in recognition of extraordinary working hours and conditions. The City Manager will annually approve the number of leave days by individual employee based on the amount of overtime performed and the quality of work produced. The annual amount of time assigned shall not exceed ten days. Unused administrative leave cannot be carried over from year to year or cashed out at year end or upon separation.

4.10 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth employees' rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth in the City's policy are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this resolution, "Leave" under this article shall mean leave pursuant to the FMLA.

CHAPTER 5
VACATION

5.1 Eligibility

Employees shall be eligible to take a paid vacation at the end of the first year of continuous service, and annually thereafter, unless otherwise provided by the City Manager.

5.2 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the Department Head in accordance with departmental regulations and with regard for the needs of the City and the preference of the employee.

5.3 Vacation at Termination

Employees leaving the municipal service with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the employee's current rate of pay.

5.4 Effect of Extended Military Leave

A management employee who interrupts his/her City service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.

5.5 Sick Leave During Vacation

Vacation leave may be converted to sick leave subject to the review and approval of the Department Head and the City Manager if an employee is injured or sick during the vacation for a period in excess of 24 hours.

5.6 New Vacation Cap and Implementation

A. New Vacation Cap

Effective January 1, 2015, the vacation cap shall change to two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap.

B. Implementation

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

5.7 Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each effected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

5.8 Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 16 days (120 hours) of vacation provided that they have taken a minimum of 16 vacation days (or administrative leave for management employees) in the previous fiscal year and maintain a vacation balance of 37.5 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 8 days (60 hours). All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

If an employee wants to request an irrevocable vacation cash-out, they must provide written notice to the Human Resources Manager, or designee, no later

than June 30 of the fiscal year before the fiscal year in which the employee wishes to cash-out vacation leave. The notice shall indicate how many vacation leave hours the employee wishes to cash-out the following year. The amount requested cannot exceed the amount stated above. An employee can cash-out during the months of July and December.

5.9 Accrual

Unless otherwise provided by the City Manager, vacation leave will be accrued from the first day of employment when a management employee is in a pay status and will be credited on a monthly basis. Municipal holidays shall not be counted during vacation. The vacation schedule is based on the years of service with the City.

VACATION ACCRUAL – MANAGEMENT AND CONFIDENTIAL

Years of Service	Days	Hrs Earned/Yr (37.5 hrs/wk)
During 1st Year	11	82.50
2-3	12	90.00
4	13	97.50
5	15	112.50
6-7	16	120.00
8-9	17	127.50
10-11	18	135.00
12-13	19	142.50
14-15	20	150.00
16-17	21	157.50
18-19	22	165.00
20-21	23	172.50
22-23	24	180.00
24-25	25	187.50
26-27	26	195.00
28-29	27	202.50
30-31	28	210.00
32-33	29	217.50
34-35	30	225.00
36-37	31	232.50
38-39	32	240.00
40	33	247.50

CHAPTER 6
WORK SCHEDULE

6.1 Workweek

The number of hours worked in the workweek for management and confidential employees is as required by the City. The normal workday varies by department depending upon the standard or designated alternative work schedule. The workweek for those assigned to the nine-day schedule in a two week period begins at noon on Friday and concludes immediately before noon the following Friday.

CHAPTER 7
EDUCATION BENEFITS

7.1 Tuition Refund Plan

Management employees are eligible for educational cost reimbursement up to a maximum of \$1,000 per year for work related studies at a recognized college, university or professional school. Course content should relate to one of the following:

- Knowledge or skills needed by an employee in his/her present job
- Preparation for promotional opportunities or advancement in the same or different field within the City organization
- The requirements of a program leading to a degree, at an approved institution, which enhances the employee's job knowledge or on the job skills.

Procedures for obtaining reimbursement and limitations regarding reimbursement may be found in the City of El Cerrito administrative procedure on educational expense reimbursement.

CHAPTER 8
MISCELLANEOUS POLICIES FOR MANAGEMENT EMPLOYEES

8.1 Continuing Education

It is the policy of the City that management employees take part in some educational or training course each year, and the City Council will attempt to provide funds in each budget for such purpose.

8.2 Membership

It is the policy of the City to provide paid membership in approved professional associations for management employees. This policy shall include publications associated with membership and other educational materials as may be approved.

8.3 Conferences

It is the policy of the City that each management employee attend (as a member) a professional conference of his or her peers each year at City expense; however, travel outside the state of California may be discouraged due to budgetary restraints.

CHAPTER 9
MISCELLANEOUS POLICIES FOR CONFIDENTIAL EMPLOYEES

9.1 Overtime

A. Policy – Definition

It is the policy of the City that overtime work is to be kept at a minimum consistent with the protection of the lives and property of El Cerrito citizens and the efficient operation of the departments and activities of the City. Overtime must be authorized by both the supervisor and department manager and is subject to such other rules and procedures as the City Manager may prescribe.

Overtime shall be defined as time worked beyond the hours worked in the normal workweek, defined in Section 6.1 herein as 37.5 hours for full-time confidential employees and 28.125 hours for the confidential Personnel Technician – 75%. Hours worked are defined as all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. Sick leave, vacation, holidays and other paid leave are considered to be part of the normal workweek and unpaid leave shall not be included as time worked. Overtime shall commence at the time an employee is released or the work is completed, whichever is earlier.

B. Overtime Compensation

1. For hours worked in excess of the normal workweek, but not in excess of forty hours in a workweek, one of the following shall occur at the discretion of the department manager and in consultation with the employee:
 - a. Employee shall accrue compensatory time off on a time-and-one-half basis (this will not count toward the FLSA compensatory time ceiling of 240 hours, but will count toward the City's 40-hour compensatory time cap)
 - b. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.
2. For hours worked in excess of forty in any workweek, one of the following shall occur at the discretion of the employee:
 - a. Employee shall accrue compensatory time off on a time-and-one-half basis (this will count toward the FLSA compensatory time ceiling of 240 hours as well as the City's 40-hour compensatory cap); or

b. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.

C. Maximum Accumulation of Compensatory Time

Confidential employees may not accrue more than 40.0 hours of compensatory time-off without permission of the department manager. Time off for compensatory time must be approved by the department manager or delegate.

9.2 Uniform Allowance

The City shall provide uniforms in accordance with department procedures and subject to approval by the Department Head and City Manager for management and confidential employees required to wear one.

BE IT FURTHER RESOLVED that Resolution 2014-22 and Resolution 2015-71 are hereby rescinded.

I CERTIFY that at a regular meeting on June 20, 2017, the El Cerrito City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June , 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor