



# City of Sunnyvale

## Notice and Agenda

### City Council

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Tuesday, November 29, 2016

5:00 PM

West Conference Room and Council Chambers,  
City Hall, 456 W. Olive Ave., Sunnyvale, CA

94086

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**Special Meetings: Closed Session-5 PM | Special Meeting-6 PM**

#### **5 P.M. SPECIAL COUNCIL MEETING (Closed Session)**

##### **1 Call to Order in the West Conference Room**

##### **2 Roll Call**

##### **3 Public Comment**

*The public may provide comments regarding the Closed Session item(s) just prior to the Council beginning the Closed Session. Closed Sessions are not open to the public.*

##### **4 Convene to Closed Session**

[16-1076](#)

Closed Session held pursuant to California Government Code  
Section 54957.6: CONFERENCE WITH LABOR  
NEGOTIATORS

Agency designated representatives: Teri Silva, Director of  
Human Resources; Deanna J. Santana, City Manager

Employee organization: Public Safety Managers Association  
(PSMA)

Employee organization: Sunnyvale Employee Association  
(SEA)

##### **5 Adjourn Special Meeting**

**6 P.M. SPECIAL COUNCIL MEETING**

*Pursuant to Council Policy, City Council will not begin consideration of any agenda item after 11:30 p.m. without a vote. Any item on the agenda which must be continued due to the late hour shall be continued to a date certain. Information provided herein is subject to change from date of printing of the agenda to the date of the meeting.*

**CALL TO ORDER**

*Call to Order in the Council Chambers (Open to the Public)*

**SALUTE TO THE FLAG****ROLL CALL****CLOSED SESSION REPORT****ORAL COMMUNICATIONS**

*This category provides an opportunity for members of the public to address Council on items not listed on the agenda and is limited to 15 minutes (may be extended or continued after the public hearings/general business section of the agenda at the discretion of the Mayor) with a maximum of up to three minutes per speaker. Please note the Brown Act (Open Meeting Law) does not allow Councilmembers to take action on an item not listed on the agenda. If you wish to address the Council, please complete a speaker card and give it to the City Clerk. Individuals are limited to one appearance during this section.*

**CONSENT CALENDAR**

*All matters listed on the consent calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion of these items. If a member of the public would like a consent calendar item pulled and discussed separately, please submit a speaker card to the City Clerk prior to the start of the meeting or before approval of the consent calendar.*

- 1.A**     [16-1056](#)            Authorization to Amend an Existing Contract for Banking Services (F17-055)

**Recommendation:** 1) Authorize the City Manager to execute an amendment to the existing contract with Union Bank, extending the contract by two years, from January 1, 2017 through December 31, 2018; and 2) authorize the City Manager to renew the contract for up to two (2) additional years.

- 1.B**     [16-1057](#)            Modify an Existing Temporary Staffing Services Contract for the Purchasing Division of the Department of Finance (F17-056)

**Recommendation:** Authorize the City Manager to 1) execute an amendment to an existing contract with CSG Consultants, Inc., increasing the not-to-exceed value from \$90,000 to \$150,000 and extending the term of the agreement through June 30, 2017, and 2) increase the contract amount if necessary, not to exceed the department's available budget.

- 1.C**     [16-1070](#)            Adopt a Resolution Authorizing the City Manager to Execute a Loan Guaranty in an Amount Not to Exceed \$1,020,000 with River City Bank and to Execute Other Necessary Documents

**Recommendation:** Adopt a Resolution Authorizing the City Manager to Execute a Loan Guaranty in an Amount Not to Exceed \$1,020,000 with River City Bank and to Execute Other Necessary Documents including a Memorandum of Understanding with the Silicon Valley Clean Energy Authority (SVCEA) and an Agreement to Subordinate the Initial Contribution made to the SVCEA.

## **PUBLIC HEARINGS/GENERAL BUSINESS**

*If you wish to speak to a public hearings/general business item, please fill out a speaker card and give it to the City Clerk. You will be recognized at the time the item is being considered by Council. Each speaker is limited to a maximum of three minutes. For land-use items, applicants are limited to a maximum of 10 minutes for opening comments and 5 minutes for closing comments.*

- 2      [16-1015](#)      Authorize the City Manager to Negotiate Agreements for Subsequent Council Approval with the City of Milpitas and Other Jurisdictions Regarding SMaRT Station Processing of Recyclables, Yard Trimmings and Municipal Solid Waste

**Recommendation:** Alternatives 1 and 2: 1) Authorize the City Manager to negotiate and bring back to Council for approval an agreement with City of Milpitas for the SMaRT Station to process, transfer and market or dispose recyclables, yard trimmings and municipal solid waste, following completion of required environmental review under the California Environmental Quality Act (CEQA); 2) Authorize the City Manager to discuss SMaRT Station options with other jurisdictions such as City of Cupertino and, if appropriate, negotiate and present to Council for approval an agreement to direct materials to the SMaRT Station, subject to completion of any required environmental review under CEQA.

- 3      [16-1084](#)      Discussion and Possible Action on Recreational and Medical Marijuana Issues and Next Steps for City Regulation of Marijuana

### **INFORMATION ONLY ITEMS**

[16-0929](#)      Tentative Council Meeting Agenda Calendar

[16-1098](#)      Information/Action Items

### **ADJOURNMENT**

**NOTICE TO THE PUBLIC**

*The agenda reports to council (RTCs) may be viewed on the City's website at [sunnyvale.ca.gov](http://sunnyvale.ca.gov) after 7 p.m. on Thursdays or at the Sunnyvale Public Library, 665 W. Olive Ave. as of Fridays prior to Tuesday City Council meetings. Any agenda related writings or documents distributed to members of the City of Sunnyvale City Council regarding any open session item on this agenda will be made available for public inspection in the Office of the City Clerk located at 603 All America Way, Sunnyvale, California during normal business hours and in the Council Chamber on the evening of the Council Meeting, pursuant to Government Code §54957.5. Please contact the Office of the City Clerk at (408) 730-7483 for specific questions regarding the agenda.*

*PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the public hearing or presented in writing to the Office of the City Clerk at or before the public hearing. PLEASE TAKE FURTHER NOTICE that Code of Civil Procedure section 1094.6 imposes a 90-day deadline for the filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure 1094.5.*

*Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Office of the City Clerk at (408) 730-7483. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.106 ADA Title II).*

**Planning a presentation for a City Council meeting?**

*To help you prepare and deliver your public comments, please review the "Making Public Comments During City Council or Planning Commission Meetings" document available at [Presentations.inSunnyvale.com](http://Presentations.inSunnyvale.com).*

**Planning to provide materials to Council?**

*If you wish to provide the City Council with copies of your presentation materials, please provide 12 copies of the materials to the City Clerk (located to the left of the Council dais). The City Clerk will distribute your items to the Council.*



# City of Sunnyvale

## Agenda Item

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**16-1076**

**Agenda Date:** 11/29/2016

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Closed Session held pursuant to California Government Code Section 54957.6: CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Teri Silva, Director of Human Resources; Deanna J. Santana, City Manager

Employee organization: Public Safety Managers Association (PSMA)

Employee organization: Sunnyvale Employee Association (SEA)



# City of Sunnyvale

## Agenda Item

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**16-1056**

**Agenda Date: 11/29/2016**

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Authorization to Amend an Existing Contract for Banking Services (F17-055)

#### **REPORT IN BRIEF**

Approval is requested to amend the City's existing banking contact with Union Bank by extending it two years. Approval is also requested to authorize the City Manager to renew the contract up to two (2) additional years. The City requires the services of a financial institution in order to have accounts into which revenues collected for City services can be deposited and from which the City can pay expenses.

#### **EXISTING POLICY**

This type of specialized professional service can be exempted from competitive bidding under Section 2.08.070(b)(1) of the Sunnyvale Municipal Code.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment

#### **BACKGROUND AND DISCUSSION**

The City has maintained a banking relationship with Union Bank since 1993 following competitive selection processes in 1993, 2000, and 2006. The 2006 contract included a 36% price reduction followed by an additional 8% reduction in 2013. The current contract term, extended by Council in 2013, expires on December 31, 2016 (RTC No. 13-287). Union Bank has offered to increase the current contract earnings credit rate by 0.12% which is estimated to generate an additional \$12,000 per year in earnings to offset fees that the bank charges, which will not increase under the first two years of the new extension. Subsequent changes would be subject to negotiation.

Under the banking contract, Union Bank provides the following:

- Deposit services for all City departments that collect payments
- Wire transfer and check clearing services
- Direct Deposit of employee payroll
- Automated Clearing House (ACH) processing for utility customers to pay utility bills electronically
- Merchant Credit and Debit Card processing (in partnership with Elavon Payment Network)
- Account reconciliation reporting

The City currently accepts approximately \$26 million in credit card payments annually. The largest component of the fees paid by the City is the Interchange fee, which is the fee that the processor's bank pays the card issuing bank to process the credit card. This fee is determined by Visa and MasterCard and is passed onto the merchant. This fee averaged 1.47% for FY2015/16.

Union Bank has had a relationship with Elavon Payment Network for many years. Elavon charges a processing fee of 0.12% per transaction.

In addition to the banking services contract, the City has a separate contract with Union Bank for custody services, which also expires on December 31, 2016. Based on the projected annual cost of \$9,200, Council action is not required on this contract because the contract amount is below the threshold for Council action. Staff is planning on also renewing this contract for a two-year term to expire on December 31, 2018. Under the custody contract, the bank provides for custody services for the City's investment transactions, which includes the following:

- Processing and safekeeping of all securities
- Reconciling assets
- Collecting and reinvesting interest income
- Providing accounting statements
- Executing ownership documents and forms

Although staff had anticipated conducting a Request for Proposals (RFP) process in advance of the calendar 2016 end date, a contract extension of the current vendor is recommended. Union Bank has been a valued City partner, providing acceptable service levels and responsiveness. Additionally, the City's average interchange rate experience of 1.47% is competitive to other jurisdictions based on survey research. Finally, the continuation of the current banking services vendor would mitigate any potential issues that could arise from the potential change of banking service vendors with the upcoming implementation of the Enterprise Resource Planning (ERP) system replacement project, which is scheduled for implementation during the term of the recommended contract amendment.

### **FISCAL IMPACT**

Staff estimates that the cost of banking services will include credit card interchange fees of \$380,000 and other banking service fees of \$40,000 for a total of \$420,000. Based on the City's transaction volume, it is anticipated that the City will realize an earnings offset to fees of approximately \$12,000 per year through the more favorable earnings credit rate offered by both Union Bank in the recommended new contract.

### **Funding Source**

Credit card interchange fees are funded through the General Fund, Development Enterprise Fund, Golf and Tennis Operations Fund, and Utility Enterprise Funds. A total of \$383,405 is currently budgeted for these fees. Banking services fees are funded through the General Fund and allocated out to all other funds on a periodic basis.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.



**RECOMMENDATION**

1) Authorize the City Manager to execute an amendment to the existing contract with Union Bank, extending the contract by two years, from January 1, 2017 through December 31, 2018; and 2) authorize the City Manager to renew the contract for up to two (2) additional years.

Prepared by: Pete Gonda, Purchasing Officer

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENT**

1. Third Amendment to Banking Services Agreement

**THIRD AMENDMENT TO AGREEMENT BETWEEN THE  
CITY OF SUNNYVALE AND UNION BANK OF CALIFORNIA, N.A. FOR BANKING SERVICES**

This Amendment to Agreement, dated \_\_\_\_\_, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and UNION BANK, N.A. ("BANK").

WHEREAS, on March 20, 2007, CITY and BANK entered into an Agreement whereby BANK would perform services necessary to serve as CITY'S depository and provider of banking services; and

WHEREAS, on December 31, 2011, CITY and BANK amended said Agreement, extending the term through December 31, 2013; and

WHEREAS, on January 1, 2014, CITY and BANK executed a Second Amendment to said Agreement, extending the term through December 31, 2016; and

WHEREAS, the parties now agree that a Second Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO AGREEMENT:

1. Term of Agreement: replace existing with the following:

BANK shall serve as CITY'S depository and provider of banking services for a period of two (2) years, commencing January 1, 2017, and ending December 31, 2019.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

UNION BANK, N.A.  
("BANK")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title



# City of Sunnyvale

## Agenda Item

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**16-1057**

**Agenda Date: 11/29/2016**

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Modify an Existing Temporary Staffing Services Contract for the Purchasing Division of the Department of Finance (F17-056)

#### **REPORT IN BRIEF**

Approval is requested to amend an existing contract with CSG Consultants, Inc. to provide temporary staffing assistance to the Purchasing Division, increasing the not-to-exceed value from \$90,000 to \$150,000 and extending the term of the agreement through June 30, 2017. Approval is also recommended to authorize the City Manager to increase the contract amount if necessary, not to exceed the department's available budget.

#### **EXISTING POLICY**

Pursuant to Chapter 2.08 of the Sunnyvale Municipal Code, contracts greater than \$100,000 require Council approval.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

#### **BACKGROUND AND DISCUSSION**

The Purchasing Division in the Department of Finance is responsible for the centralized procurement of goods and services for the City. In the last two years, the division's two most senior buyers retired through attrition. At the same time, the division's workload was increasing significantly, mainly due to a rebounding economy, increased demand for purchasing/procurements relative to Council approved service levels, increased construction and maintenance to address the City's aging infrastructure and commencement of reconstruction of the new Water Pollution Control Plant (The Sunnyvale Clean Water Program).

While two new buyers have joined the City, a senior buyer position remains vacant, and an additional level of purchasing expertise is required to conduct some of the more complex public works projects that are in process or are scheduled to be bid out during the next few months, including the Sunnyvale Clean Water Program.

In order to augment the current situation, a temporary staffing contract was awarded to CSG in May 2016 in the amount of \$60,000. CSG has provided the requisite level of engineering experience needed to conduct the more complex bids. The contract was recently increased to \$90,000 with an expected assignment end date of November 30, 2016. However, CSG has agreed to extend the

assignment for several more months..

A recruitment process for a senior buyer is currently underway and should be completed by the end of the calendar year. Even with this expected addition to the Purchasing team, the possibility exists that augmented staffing will be needed over the next several months as workload is anticipated to remain at the current elevated level.

### **FISCAL IMPACT**

Budgeted funding is available in the Department of Finance operating budget.

### **Funding Source**

The cost for purchasing activities in the Department of Finance are charged back to all the City's operating funds, including the General Fund, the Utility Funds, and the Development Enterprise Fund.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **RECOMMENDATION**

Authorize the City Manager to 1) execute an amendment to an existing contract with CSG Consultants, Inc., increasing the not-to-exceed value from \$90,000 to \$150,000 and extending the term of the agreement through June 30, 2017, and 2) increase the contract amount if necessary, not to exceed the department's available budget.

Prepared by: Pete Gonda, Purchasing Officer

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: Teri Silva, Director of Human Resources

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENT**

1. Draft Second Amendment to Temporary Staffing Agreement

**DRAFT SECOND AMENDMENT TO TEMPORARY PERSONNEL SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE AND CSG CONSULTANTS INC**

This Second Amendment to Temporary Personnel Services Agreement, dated \_\_\_\_\_, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and CSG CONSULTANTS INC., a California corporation ("AGENCY").

WHEREAS, on May 31, 2016, CITY and AGENCY entered into a Temporary Personnel Services Agreement whereby AGENCY would provide specialized services in relation to temporary personnel to provide competitive bidding services as described in the Scope of Work (Exhibit A); and

WHEREAS, on October 24, 2016, the Agreement was amended to increase the total compensation amount; and

WHEREAS, the parties now agree that a Second Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS SECOND AMENDMENT TO TEMPORARY PERSONNEL SERVICES AGREEMENT:

2. Time for Performance

Replace the first sentence of this paragraph with the following:

The term of this Agreement shall be from May 31, 2016 to June 30, 2017, unless otherwise terminated.

4. Compensation

Replace the third sentence of this section with the following:

Total compensation shall not exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

CSG CONSULTANTS INC  
("AGENCY")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title



# City of Sunnyvale

## Agenda Item

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16-1070

Agenda Date: 11/29/2016

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### REPORT TO COUNCIL

#### **SUBJECT**

Adopt a Resolution Authorizing the City Manager to Execute a Loan Guaranty in an Amount Not to Exceed \$1,020,000 with River City Bank and to Execute Other Necessary Documents

#### **BACKGROUND**

On December 15, 2015, the Sunnyvale City Council unanimously approved the actions required to form and participate in the Silicon Valley Clean Energy Authority (SVCEA). SVCEA will operate a Community Choice Energy (CCE) program to pool the electricity demand within the twelve participating jurisdictions to directly procure or generate electrical power supplies on behalf of their residents and businesses.

The December 2015 report to Council (RTC No. 15-0952) detailed the next steps for forming SVCEA and the early operational steps to develop and launch a CCE program. The report discussed that SVCEA would require operating capital and significant credit capacity for its initial power supply purchases until sufficient ratepayer revenues are received, and it also described that such financing would likely require some form of limited term guaranty typically provided by one or more member agencies. The report also noted that staff would return to Council with an update and potential action regarding this bridge financing.

On August 9, 2016 Council provided direction to the City Manager to move forward with negotiations with River City Bank to provide a credit guaranty to fund the initial launch of the SVCEA.

#### **EXISTING POLICY**

**Climate Action Plan, *Provide a Sustainable Energy Portfolio (EP)***, Reduction Measure EP-1.1: Create or join a community choice aggregation (CCA) program to take control of power generation for city residents and businesses

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and (5) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment.

#### **DISCUSSION**

Since formation, SVCEA has convened its Board of Directors, hired a Chief Executive Officer, and made significant progress toward launch of a CCE program. In July, SVCEA submitted its Implementation Plan for certification by the California Public Utilities Commission, and it established a tentative customer rollout approach that seeks a swift implementation of all customers between April and October 2017. Actions in progress related to staffing the organization, procuring energy and

additional support services, and community engagement are all geared toward that launch window.

The City of Mountain View took the lead in evaluating financing options for SVCEA to provide the essential financing that bridges the early operations and electricity purchases until sufficient revenues are received. The financing team, which includes Sunnyvale staff, completed a request for proposal (RFP) for credit and banking services on behalf of SVCEA, and a contract was awarded by the SVCEA Board to River City Bank of Sacramento California.

It was anticipated that the member agencies may need to provide some form of limited guaranty to a bank, or provide direct financing to SVCEA. The credit terms provided by the Bank are such that direct loans from the member agencies are not required; however a short-term (1-2 years) guaranty will be required.

The financing team and SVCEA (represented by its CEO and Attorney) have been engaged in credit negotiations regarding both Non-revolving Line of Credit (NRLOC) of up to \$2 million, and a Revolving Line of Credit (RLOC) of up to \$18 million. The credit terms are very favorable for the SVCEA, and the risk to the member agencies is low. The NRLOC requires a guaranty which will be shared proportionally, based on projected energy demand, by the member agencies of Mountain View, Sunnyvale, Gilroy, and Santa Clara County. The shares are \$480,000, \$1,020,000, \$280,000, and \$220,000 respectively, with Sunnyvale carrying the largest share as it represents the largest demand in the authority. These four agencies have the most legal flexibility to provide the guaranty as charter cities and the County. While other members could participate, additional steps would be required for them to participate, delaying the potential launch of the SVCEA. The RLOC requires no Guaranty and no action by the member agencies is required. The NRLOC requires several documents be executed as follows:

- A Guaranty Agreement with River City Bank to provide Sunnyvale's share of the Guaranty (Attachment 2).
- A Memorandum of Understanding between the SVCEA and the Cities of Mountain View, Sunnyvale, Gilroy and the County of Santa Clara to provide the Guaranty (Attachment 3).
- A Subordination Agreement with River City Bank subordinating the initial contributions made by the member agencies until the NRLOC is retired (Attachment 4).

The Subordination Agreement is needed to ensure that River City Bank is paid before the member agencies are paid back for their initial contributions. Sunnyvale's initial contribution totaled \$530,000. All the member agencies are being required to execute this agreement, and a communication to their respective executives has been distributed.

Staff is recommending Council authorize the City Manager to execute the agreements in substantially the same form as attached.

### **FISCAL IMPACT**

Should SVCEA default on its loan agreement, the City would be required to provide up to \$1,020,000 in funds per the guaranty agreement. This amount could be less if the outstanding balance were less. Each of the guarantors would share proportionally up to their respective totals. In addition, if the SVCEA were in a position that it could not pay its debts, it would likely that the City would also lose its \$530,000 initial contribution. However, default by SVCEA is unlikely, as evidenced by the

successful launch of several other local Community Choice programs. It should also be noted that Council had authorized staff to negotiate a guaranty of up to \$1.3 million, but with the participation of partner agencies, that total was reduced. The agreements are consistent with direction provided by Council to negotiate the provision of a loan guaranty to SVCEA for startup financing.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **RECOMMENDATION**

Adopt a Resolution Authorizing the City Manager to Execute a Loan Guaranty in an Amount Not to Exceed \$1,020,000 with River City Bank and to Execute Other Necessary Documents including a Memorandum of Understanding with the Silicon Valley Clean Energy Authority (SVCEA) and an Agreement to Subordinate the Initial Contribution made to the SVCEA.

Prepared by: Timothy J. Kirby, Director of Finance  
Reviewed by: Walter C. Rossmann, Assistant City Manager  
Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Resolution Authorizing the City Manager to Execute a Loan Guaranty for the Silicon Valley Clean Energy Authority and other necessary documents
2. Guaranty Agreement with River City Bank to provide Sunnyvale's share of the Guaranty
3. A Memorandum of Understanding between the SVCEA and the Cities of Mountain View, Sunnyvale, Gilroy and the County of Santa Clara to provide the Guaranty
4. A Subordination Agreement with River City Bank subordinating the initial contributions made by the member agencies until the NRLOC is retired



DRAFT 11/9/16 DM

## RESOLUTION NO. \_\_\_\_-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
SUNNYVALE AUTHORIZING THE CITY MANAGER TO  
EXECUTE DOCUMENTS NECESSARY TO PROVIDE A  
LOAN GUARANTY IN A LIMITED MAXIMUM AMOUNT  
FOR THE SILICON VALLEY CLEAN ENERGY AUTHORITY**

WHEREAS, the City of Sunnyvale is a member of the Silicon Valley Clean Energy Authority ("SVCEA"), which was created by a Joint Powers Agreement to which Sunnyvale is a party; and

WHEREAS, the SVCEA intends to acquire a Non-Revolving Credit arrangement from River City Bank of Sacramento ("Bank") in the total amount of Two Million Dollars (\$2,000,000); and

WHEREAS, the Bank requires that the Non-Revolving Credit be guaranteed by the County of Santa Clara and the charter cities that are members of the SVCEA (Mountain View, Sunnyvale, and Gilroy) and therefore able to give such guaranty, and that each such entity provide such authority by resolution; and

WHEREAS, at the duly-noticed regular City Council meeting on August 9, 2016, the City Council provided direction to the City Manager to move forward with negotiations with River City Bank to provide a credit guaranty to fund the initial launch of the SVCEA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE, AS FOLLOWS:

The City Council hereby authorizes the City Manager to sign a loan guaranty and any other necessary documents to effectuate a guaranty on the part of the City of Sunnyvale of the Non-Revolving Credit for the SVCEA in a guaranteed amount not to exceed One Million Twenty Thousand Dollars (\$1,020,000).

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT B  
NON-REVOLVING CREDIT GUARANTY

This NON-REVOLVING CREDIT GUARANTY is made effective as of \_\_\_\_\_ (“*Guaranty*”) by the City of Mountain View, the City of Sunnyvale, the County of Santa Clara and the City of Gilroy (each a “*Non-Revolving Credit Guarantor*” and collectively “*Non-Revolving Credit Guarantors*”), in favor and for the benefit of Lender under the Credit Agreement (each as hereinafter defined).

RECITALS

A. Pursuant to a certain credit agreement dated as of November \_\_\_, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof in effect, the “*Credit Agreement*”) by and between Silicon Valley Clean Energy Authority (“*Borrower*”) and River City Bank (“*Lender*”), Lender has agreed to make certain Advances to Borrower. Capitalized terms not defined herein have the meanings ascribed to them in the Credit Agreement.

B. It is a requirement under Section 8.2(a)(ii) of the Credit Agreement that each Non-Revolving Credit Guarantor shall execute and deliver this Guaranty and that this Guaranty shall be in full force and effect.

C. This Guaranty is given by Non-Revolving Credit Guarantors in favor of Lender to guaranty all of the Obligations of Borrower under the Non-Revolving Credit in accordance with the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Non-Revolving Credit Guarantors hereby agree as follows:

1. Guaranty. (a) To induce Lender to make the Advances upon the terms and conditions set forth in the Credit Agreement, and in consideration thereof, each Non-Revolving Credit Guarantor hereby unconditionally and irrevocably severally (based on each Non-Revolving Credit Guarantor’s percentage responsibility set forth on **Exhibit A** attached hereto (each a “*Guarantor’s Share*”)) (i) guarantees to Lender and its successors, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and at all times thereafter of the Obligations of Borrower (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Federal Bankruptcy Code of 1978, as amended, or any state bankruptcy statute) under the Non-Revolving Credit; and (ii) agrees to pay any and all reasonable expenses (including reasonable attorneys’ fees and disbursements and expert witnesses’ fees and disbursements) which may be paid or incurred by Lender in enforcing any rights with respect to, or collecting, any or all of the Obligations under the Non-Revolving

Credit and/or enforcing any rights with respect to, or collecting against, such Non-Revolving Credit Guarantor under this Guaranty (collectively, the “*Guaranteed Obligations*”).

(b) Each Non-Revolving Credit Guarantor agrees that this Guaranty constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be had by Lender to any security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person.

(c) No payment or payments made by Borrower or any other Person or received or collected by Lender from any other Person by virtue of any action or proceeding or any set off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Non-Revolving Credit Guarantor hereunder which shall, notwithstanding any such payment or payments other than payments made to Lender by a Non-Revolving Credit Guarantor or payments received or collected by Lender from a Non-Revolving Credit Guarantor, remain liable for such Guarantor’s Share of the Guaranteed Obligations until the Guaranteed Obligations are indefeasibly paid in full in cash or cash equivalents.

(d) Each Non-Revolving Credit Guarantor understands, agrees and confirms that this is a guaranty of payment when due and not of collection and that Lender may, from time to time, enforce this Guaranty up to the full amount of each Guarantor’s Share of the Guaranteed Obligations owed to Lender without proceeding against any other Person, against any security for the Guaranteed Obligations, against any other guarantor or under any other guaranty covering the Guaranteed Obligations.

2. Waiver by Non-Revolving Credit Guarantor. Until the payment and satisfaction in full of all Guaranteed Obligations and the expiration or termination of any commitment to lend by Lender under the Credit Agreement, each Non-Revolving Credit Guarantor hereby waives absolutely and irrevocably any claim which it may have against Borrower or any or its respective Affiliates by reason of any payment to Lender, or to any other Person pursuant to or in respect of this Guaranty, including any claims by way of subrogation, contribution, reimbursement, indemnity or otherwise.

Each Non-Revolving Credit Guarantor further agrees that such Non-Revolving Credit Guarantor’s liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of such Non-Revolving Credit Guarantor of the time for payment of interest or principal under the Credit Agreement or by any forbearance or delay in collecting interest or principal under the Credit Agreement, or by any waiver by Lender under the Credit Agreement or any other Loan Documents, or by Lender’s failure or election not to pursue any other remedies it may have against Borrower or such Non-Revolving Credit Guarantor, or by any change or modification in the Credit Agreement or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, except that payment in full of the indebtedness shall automatically release such Non-Revolving Credit

Guarantor of its Obligations under this Guaranty, or by the application of payments received from any source to the payment of any obligation other than the indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the indebtedness (in which case such Non-Revolving Credit Guarantor will be automatically released), or by the failure or invalidity of, or any defect in, the Credit Agreement, or by any legal disability or other defense of Borrower, or by the cessation, limitation or termination from any cause whatsoever of any of the Obligations under the Credit Agreement, except upon payment in full of the indebtedness (in which case such Non-Revolving Credit Guarantor will be automatically released), or by the application by Borrower of the proceeds of the Advances for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Non-Revolving Credit Guarantors, it being the intent hereof that each Non-Revolving Credit Guarantor shall remain liable for its ratable share of Obligations hereunder to the extent of each Guarantor's Obligations provided herein, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Each Non-Revolving Credit Guarantor hereby waives any and all rights or defenses based on, and understands and agrees that such Non-Revolving Credit Guarantor's liability as guarantor shall not be impaired or affected by, an election of remedies by Lender, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Non-Revolving Credit Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise, or the foreclosure of any of the security for the Advances, including without limitation the security described in any Security Agreement, or each Non-Revolving Credit Guarantor's right to a fair value hearing under Section 580a of the California Code of Civil Procedure, it being intended that this Guaranty shall survive the realization upon any of the security for the Advances, including without limitation the security described in the Security Agreement, including without limitation non-judicial foreclosure, where applicable, and notwithstanding any defense, right, or claim that any such foreclosure satisfied the obligations secured thereby. Each Non-Revolving Credit Guarantor agrees that the payment of all sums payable under the Credit Agreement or any of the other Loan Documents or any part thereof or other act which tolls any statute of limitations applicable to the Credit Agreement or the other Loan Documents shall similarly operate to toll the statute of limitations applicable to such Non-Revolving Credit Guarantor's liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, each Non-Revolving Credit Guarantor expressly waives to the extent permitted by law any and all rights and defenses that such Non-Revolving Credit Guarantor may have if Borrower's debt is secured by real property. This means, among other things: (1) Lender may collect from a Non-Revolving Credit Guarantor without first foreclosing on any security for the Advances (whether such security is real or personal property) pledged by Borrower; and (2) if Lender forecloses on any real property security pledged by Borrower (including without limitation the real property described in a Deed of Trust), (A) the amount of the Indebtedness may be reduced only by the price for which that security is sold at the foreclosure sale, even if the security is worth more than the sale price, and (B) Lender may collect from a Non-Revolving Credit Guarantor even if Lender, by foreclosing on the real property security, has destroyed any right such Non-Revolving Credit Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Non-Revolving Credit Guarantor may have if Borrower's debt is secured by

real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure, and/or Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code, or any of such sections. Each Non-Revolving Credit Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Credit Agreement, Loan Agreement, Security Agreement or other Loan Documents, and may waive or release any provision or provisions of the Credit Agreement, Loan Agreement, Security Agreement and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or such Non-Revolving Credit Guarantor's obligations hereunder.

3. Consent by Non-Revolving Credit Guarantor. Each Non-Revolving Credit Guarantor hereby consents and agrees that, without the necessity of any reservation of rights against such Non-Revolving Credit Guarantor and without notice to or further assent by such Non-Revolving Credit Guarantor, any demand for payment of any of the Guaranteed Obligations made by Lender may be rescinded by Lender and any of the Guaranteed Obligations continued, and the Guaranteed Obligations, or the liability of any other party upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender; and the Credit Agreement or other guaranty or documents in connection therewith, or any of them, may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time; and any guaranty or right of offset may be sold, exchanged, waived, surrendered or released, all without the necessity of any reservation of rights against any Non-Revolving Credit Guarantor and without notice to or further assent by any Non-Revolving Credit Guarantor, which will remain bound hereunder, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, surrender or release. Lender shall have no obligation to protect, secure, perfect or insure any property at any time held as security for the Guaranteed Obligations. When making any demand hereunder against a Non-Revolving Credit Guarantor, Lender may, but shall be under no obligation to, make a similar demand on Borrower, any other Person who at any time guarantees or pledges any assets to secure the Guaranteed Obligations, or any one or more of them (a "*Credit Party*") or any such other guarantor, and any failure by Lender to make any such demand or to collect any payments from such other Credit Party or any such other guarantor or any release of such other Credit Party or any such other guarantor or of a Non-Revolving Credit Guarantor's obligations or liabilities hereunder shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Lender against a Non-Revolving Credit Guarantor hereunder. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

4. Waivers; Successors and Assigns. Each Non-Revolving Credit Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Lender upon this Guaranty or acceptance of

this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between a Non-Revolving Credit Guarantor and any other Credit Party, on the one hand, and Lender, on the other hand, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. Each Non-Revolving Credit Guarantor waives diligence, presentment, protest, demand for payment and notice of default or non-payment to or upon any Credit Party or a Non-Revolving Credit Guarantor with respect to the Guaranteed Obligations. This Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment without regard to the validity, regularity or enforceability of the Credit Agreement, the other Loan Documents, any of the Guaranteed Obligations or any guaranty therefor or right of offset with respect thereto at any time or from time to time held by Lender and without regard to any defense (other than the defense of payment), set-off or counterclaim which may at any time be available to or be asserted by any Credit Party against Lender, or by any other circumstance whatsoever (with or without notice to or knowledge of any Non-Revolving Credit Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Guaranteed Obligations, or of a Non-Revolving Credit Guarantor under this Guaranty, in bankruptcy or in any other instance, and the obligations and liabilities of such Non-Revolving Credit Guarantor hereunder shall not be conditioned or contingent upon the pursuit by Lender or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or Guaranty therefor or right of offset with respect thereto. This Guaranty shall be a primary obligation of each Non-Revolving Credit Guarantor to secure the payment of the Guaranteed Obligations and Lender shall have no obligation whatsoever to seek payment of the Guaranteed Obligations from Borrower in the event an Event of Default has occurred and is continuing. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon each Non-Revolving Credit Guarantor and the successors and assigns thereof, and shall inure to the benefit of Lender, and their respective successors, transferees and assigns (including each holder from time to time of Guaranteed Obligations), until all of the Guaranteed Obligations and the obligations of each Non-Revolving Credit Guarantor under this Guaranty shall have been satisfied by indefeasible payment in full in cash or cash equivalents, notwithstanding that from time to time during the term of the Credit Agreement any Credit Party may be released from all of its Guaranteed Obligations thereunder.

5. Effectiveness; Reinstatement. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of; or trustee or similar officer for, any Credit Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

6. Payments of Guaranteed Obligations. Each Non-Revolving Credit Guarantor hereby guarantees that its Guarantor's Share of the Guaranteed Obligations will be paid for the benefit of Lender without set-off or counterclaim in lawful currency of the United States of

America at the office of Lender located at 2485 Natomas Park Drive, Sacramento, California 95833. Each Non-Revolver Credit Guarantor shall make any payments required hereunder within five (5) business days of receipt of written notice thereof from Lender; provided, however, that such written notice may only be sent after the occurrence and during the continuation of an Event of Default and provided, further, however, that the failure of Lender to give such notice shall not affect such Non-Revolver Credit Guarantor's obligations hereunder.

7. Representations and Warranties. To induce Lender to enter into the Credit Agreement and to make the Advances thereunder, each Non-Revolver Credit Guarantor represents and warrants to Lender that, as to such Non-Revolver Credit Guarantor, the following statements are true, correct and complete on and as of the date hereof:

(a) Organization and Qualification; Authority; Consents. Such Non-Revolver Credit Guarantor is a [REDACTED] duly organized, validly existing under and operating pursuant to the laws of the State of California, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Such Non-Revolver Credit Guarantor has full right and authority to enter into this Guaranty and to perform each and all of the matters and things herein provided for; and this Guaranty does not, nor does the performance or observance by such Non-Revolver Credit Guarantor of any of the matters or things herein or therein provided for, contravene any provision of law or any organizational document of such Non-Revolver Credit Guarantor or any covenant, indenture or agreement of or affecting such Non-Revolver Credit Guarantor or any of its Properties. The execution, delivery, performance and observance by such Non-Revolver Credit Guarantor of this Guaranty and any other instruments and documents executed by such Non-Revolver Credit Guarantor in connection with this Guaranty do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

(b) Legal Effect. This Guaranty constitutes a legal, valid and binding agreement of such Non-Revolver Credit Guarantor, enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

(c) Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of such Non-Revolver Credit Guarantor threatened in writing, against such Non-Revolver Credit Guarantor which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of such Non-Revolver Credit Guarantor.

(d) Compliance with Laws. Such Non-Revolver Credit Guarantor is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and



regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor. Such Non-Revolving Credit Guarantor has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor.

(e) Other Agreements. Such Non-Revolving Credit Guarantor is not in default under the terms of any covenant, indenture or agreement of or affecting such Non-Revolving Credit Guarantor or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor.

8. Covenants. Each Non-Revolving Credit Guarantor agrees that, as to such Non-Revolving Credit Guarantor, so long as any credit is available to or in use by Borrower under the Credit Agreement, except to the extent compliance in any case or cases is waived in writing by Lender:

(a) Financial Reports. Such Non-Revolving Credit Guarantor shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives any publicly available information respecting the business and financial condition of such Non-Revolving Credit Guarantor as Lender may reasonably request.

(b) Compliance with Laws. Such Non-Revolving Credit Guarantor shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor or could result in a Lien upon any of its Property.

(c) Notices of Claims and Litigation. Such Non-Revolving Credit Guarantor shall promptly inform Lender in writing of (1) all material adverse changes in such Non-Revolving Credit Guarantor's financial condition and (2) all existing litigation and all written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting such Non-Revolving Credit Guarantor which could materially affect the financial condition of such Non-Revolving Credit Guarantor.

9. Expenses. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; or (c) an attorney is retained to represent Lender in

any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Non-Revolving Credit Guarantors shall pay to Lender (as the case may be) upon demand such Non-Revolving Credit Guarantor's Share of all reasonable attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

10. No Waiver. No failure to exercise and no delay in exercising, on the part of Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

11. Notices. All notices, demands, instructions or other communications required or permitted to be given to or made upon any party hereto shall be given in accordance with the provisions of the Credit Agreement and at the address set forth therein or as provided on the signature page hereof.

12. Amendments, Waivers, etc. No provision of this Guaranty shall be waived, amended, terminated or supplemented except by a written instrument executed by Non-Revolving Credit Guarantors and Lender.

13. GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

14. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST A NON-REVOLVING CREDIT GUARANTOR WITH RESPECT TO THIS GUARANTY AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SACRAMENTO, CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY AGREEMENT EACH NON-REVOLVING CREDIT GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

15. Counterparts. This Guaranty and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate

counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[remainder of page intentionally left blank]

DRAFT

**City of Mountain View**

**County of Santa Clara**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

FINANCIAL APPROVAL:

\_\_\_\_\_  
Finance and Administrative Services Director

**City of Gilroy**

APPROVED AS TO FORM:

By: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Its: \_\_\_\_\_

Notices shall be provided to:

Finance and Administrative Services Director  
City of Mountain View  
P.O. Box 7540  
Mountain View, CA 94039-7540

**City of Sunnyvale**

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**GUARANTOR'S SHARE**

<b><u>Guarantor</u></b>	<b><u>Guarantor's Share</u></b>
City of Mountain View	24.0%
City of Sunnyvale	51.0%
County of Santa Clara	14.0%
City of Gilroy	<u>11.0%</u>
<b>Total</b>	<b>100%</b>

**Memorandum of Understanding By and Among the Silicon Valley Clean Energy Authority  
and the City of Gilroy, the City of Mountain View, the City of Sunnyvale, and the County  
of Santa Clara Regarding Bank Loan Guarantee**

**Whereas**, the Silicon Valley Clean Energy Authority (SVCEA) is a joint powers agency formed by the Silicon Valley Clean Energy Authority Joint Powers Agreement (SVCEA JPA) and operating under the authority of the Joint Exercise of Powers Act (Government Code Sections 6500 et seq.) to form and operate a separate public agency to implement a Community Choice Aggregation (CCA) program along with other purposes enumerated in the SVCEA JPA; and

**Whereas**, the Cities of Gilroy, Mountain View, and Sunnyvale and the County of Santa Clara are Parties to the SVCEA JPA (the "Parties"), and pursuant to Section 2.3 of the SVCEA JPA, the obligations of SVCEA are not the debts, liabilities or obligations of the Parties to the SVCEA JPA; and

**Whereas**, for the purposes of this Memorandum of Understanding (MOU), Gilroy, Mountain View, and Sunnyvale are each acting in their individual capacities as a municipal corporation and the County of Santa Clara is acting in its individual capacity as a subdivision of the state; and

**Whereas**, SVCEA has requested that the Parties provide guarantees for a \$2,000,000 working capital facility from River City Bank in the following amounts: \$220,000 for Gilroy, \$480,000 for Mountain View, \$1,020,000 for Sunnyvale and \$280,000 for the County of Santa Clara ; and

**Whereas**, the Joint Exercise of Powers Act at Government Code Section 6508.1 permits a party to the SVCEA JPA to separately contract for, or assume responsibility for, specific debts, liabilities or obligations of SVCEA; and

**Whereas**, the governing body of each of the Parties have approved the loan guarantees as described in this MOU.

**Now, therefore** SVCEA, Gilroy, Mountain View, Sunnyvale and the County of Santa Clara agree as follows:

1. SVCEA represents that it has the legal authority under the laws of the State of California to enter into the working capital loan transaction in the amount of \$2,000,000 from River City Bank, as evidenced by the Loan Agreement attached hereto as Exhibit A (hereinafter referred to as the River City Loan).
2. In reliance upon the above representation and agreement, Gilroy will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, Gilroy represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Gilroy's liability under this MOU is for the specific bank loan guarantee identified herein for Gilroy only and that Gilroy shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.
3. In reliance upon the above representation and agreement, Mountain View will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the

loan guarantee, Mountain View represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Mountain View's liability under this MOU is for the specific bank loan guarantee identified herein for Mountain View only and that Mountain View shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.

4. In reliance upon the above representation and agreement, Sunnyvale will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, Sunnyvale represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Sunnyvale's liability under this MOU is for the specific bank loan guarantee identified herein for Sunnyvale only and that Sunnyvale shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.
5. In reliance upon the above representation and agreement, the County of Santa Clara will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, the County of Santa Clara represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that the County of Santa Clara's liability under this MOU is for the specific bank loan guarantee identified herein for the County of Santa Clara only and that the County of Santa Clara shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.
6. SVCEA will ensure that a provision is included within the River City Loan providing that River City Bank will enforce the guarantees provided pursuant to the MOU in proportion to the amount of each of the four guarantees.
7. SVCEA will repay the Parties for any draw on the loan guarantees described in this MOU prior to commencing reimbursement of any of the Initial Costs described in Section 6.3.2 of the SVCEA JPA. Any partial reimbursement by SVCEA to the Parties will be disbursed proportionally to the amount of each of the four guarantees.

**APPROVED BY SVCEA**

By: \_\_\_\_\_  
Tom Habashi, Chief Executive Officer

Dated: \_\_\_\_\_

**APPROVED BY CITY OF GILROY**

By: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED BY CITY OF MOUNTAIN VIEW**

By: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED BY CITY OF SUNNYVALE**

By: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

**APPROVED BY THE COUNTY OF SANTA CLARA**

By: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_



## Exhibit H

### Form of Subordination Agreement

#### **SUBORDINATION AGREEMENT**

River City Bank (the “*Lender*”) and the other parties signatories hereto (each, a “*Subordinated Creditor*” and collectively, the “*Subordinated Creditors*”), agree, effective November 15, 2016, as follows:

##### Section 1. Background and Purpose.

1.1 The Lender is making loans to Silicon Valley Clean Energy Authority, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “*Obligor*”), pursuant to that certain Credit Agreement dated as of the date hereof (as modified, amended, restated or replaced from time to time, the “*Senior Loan Agreement*”). The loans are evidenced by a Non-Revolver Promissory Note in the original principal balance of \$2,000,000 (“*Non-Revolver Note*”) and a Revolver Credit Promissory Note in the original principal balance of \$18,000,000 (together with the Non-Revolver Note, the “*Senior Notes*”). The Obligor is currently indebted to the Subordinated Creditors as set forth on Exhibit A attached hereto and incorporated herein (as the same may be amended, modified or refinanced, “*Subordinated Debt*”). The Lender and the Subordinated Creditors desire to enter into this Agreement to effectuate the subordination of the Subordinated Debt to the Senior Debt (as defined below). Capitalized terms used, but not otherwise defined, in this Subordination Agreement shall have the meanings ascribed to them in the Senior Loan Agreement.

##### Section 2. Subordination.

2.1 Each Subordinated Creditor hereby irrevocably subordinates, in accordance with the terms hereof, the payment and performance of the Subordinated Debt by the Obligor to it, to the prior payment and performance in full of all of the obligations specified in the Senior Loan Agreement and the Senior Notes (collectively, the “*Senior Debt*”). Each Subordinated Creditor acknowledges that it has been represented by counsel in connection with the transactions that are the subject of this Subordination Agreement. This Subordination Agreement shall be effective as to a Subordinated Creditor when such Subordinated Creditor signs this Subordination Agreement and execution by all Subordinated Creditors is not a condition to such effectiveness.

2.2 Under no circumstances will the Senior Debt be deemed to have been paid in full unless and until such time as, and when used in this Subordination Agreement with respect to the Senior Debt, the words “paid in full,” “payment in full,” and similar phrases shall

mean that, the Lender has received payment, in immediately available funds, of 100% of all outstanding Senior Debt, and all of the Lender's obligations to extend credit under the Senior Loan Agreement have terminated.

2.3 The Subordinated Debt is subordinated in right of payment to the Senior Debt in accordance with this Agreement. Each Subordinated Creditor agrees to make appropriate entries in its books and records and stamp all Subordinated Debt documents evidencing the Subordinated Debt with the following legend:

“The indebtedness evidenced by this instrument is subordinated to the prior payment in full of the Senior Debt (as defined in the Subordination Agreement hereinafter referred to) pursuant to, and to the extent provided in, the Subordination Agreement effective as of November 15, 2016 by the maker hereof and payee named herein in favor of River City Bank.”

### Section 3. Payments.

3.1 Until the payment in full of the Senior Debt, without the prior written consent of the Lender (which consent the Lender may refuse to give for any or no reason), under no circumstances will any Subordinated Creditor, directly or indirectly, take any action to enforce payment of or to collect the whole or any part of the Subordinated Debt or enforce any of the rights and remedies available to the Subordinated Creditor, other than in the manner and to the extent permitted by Section 4 hereof, or ask, demand, take or receive any collateral, mortgages or other security from the Obligor in respect of the Subordinated Debt. Any amounts paid by the Obligor to a Subordinated Creditor in violation of the terms of this Subordination Agreement shall be held by such Subordinated Creditor in trust and promptly paid over to the Lender for application to the Senior Debt in accordance with the Senior Loan Agreement.

3.2 Notwithstanding anything to the contrary contained in this Subordination Agreement, each Subordinated Creditor agrees that it will not, without the Lender's prior written consent (which the Lender may refuse to give for any or no reason), directly or indirectly permit the modification or amendment of any of the terms or provisions, as they exist on the date hereof, of the note reflecting the Subordinated Debt (“*Subordinated Note*”), to the extent that any such modification or amendment would (a) result in any increase in the amount of the Subordinated Debt, (b) increase the amount, or accelerate the due date, of any payment or distribution in respect of the Subordinated Debt.

### Section 4. Allowable Payments.

4.1 Subject to other applicable provisions of this Subordination Agreement, including, without limitation, those contained in Section 5 hereof, without the Lender's prior written consent, the Obligor may not make, and a Subordinated Creditor may not accept from the Obligor, any payment in respect of the Subordinated Debt.

4.2 Notwithstanding anything to the contrary in this Subordination Agreement, the Obligor may set-off against amounts payable in respect of Subordinated Debt under the circumstances set forth or referenced in any documentation of such Subordinated Debt.

Section 5. Readjustment. Each Subordinated Creditor further agrees that, upon any distribution of the assets or readjustment of the indebtedness of the Obligor, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any of the Subordinated Debt, or the application of the property of the Obligor to the payment or liquidation thereof, the Lender, in any such instance, shall be entitled to receive payment in full of the Senior Debt prior to the payment of all or any part of the Subordinated Debt.

Section 6. Bankruptcy Issues. To the extent that the Obligor makes a payment to the Lender, which payment(s) (or any part thereof) subsequently are voided, invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other person or entity pursuant to Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (the “*Bankruptcy Code*”), any other bankruptcy act, state or federal law, common law or equitable cause (“*Insolvency Law*”), then, to the extent any such payment(s) or proceeds are repaid by the Lender, the Senior Debt (or the part that was intended to be satisfied) will be revived for all purposes of this Subordination Agreement and will continue in full force and effect, as if such payment or proceeds had not been received by the Lender.

Section 7. Waivers. Each Subordinated Creditor hereby waives until the Senior Debt is paid in full any and all rights at law or in equity to subrogation, reimbursement or set off or any other rights which such Subordinated Creditor may have or hereafter acquire against the Obligor in connection with or as a result of such Subordinated Creditor’s execution, delivery and/or performance of this Subordination Agreement.

Section 8. Attorney-In-Fact. Each Subordinated Creditor irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, in either the Lender’s name or such Subordinated Creditor’s name, to do the following (but the Lender shall have no obligation to do so): (a) endorse and collect all checks, drafts, other payment orders and instruments representing or included in, any payment, dividend or distribution relating to, the Subordinated Debt or any Collateral securing the Subordinated Debt; (b) take any action to enforce, collect or compromise any of the Subordinated Debt; (c) exercise any other right, remedy, privilege or option of such Subordinated Creditor pertaining to any Subordinated Debt or Subordinated Debt documents; (d) take any actions or institute any proceedings that the Lender determines to be necessary or appropriate to collect or preserve the Subordinated Debt or any Collateral for the Subordinated Debt; (e) execute in the name of or otherwise authenticate on behalf of such Subordinated Creditor any record reasonably believed necessary or appropriate by the Lender for compliance with laws, rules or regulations applicable to any Subordinated Debt or any Collateral for the Subordinated Debt, or in connection with exercising the Lender’s rights under this Agreement; and (f) execute and file claims, proofs of claim or other documents, and to take any other action regarding all or any part of the Subordinated Debt necessary or appropriate to insure payment to and receipt by the Lender of all payments, dividends and other distributions on account of the Subordinated Debt, instruments evidencing the Subordinated Debt, or any Collateral for the Subordinated Debt. This appointment is irrevocable and coupled with an interest and shall

survive the dissolution or disability of such Subordinated Creditor. Notwithstanding the foregoing, the Lender shall not be liable to any Subordinated Creditor for any failure (i) to prove the existence, amount, or circumstances of the Subordinated Debt; (ii) to exercise any right related to the Subordinated Debt; or (iii) to collect any sums payable on or distributions attributable to, the Subordinated Debt.

Section 9. Representations and Warranties. Each Subordinated Creditor represents and warrants to the Lender as follows: (a) the execution, delivery and performance of this Agreement and each of the Subordinated Debt documents now outstanding (true and complete copies of which have been furnished to the Lender) have been duly authorized by all necessary action, are within the power and authority of the Subordinated Creditor and do not and will not (i) contravene the articles, charter, bylaws, partnership agreement, operating agreement, regulations or other organic documents, if any, establishing or governing such Subordinated Creditor, any applicable law or governmental regulation or any contractual restriction binding on or affecting such Subordinated Creditor or any of their respective properties, (ii) result in or require the creation of any lien upon or with respect to any of such Subordinated Creditor's properties or (iii) violate the rights of any person or entity; (b) this Agreement and each of the Subordinated Debt documents are legal, valid and binding obligations of such Subordinated Creditor, enforceable against such Subordinated Creditor in accordance with their respective terms except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights and by general equitable principles; (c) there exists no default, event of default, or event which with the passage of time, the giving of notice or both may result in a default or event of default under the Subordinated Debt or any Subordinated Debt documents or any event or occurrence that gives a Subordinated Creditor the right to terminate a commitment, refuse to make an advance, accelerate a maturity with or without notice or the passage of time; and (d) if such Subordinated Creditor is an entity, that entity is and will remain duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and in good standing in the jurisdictions in which it is doing business. Each Subordinated Creditor further represents and warrants to the Lender as follows: (A) such Subordinated Creditor owns and holds the Subordinated Debt now outstanding free and clear of any lien that has not been disclosed in writing by such Subordinated Creditor to the Lender; (B) such Subordinated Creditor is now solvent, the execution, delivery and performance of this Agreement will benefit such Subordinated Creditor directly or indirectly and such Subordinated Creditor has and will receive fair and reasonably equivalent value for the obligations undertaken in this Agreement; (C) such Subordinated Creditor has (1) without reliance on the Lender or any information received from the Lender and based upon the documents and information such Subordinated Creditor deems appropriate, made an independent investigation of the transactions contemplated by this Agreement and the Borrower, the Borrower's business, assets, operations, prospects and condition, financial or otherwise, and any circumstances that may bear upon those transactions, the Borrower or the obligations and risks undertaken in this Agreement with respect to the Senior Debt; (2) adequate means to obtain from the Borrower on a continuing basis information concerning the Senior Debt and the Lender has no duty to provide to such Subordinated Creditor any information; (3) full and complete access by and through the Borrower to the Lender's loan documents; (4) not relied and will not rely upon any representations or warranties of the Lender not embodied in this Agreement or any acts taken by the Lender (including but not limited to any review by the Lender of the affairs of the Borrower) prior to or after the date of this Agreement; (D) such Subordinated Creditor is the sole

holder of the Subordinated Debt with full power to make the subordinations set forth in this Agreement; and (E) such Subordinated Creditor has not made or permitted any assignment or transfer, as security or otherwise, of the Subordinated Debt, any Subordinated Debt documents or of any of the Collateral securing the Subordinated Debt, and such Subordinated Creditor shall not do so except in favor of the Lender as long as this Agreement remains in effect.

Section 10. Successors and Assigns. This Subordination Agreement immediately shall be binding on each Subordinated Creditor and on its heirs, representatives and assigns, and shall inure to the benefit of the Lender and its successors and assigns. Whenever reference is made in this Subordination Agreement to the Obligor, such term shall include any successor or assign of the Obligor, including, without limitation, a receiver, trustee, or debtor or debtor-in-possession under the Bankruptcy Code.

Section 11. Notices. Any notice required or permitted hereunder shall be given in writing by personal delivery, by overnight delivery through a recognized courier service, by certified U.S. mail, or by telecopier (fax) (i) as to a Subordinated Creditor, by giving such notice to such Subordinated Creditor at the address set forth below such Subordinated Creditor's signature hereon, and (ii) as to the Lender, by giving such notice to the Lender at the address set forth below its signature hereon. All such notices shall be deemed to have been received on the date given, except that any such notice given by overnight delivery will be deemed to have been received on the next business day after such notice was delivered to such a carrier for delivery, and any such notice given by certified U.S. mail will be deemed to have been received three days after such notice was deposited in the U.S. mails, postage prepaid.

Section 12. Governing Law. THIS SUBORDINATION AGREEMENT SHALL BE GOVERNED BY CALIFORNIA LAW (WITHOUT REGARD TO ANY JURISDICTION'S CONFLICT OF LAWS PRINCIPLES). EACH SUBORDINATED CREDITOR AND THE LENDER EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS SUBORDINATION AGREEMENT. This is a "Subordination Agreement" within the meaning of Section 510(a) of the Bankruptcy Code and shall be interpreted and construed accordingly in any proceeding under the Bankruptcy Code.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

*[Remainder of this Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned has caused this Subordination Agreement to be executed as of the Effective Date.

**City of Campbell**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Cupertino**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Gilroy**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

*(Signature Blocks Continue on Following Pages)*

**City of Los Altos**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**Town of Los Altos Hills**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**Town of Los Gatos**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

***(Signature Blocks Continue on Following Pages)***

**City of Monte Sereno**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Morgan Hill**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Mountain View**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

***(Signature Blocks Continue on Following Pages)***



**County of Santa Clara (Unincorporated Area)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Saratoga**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Sunnyvale**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

***(Signature Blocks Continue on Following Page)***

**RIVER CITY BANK, as Lender**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notice and service of process:

River City Bank

2485 Natomas Park Drive, Suite 100

Sacramento, CA 95833

Attention: \_\_\_\_\_

Fax: (916) \_\_\_\_\_

**Exhibit A**

<u>Lender</u>	<u>Total Amount</u>
City of Campbell	\$ 100,000
City of Cupertino	\$ 520,000
City of Gilroy	\$ 100,000
City of Los Altos	\$ 100,000
Town of Los Altos Hills	\$ 25,000
Town of Los Gatos	\$ 100,000
City of Monte Sereno	\$ 25,000
City of Morgan Hill	\$ 100,000
City of Mountain View	\$ 520,000
County of Santa Clara (Unincorporated Area)	\$ 520,000
City of Saratoga	\$ 100,000
City of Sunnyvale	<u>\$ 520,000</u>
Total	\$2,730,000

## ACKNOWLEDGMENT

Silicon Valley Clean Energy Authority, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “*Company*”), acknowledges receipt of a copy of the Subordination Agreement by and between River City Bank (the “*Lender*”), and the cities, towns and counties parties thereto (each a “*Subordinated Creditor*”), dated as of November \_\_\_\_, 2016 (as amended from time to time, the “*Subordination Agreement*”), and agrees that: (a) it will not: (i) except to the extent permitted by the Subordination Agreement, pay any of the Subordinated Debt until the payment in full of the Senior Debt, (ii) provide any security or collateral for any of Subordinated Debt until the payment in full of the Senior Debt, or (iii) take or omit from taking any action that would cause a breach of the Subordination Agreement; (b) neither the Company nor any of its successors or assignees, by operation of law or otherwise, is a party to the Subordination Agreement, and neither the Company nor any of its successors or assignees will have: (i) any right in, or to enforcement of, the Subordination Agreement as against the Lender or a Subordinated Creditor, (ii) any claim of damage if the Lender or a Subordinated Creditor defaults under the Subordination Agreement, or (iii) any right to object to any amendment, modification, or supplement to, or any restatement or replacement of, the Subordination Agreement that is agreed upon by a Subordinated Creditor and the Lender; and (c) none of the provisions of the Subordination Agreement limit or impair the Lender’s rights against the Company or its successors and assigns or any of their respective obligations, indebtedness, or liabilities to the Lender under the Senior Loan Agreement, any related documents, or otherwise.

All capitalized terms used in this Acknowledgment that are defined in the Subordination Agreement and not otherwise defined in this Acknowledgment have the meanings specified in the Subordination Agreement.

IN WITNESS WHEREOF, the Company has executed and delivered this Acknowledgement to the Lender as of the Effective Date.

**Silicon Valley Clean Energy Authority**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



# City of Sunnyvale

## Agenda Item

16-1015

Agenda Date: 11/29/2016

### REPORT TO COUNCIL

#### SUBJECT

Authorize the City Manager to Negotiate Agreements for Subsequent Council Approval with the City of Milpitas and Other Jurisdictions Regarding SMaRT Station Processing of Recyclables, Yard Trimmings and Municipal Solid Waste

#### BACKGROUND

##### City of Milpitas

Consistent with prior Council direction to pursue uses for the excess capacity of the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®), staff has been assessing the feasibility of providing SMaRT Station solid waste and recycling services to City of Milpitas (Milpitas) in response to a Request for Proposals (RFP) issued by Milpitas. This opportunity was made possible because the SMaRT Station has some excess processing capacity that can be marketed to serve the needs of other entities.

Adding materials from Milpitas to those already handled at the SMaRT Station would result in economies of scale that, with appropriate pricing and terms, would reduce costs and increase revenues for the existing partner agencies (cities of Mountain View, Palo Alto, and Sunnyvale). Milpitas would benefit by taking advantage of the SMaRT Station's advanced processing capabilities to reduce the amount of municipal solid waste (MSW) it disposes, thus increasing its diversion rate, which would likely have financial benefits to Milpitas in the future by reducing its future costs of compliance with State of California MSW diversion requirements.

Working within the framework of the RFP, staff indicated to Milpitas the City's interest in accepting MSW, recyclables and yard trimmings, including disposal at Kirby Canyon Landfill of unrecycled residues. Participating in the process did not bind Sunnyvale at that initial stage of the Milpitas procurement.

The Milpitas RFP process separated the procurement into two phases: (1) landfill disposal and (2) collection/processing. Milpitas awarded its landfill contract to Waste Management (WM) for disposal of garbage at the Guadalupe Landfill. Guadalupe Landfill is located in southern San Jose, with access from Camden Avenue and Guadalupe Mines Road. Following award of that contract, opponents of the contract award circulated petitions and gained enough signatures from Milpitas voters to place on the November general election ballot a referendum to overturn the award of the disposal contract. On November 8, 2016 a majority of Milpitas voters voted "Yes," thus affirming the award of the Guadalupe Landfill disposal contract to WM.

As Milpitas moved into the collection/processing phase of the RFP, its staff became very interested

how the processing capabilities of the SMaRT Station could help Milpitas divert more of its discarded material from disposal. The Milpitas City Council held a special meeting at the SMaRT Station on August 24, 2016, to hear a Sunnyvale staff presentation and tour the facility.

The Milpitas evaluation of franchised collection options narrowed the choices to two companies- Republic Services, the incumbent collector, and Garden Cities Sanitation (GCS). Republic indicated to Milpitas that if it retained the franchise the company would continue to process recyclables and yard trimmings at its own Newby Island facilities and was not interested in delivering materials to the SMaRT Station.

The initial GCS proposal in 2015 provided Milpitas with an option where the City could direct recyclables, yard trimmings and MSW to SMaRT, with City of Sunnyvale transferring unrecycled residues to Kirby Canyon Landfill for disposal under Sunnyvale's contract with WM. Kirby Canyon is located just east of Highway 101 at the southern end of San Jose, with access from the Coyote Creek Golf Drive freeway interchange.

On October 28, 2015, the City Manager sent a letter to Milpitas that expressed Sunnyvale's interest in providing service to Milpitas. The letter described the facility and its capabilities and discussed the potential benefits to Milpitas of entering into either a "merchant" or partner relationship with Sunnyvale. A copy of the letter is attached (Attachment 1).

Based on the steps and respective timeline outlined in the letter, Milpitas moved ahead with award of its franchise to GCS so that it could be assured of having a hauler under contract when the current franchise expires in September 2017. The critical path item is purchasing the refuse collection trucks, which typically takes at least six months. Since the GCS contract provides for the option of processing materials at the SMaRT station, Milpitas is interested in an agreement with Sunnyvale to process Milpitas' recyclables, yard trimmings and/or MSW at the SMaRT Station and disposal of unrecycled residues at Kirby Canyon Landfill.

### **EXISTING POLICY**

Council adopted the Zero Waste Plan in April 2013. In so doing, the Council directed staff to, "market SMaRT Station capacity beyond the current tri-city consortium (Sunnyvale, Mountain View, and Palo Alto)" and to "create renewed partnerships that are centered on the SMaRT Station and take advantage of economies of scale, which are significant in waste processing facilities." Council specifically recommended that staff "continue to explore with other jurisdictions their interest in committing to a SMaRT Station-based Zero Waste goal as well as transfer and disposal services."

Council Goal 3.2F states the objective to, "Maintain sound financial strategies and practices that will enable the City to provide comprehensive solid waste management services to the community while keeping refuse rates at or below countywide averages for cities using cost of service pricing."

More specifically, Policy 3.2F.3 states: "Identify additional revenue sources and, where possible, increase revenues from solid waste programs, services, and **facilities** [emphasis added] without jeopardizing program goals and customer service quality."

### **ENVIRONMENTAL REVIEW**

The City Council certified an Environmental Impact Report for the SMaRT Station in 1990 (SCH #89022812). The amount of material and the number of truck trips anticipated to arrive at SMaRT

from Milpitas do not exceed the amounts evaluated in the EIR. Staff anticipates that the proposed project will require an addendum to the 1990 EIR because Milpitas was not part of the defined service area. Staff has retained an environmental consultant to determine the necessary level of review under the California Environmental Quality Act (CEQA) and to prepare appropriate environmental documentation which will be provided to the City Council when staff returns for Council's consideration of approval of the project. CEQA requires that CEQA review be completed as early as feasible in the planning process yet late enough to provide meaningful information for environmental assessment. An agency may not formally make a decision to proceed with use of a site or facilities for a public project, or take any action that forecloses alternatives or mitigation measures, prior to completion of the required environmental review. (CEQA Guidelines Section 15004(b)). Therefore, the proposed action authorizing the City Manager to negotiate agreements does not constitute approval of any proposal to bring Milpitas waste and materials to the SMaRT Station. The City Council retains discretion to ultimately approve or disapprove the project.

## **DISCUSSION**

### **Milpitas**

On November 14, 2016 the Milpitas City Council awarded a new, 15-year refuse collection franchise to GCS, with services to begin in September 2017. The franchise agreement provides for GCS to deliver recyclables, yard trimmings and construction and demolition (C&D) wastes at various "approved" and "alternate approved" facilities. The SMaRT Station is listed as an "alternate approved facility."

Pursuant to Milpitas's contract with WM, GCS will deliver MSW to Guadalupe Landfill for disposal. However, the GCS franchise agreement allows Milpitas to direct the hauler to instead deliver MSW to the SMaRT Station if there is an agreement between Milpitas and Sunnyvale that allows use of the facility.

In light of the advanced sorting and diversion capabilities of the SMaRT Station, Milpitas is interested in potentially processing two or more material types at the SMaRT Station to improve its ability to meet regulatory requirements for diversion and to reduce its costs for landfill disposal. The anticipated annual amounts are approximately:

- MSW - 56,400 tons per year
- Recyclable Materials - 14,400 tons per year
- Yard Trimmings - 6,800 tons per year

Milpitas has indicated that it would like to take advantage of the SMaRT Station's unique services on a "merchant agreement" basis initially, with the option of considering becoming a long-term MOU partner along with Mountain View and Palo Alto. Milpitas has indicated that it may choose to initially only direct recyclables and yard trimmings to the SMaRT Station, and reserve an ability to also direct MSW there for processing when the additional diversion is needed to satisfy regulatory and/or policy requirements.

Key elements and preliminary dates for the items needed to negotiate and present an agreement for consideration to the city councils of Milpitas and Sunnyvale include:

- Approval of the proposal by the cities of Mountain View and Palo Alto (the three-city MOU only requires approval by one of the other Participating Agencies, but approval by both is preferable) (January 2017)
- Agreement among WM, Milpitas, and Sunnyvale that the SMaRT Station operator may transfer the unrecycled portion of Milpitas materials from SMaRT to Kirby Canyon Landfill for disposal, including the price and terms (January 2017)
- Completion of appropriate environmental review under CEQA. Sunnyvale anticipates that approval of the plan to receive waste and materials from Milpitas will require an addendum to the 1990 EIR for the SMaRT Station. (January 2017)
- Agreement, in the form of a memorandum of understanding, between Milpitas and Sunnyvale on the prices, key terms and other elements to be included in a final post-collection processing contract between the two cities. (January/February 2017)
- Approval by cities of Milpitas and Sunnyvale of a final post-collection processing contract - (July 2017)

The amount of material and the number of truck trips anticipated to arrive at SMaRT are well within the current limits of SMaRT's Solid Waste Facilities Permit, so no modification to that permit would be required.

There are no reasonably foreseeable limits on WM's ability to accept at Kirby Canyon Landfill the amount of Milpitas waste that would be delivered for disposal via the SMaRT Station. The Excess Quantity Disposal Fees in the disposal agreements with WM were removed as part of the 2013 Second Amendment approved by the three cities. The Kirby Canyon site itself has significant potential for expansion that would allow for disposal well beyond the current term of the agreements. A graph showing historic and reasonably anticipated future disposal amounts and tonnage commitments is attached (Attachment 2).

The SMaRT Station operating agreement with Bay Counties Waste Services (BCWS) includes provisions for the City to require BCWS to receive and process materials from outside the three SMaRT Cities. The agreement also allows the City, without amending the agreement, to direct BCWS to perform additional services in exchange for an "equitable adjustment" to the contractor's compensation. Receiving and processing the materials from Milpitas will increase the cost for BCWS to carry out its work under this agreement. Staff has asked BCWS to provide detailed estimates of the changes to its costs and revenues if various quantities and combinations of Milpitas materials are received. Staff will use this information as it negotiates with Milpitas regarding proposed charges for accepting materials. The amount of the "equitable adjustment" made to BCWS's contract compensation will depend on the actual types and amounts of materials received and the resulting net cost changes.

Determining the prices that would be charged to Milpitas requires consideration of a number of factors, as described below.

*Examples of Financial Elements to be Factored into Pricing*

- Annual (Fixed) Operating Costs (annual payment to SMaRT operator, City administration, etc.)
- Variable Operating Costs (utilities, spare parts, hazardous waste disposal, fuel, etc.)
- Landfill Charges, Taxes, Fees
- Host Fee (to General Fund)



- SMaRT Station rent (to the General Fund)
- Capital Costs and Debt Service
- Revenues from Curbside Recycling
- Cost to Compost yard trimmings

Given the potential financial benefits to Sunnyvale and its Mountain View and Palo Alto partners, staff is recommending that Council delegate to the City Manager authority to negotiate with City of Milpitas over prices and terms for accepting the materials that would be collected by its franchised hauler. The goal would be to bring back to Council for approval in early 2017, following completion of required CEQA review, an agreement for the SMaRT Station to process, transfer and market or dispose Milpitas recyclables, yard trimmings and municipal solid waste, and for that agreement to provide significant financial benefits to the Participating Agencies.

### **Negotiation of Merchant Agreements with other Cities**

The City of Cupertino has also approached City staff to express interest in making use of the SMaRT Station to increase diversion of portions of the material collected by its franchised hauler, Recology. ESD staff attended an October 18, 2016, Cupertino City Council Study Session on this topic. Staff discussions on options available to Cupertino are at a preliminary stage and will require additional information on the nature and quantities of the materials to be handled at SMaRT. Cupertino was part of the expanded service area analyzed in the 1990 EIR. However, staff will evaluate the appropriate level of CEQA review required for Cupertino's proposal.

Therefore, staff is also recommending that Council delegate to the City Manager similar authority to discuss SMaRT Station options with other cities such as City of Cupertino and, if appropriate, negotiate an agreement for Cupertino to direct materials to the SMaRT Station. Staff will inform Council how such discussions progress and any agreement would be brought back to Council for consideration and approval.

### **FISCAL IMPACT**

Providing the recommended negotiation authority to the City Manager will, by itself, result in no significant changes to costs or revenues and thus has no fiscal impact. If negotiations are successful and staff returns with an RTC recommending Council approval of an agreement with Milpitas, that RTC will provide a projection of the fiscal benefits the agreement would provide to the City. The specific amounts of these benefits will depend on the outcome of negotiations, but staff anticipates an increase in General Fund revenues from a Host Fee (similar to the fee charged to the existing partner cities) and a reduction in cost to the Sunnyvale Solid Waste Fund as SMaRT Station costs are spread over materials received from an additional city.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Authorize the City Manager to negotiate and bring back to Council for approval an agreement with

City of Milpitas for the SMaRT Station to process, transfer and market or dispose recyclables, yard trimmings and municipal solid waste, following completion of required environmental review under the California Environmental Quality Act (CEQA).

2. Authorize the City Manager to discuss SMaRT Station options with other jurisdictions such as City of Cupertino and, if appropriate, negotiate and present to Council for approval an agreement to direct materials to the SMaRT Station, subject to completion of any required environmental review under the California Environmental Quality Act (CEQA).

3. Take no action.

### **STAFF RECOMMENDATION**

Alternatives 1 and 2: 1) Authorize the City Manager to negotiate and bring back to Council for approval an agreement with City of Milpitas for the SMaRT Station to process, transfer and market or dispose recyclables, yard trimmings and municipal solid waste, following completion of required environmental review under the California Environmental Quality Act (CEQA); 2) Authorize the City Manager to discuss SMaRT Station options with other jurisdictions such as City of Cupertino and, if appropriate, negotiate and present to Council for approval an agreement to direct materials to the SMaRT Station, subject to completion of any required environmental review under CEQA.

Staff is recommending this course of action because the SMaRT Station has excess capacity. Increasing the amount of materials flowing through the SMaRT Station would put that capacity to work, with the potential for significant financial benefits to the ratepayers of all three Participating Agencies. This benefit would result from spreading fixed costs at the SMaRT station over a larger base, resulting in lower unit costs for handling the larger amount of materials.

Prepared by: Mark A. Bowers, Solid Waste Programs Division Manager

Reviewed by: John Stufflebean, Director, Environmental Services Department

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. October 28, 2015 Letter to Mr. Tom Williams, City Manager, City of Milpitas
2. Historic and Projected Disposal Quantities, Kirby Canyon Landfill

# CITY OF SUNNYVALE

*The Heart of Silicon Valley* <sup>SM</sup>

456 WEST OLIVE AVENUE

SUNNYVALE, CALIFORNIA 94086

(408) 730-7480

*Office of the City Manager*

October 28, 2015

Mr. Thomas C. Williams  
City Manager  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, California 95035

**Subject: Request for Proposals**

Dear Mr. Williams:

On behalf of the City of Sunnyvale and in partnership with Garden City Sanitation, I am pleased to make you aware of the City's interest in providing services to Milpitas in response to your Request for Proposals (RFP) for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services.

In fact, I also offer you an opportunity to become a partner, along with Mountain View and Palo Alto, in the award-winning Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®). I am confident that the services provided by the SMaRT Station will meet or exceed Milpitas's needs. The SMaRT Station will:

- Use a modern Materials Recovery Facility to reduce by 30 percent or more the disposal of solid waste.
- Process Milpitas recyclables for sales to markets here and abroad.
- Arrange for composting of your source-separated organics (yard trimmings and food waste).
- Transport the unrecycled residues from the above activities to the Kirby Canyon Landfill in San Jose, a state-of-the-art disposal site owned and operated by Waste Management of California, Inc. Sunnyvale recently extended its Kirby Canyon disposal contract to run through 2031.

Sunnyvale can provide these services on a merchant basis or (our preference) in a full, peer-to-peer partnership, with Milpitas joining Mountain View, Palo Alto and Sunnyvale as a full participant in the SMaRT Station MOU. This would include a share of the recycling revenues generated by SMaRT and a seat at the table when the cities discuss how best to use the facility to meet future recycling and solid waste processing and disposal needs. The urgency of this last topic is sharpened by the Air Resources Board announcing this month its intent to ban the disposal of organics by the year 2025.

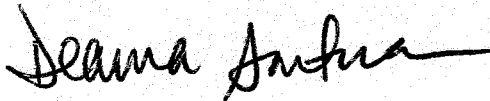
The City of Sunnyvale owns and operates, with a contract operator, the SMaRT Station, located at 301 Carl Road in Sunnyvale. The SMaRT Station provides a number of refuse-related services to Sunnyvale and the cities of Mountain View and Palo Alto. These functions include:

- Receipt of garbage collected within the SMaRT cities.
- Recovery of recyclable materials and compostable organics from the garbage, using a \$16 million equipment layout installed in 2009 and updated in the first half of 2015.
- Preparing source-separated curbside recyclables for shipment and sale to recycling markets.
- Processing yard trimmings and shipping them to a compost facility.
- No-charge distribution to residents of finished compost.
- Providing residents and businesses with an attractive, paved facility for self-hauled waste and recyclables.
- Drop-off of Universal Wastes, paint, hypodermic needles and other "sharps".
- A popular beverage container redemption center.
- Periodic shredding events for residents.

The SMaRT Station began operation in October 1993 and serves a combined residential population of 290,000 in the cities of Mountain View, Palo Alto and Sunnyvale. It also serves the recycling and disposal needs of the large industrial sectors of these "SMaRT Cities," including aggressive sorting of recyclables materials from construction and demolition projects.

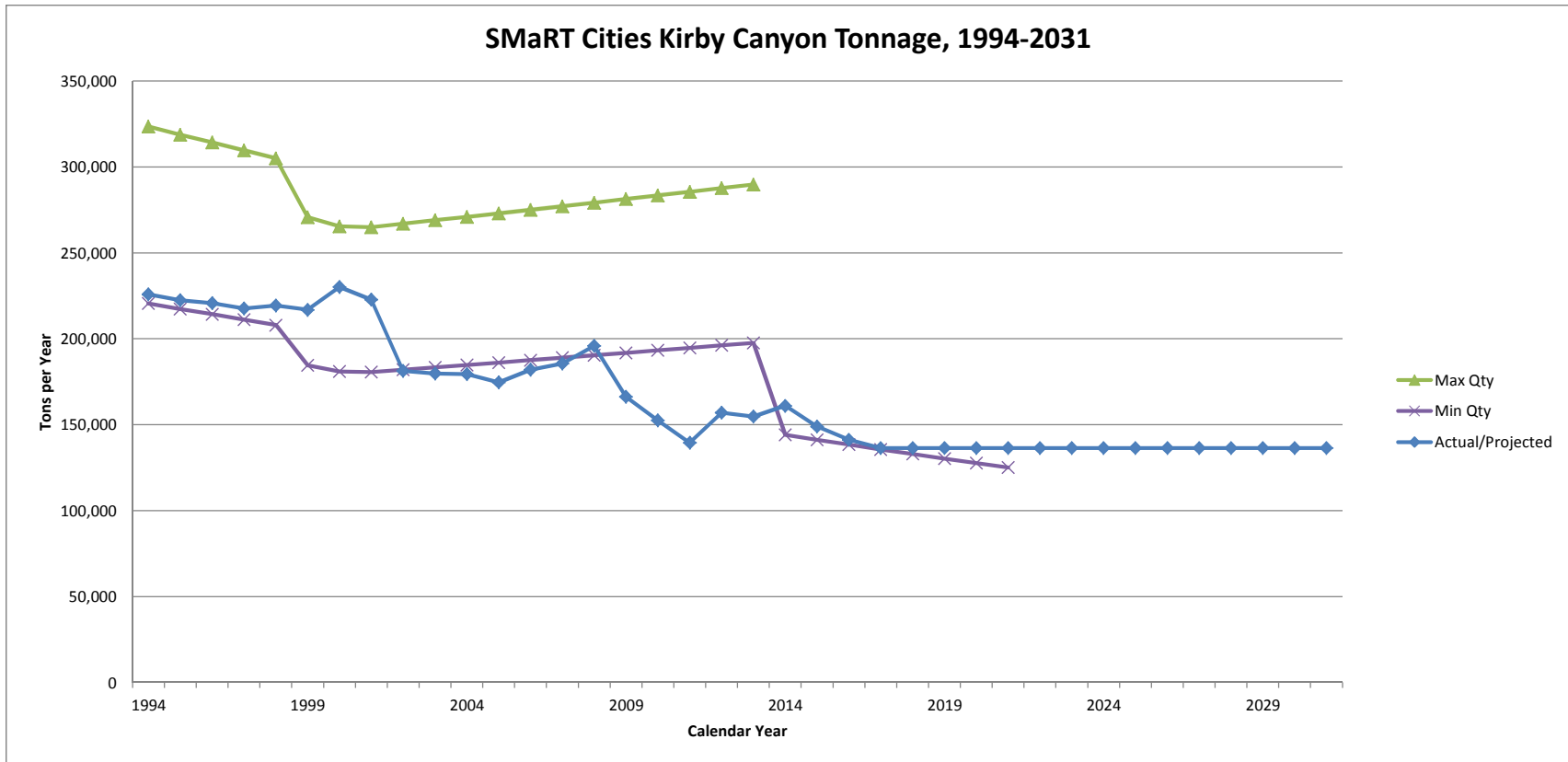
I encourage you to think beyond the framework of the current RFP to consider the benefits a SMaRT Station partner role will provide to your community. I look forward to the opportunity to discuss with you this opportunity.

Sincerely,



Deanna J. Santana  
City Manager

cc: John Stufflebean, Environmental Services Director  
Joan Borger, City Attorney  
Grace Leung, Finance Director  
Mark Bowers, Solid Waste Program Manager





# City of Sunnyvale

## Agenda Item

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**16-1084**

**Agenda Date:** 11/29/2016

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Discussion and Possible Action on Recreational and Medical Marijuana Issues and Next Steps for City Regulation of Marijuana



# City of Sunnyvale

## Agenda Item

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**16-0929**

**Agenda Date:** 11/29/2016

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Tentative Council Meeting Agenda Calendar



# City of Sunnyvale

## Tentative Council Meeting Agenda Calendar

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### Tuesday, December 6, 2016 - City Council

#### **Study Session**

- 16-0549** 5 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Pension Trust Fund
- 16-0962** 6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Discussion of Council 2016 Intergovernmental Relations Assignments
- 16-0520** 6:45 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Discussion of Upcoming Selection of Mayor for 2017-2018 and Vice Mayor for 2017

#### **Public Hearings/General Business**

- 16-1108** Lawrence Station Area Plan and Environmental Impact Report (2013-7653):
1. Adopt a Resolution to:
    - Certify the EIR; Make the Findings Required by the California Environmental Quality Act; Adopt the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program;
    - Adopt the Water Supply Assessment
    - Amend the General Plan to Create the Lawrence Station Area Plan General Plan Designation; and Update the General Plan Map to Reflect the Lawrence Station Area Plan Area;
    - Adopt the Lawrence Station Area Plan, with Modifications;
    - Adopt the Lawrence Station Area Plan Incentives and Development Cap Administrative Regulations.
  2. Introduce an ordinance to:
    - Add Chapter 19.35 (Lawrence Station Area Plan District) to Title 19 (Zoning) to the Sunnyvale Municipal Code;
    - Amend the Precise Zoning Plan Zoning Districts Map to add the Lawrence Station Area Plan District and Rezone the Parcels in the Lawrence Station Area Plan Area to Lawrence Station Area Plan (LSAP) District; and
    - Amend Sunnyvale Municipal Code Table 19.54.080 (Telecommunications Facilities Permits), Section 19.16.020 (Zoning Districts - Creation), and Section 19.90.010 (Special Development Permits) to Implement the Lawrence Station Area Specific Plan
- 16-1055** Adopt an Urgency Interim Ordinance and Introduce an Ordinance to Amend Title 19 (Zoning) and Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code related to Senate Bill 1069 and Assembly Bill



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2299 Amending the Government Code Related to Accessory Dwelling Units, and Find that the Action is Exempt from CEQA

**16-1091**

Proposed Project: REZONE: Introduction of an Ordinance to rezone 62 contiguous lots (61 single-family homes and a private swim club) from R-1 (Low Density Residential) to R-1/S (Low Density Residential/Single Story Combining District)

File #: 2016-7489

Location: Multiple properties bound by Hollenbeck Avenue on the west, Torrington Drive on the south, Spinosa Drive on the east and Sheraton Drive on the north and including Tiffany Court, Templeton Court and South Sage Court.

613-699 Torrington Drive (Assessor Parcel Numbers 202-09-001 through 202-09-017), 1160-1158 Hollenbeck Avenue (202-09-018 through 202-09-019), 696 Sheraton Drive (202-09-020), 674-683 Tiffany Court (202-09-021 through 202-09-026), 1130 -1150 Royal Ann Drive (202-09-027 through 202-09-032), 1127-1145 S. Sage Ct. (202-09-033 through 209-02-042), 602-654 Sheraton Drive (202-09-042 through 202-09-050) and 604-633 Templeton Court (202-09-051 through 202-09-062).

Zoning: R-1

Applicant /Owner: Erik Peterson (plus multiple owners)

Environmental Review: The ordinance being considered is categorically exempt from review pursuant to CEQA Guidelines Section 15305 (minor alterations in land use) and Section 15061(b)(3) (a general rule that CEQA only applies to projects that have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the activity is not subject to CEQA).

#### **Tuesday, December 13, 2016 - City Council**

##### **Closed Session**

**16-0327**

5 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session held pursuant to California Government Code Section 54957:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Attorney

**16-0331**

6 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session held pursuant to California Government Code Section 54957:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager

##### **Public Hearings/General Business**

**16-0807**

Certification of the November 8, 2016 Election Results for Initiative Ballot Measure M (Sunnyvale Public Lands Act) and City Ballot Measure N

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(Sunnyvale Essential Services Protection Measure) and Adoption of Ordinance Amending Chapter 3.12 (Utility Users Tax) of the Sunnyvale Municipal Code to Update the Telecommunication Users Tax and Related Provisions

**16-0690** Receive and File the FY 2015/16 Budgetary Year-End Financial Report, Comprehensive Annual Financial Report (CAFR) and Sunnyvale Financing Authority Financial Report

**16-0852** File #: 2014-7373  
Location: 871 E. Fremont Ave. (APNs: 211-25-011, 211-25-033, 211-25-034, 211-25-038 and 211-25-039)  
Zoning: R-3/ECR and C-1/ECR  
Proposed Project: Related applications on five parcels totaling 5.49 acres:  
REZONE: Introduction of an Ordinance to rezone one parcel from C-1/ECR to R-3/ECR,  
SPECIAL DEVELOPMENT PERMIT: To allow 138 residential units (39 townhomes and 99 flats) and 6,934 square feet of retail/office use with surface and underground parking,  
VESTING TENTATIVE MAP: To create 40 lots and one common lot, which includes 39 townhome lots and one lot for condominium purposes (99 residential condominiums and one commercial condominium), and  
CERTIFY: Environmental Impact Report.  
Applicant / Owner: De Anza Properties  
Environmental Review: Environmental Impact Report

**16-1008** Update to the Status of Department of Public Safety Recruitment and Staffing and Approval of Budget Modification No. 17 to add \$1,300,000 to Fund the Completion of FY 2014/15 Recruitment and Training for Sworn Officers

**16-1094** File #: 2015-7576  
Location: 1250 Lakeside Drive (APNs: 216-43-035 and -036)  
Zoning: LSP  
Proposed Project: Related LAKESIDE SPECIFIC PLAN applications on an 8.83-acre site:  
SPECIFIC PLAN AMENDMENT: to revise the land use configuration, increase the height allowance, and make other miscellaneous updates.  
SPECIAL DEVELOPMENT PERMIT: for development of an existing vacant site with two new buildings and associated site improvements - a six-story, 263-room hotel with an attached 3,000 sq. ft. restaurant and an attached three-level above grade parking structure; and a five-story, 250-unit apartment building over a two-level, above-grade podium parking garage  
TENTATIVE PARCEL MAP: to subdivide the site into two - with a lot for each land use.  
CEQA: Adopt a Resolution to Certify the Supplemental Environmental Impact Report, adopt a Statement of Overriding Considerations and

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Mitigation Monitoring and Reporting Program  
Applicant / Owner: Sunnyvale Partners, Ltd (applicant) / Aircoa Equity  
Interests, Inc. (owner)  
Environmental Review: Supplemental Environmental Impact Report

- 16-1100** Approve Memorandum of Understanding between the City of Sunnyvale and the Public Safety Managers Association 2015-2021 and Resolution to Amend the City's Salary Resolution to add Pay Plan Category M (Public Safety Captains and Public Safety Deputy Chiefs)

**Tuesday, January 10, 2017 - City Council**

**Special Order of the Day**

- 17-0001** Certification of November 8, 2016 Election Results - Council Seats 4, 5, 6 and 7
- 17-0002** SPECIAL ORDER OF THE DAY - Recognition of Outgoing Councilmembers
- 17-0005** SPECIAL ORDER OF THE DAY - Ceremonial Oath of Office for Council-Elect

**Public Hearings/General Business**

- 17-0006** Selection of Mayor for a Two-Year Term Effective January 10, 2017
- 17-0007** Selection of Vice Mayor for a One-Year Term Effective January 10, 2017
- 17-0008** Approve the 2017 City Council Regular Meeting Calendar
- 17-0010** Annual Public Hearing - Discussion of Potential Council Study Issues and Budget Issues for Calendar Year 2017
- 17-0011** Approve the Proposed 2017 Priority Issues and Short and Long-term Legislative Advocacy Positions (LAPs)
- 17-0012** Appoint Councilmembers to Internal Intergovernmental Assignments; Ratify Councilmembers to External Intergovernmental Assignments; Reaffirm Councilmember Board and Commissions Liaison Rotation
- 17-0009** 2017 Seating Arrangements for City Council

**Tuesday, January 24, 2017 - City Council**

**Closed Session**

- 16-0329** 6 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section 54957:

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PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Attorney

**Public Hearings/General Business**

- 16-0571** Approve Amendment to Resolution No. 203.95 Concerning Speed Limits Pursuant to Municipal Code Section 10.28.10
- 16-0857** Consider Terms of Exclusive Negotiating Agreement (ENA) with [Party TBD] for Development of Affordable Housing on City Property (Block 15 Housing Site)
- 16-0859** Consider Approval of Conversion Impact Report for Blue Bonnet Mobile Home Park, Located at 617 E. Evelyn Avenue in Sunnyvale
- 16-0930** File #: 2016-7467  
Location: 1403-1457 Mallard Way (APNs: 309-11-039 through 309-11-041, 309-11-053 to 309-11-055, and 309-11-022), 800-862 Carlisle Way (APNs: 309-11-036 through 309-11-038 and 309-12-013), 321-361 Dartshire Way (APNs: 309-11-023 through 309-11-025 and 309-12-029 through 309-12-032), 854-870 Cornwall Court (APNs: 309-11-042 through 309-11-052), 812-827 Coventry Court (APNs: 309-12-019 through 309-12-026), and 1402-1458 Kingfisher Way (APNs: 309-11-026 through 309-11-035, 309-12-014 through 309-12-018, and 309-12-027 through 309-12-028).  
Zoning: R-0  
Proposed Project: Introduction of Ordinance to REZONE 53 contiguous single family home lots from R-0 (Low Density Residential) to R-0/S (Low Density Residential/Single-Story)  
Applicant / Owner: Paul Healy (plus multiple owners)  
Environmental Review: The Ordinance being considered is categorically exempt from review pursuant to CEQA Guidelines Section 15305 (minor alteration in land use) and Section 15061(b)(3) (a general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the activity is not subject to CEQA).
- 16-0931** File #: 2016-7578  
Location: 1156-1202 Sesame Drive (APNs: 202-08-006 through 202-08-016), 1140-1160 Snowberry Court (APNs: 202-08-022 through 202-08-030), and 614-646 Torrington Drive (APNs: 202-08-017 through 202-08-021)  
Zoning: R-1  
Proposed Project: Introduction of Ordinance to REZONE 25 contiguous single family home lots from R-1 (Low Density Residential) to R-1/S (Low Density Residential/Single-Story)  
Applicant / Owner: Francois Cornillion (plus multiple owners)  
Environmental Review: The Ordinance being considered is categorically exempt from review pursuant to CEQA Guidelines Section 15305 (minor

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alteration in land use) and Section 15061(b)(3) (a general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the activity is not subject to CEQA).

**Thursday, January 26, 2017 - City Council**

**Public Hearings/General Business**

**16-0059**                      8:30 A.M. SPECIAL COUNCIL MEETING  
Strategic Session - Operational Priorities

**Friday, January 27, 2017 - City Council**

**Public Hearings/General Business**

**16-0076**                      8:30 A.M. SPECIAL COUNCIL MEETING  
Strategic Session - Council Policy Priorities

**Tuesday, January 31, 2017 - City Council**

**Public Hearings/General Business**

**16-0065**                      TBD - meeting to be held only if necessary

**Tuesday, February 7, 2017 - City Council**

**Study Session**

**16-0087**                      6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Board and Commission Interviews (as necessary)

**Public Hearings/General Business**

**16-0664**                      Next Steps and Possible Options for the Property Located at 1050 & 1060 Innovation Way (Onizuka) and Adopt a Resolution Declaring City-Owned Property Located at 1484 Kifer Road (Unilever) as Surplus Property and Authorizing for Sale the Subject Property in Compliance with Government Code Section 54220 et seq.

**15-0605**                      Land Use and Transportation Element and Environmental Impact Report

**16-0618**                      File #: 2015-7756  
Consider Below Market Rate Alternative Compliance Plan for the Ownership Project at 803 El Camino Real

**Friday, February 17, 2017 - City Council**

**Public Hearings/General Business**

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**16-0057**                      8:30 A.M. SPECIAL COUNCIL MEETING  
Study/Budget Issues Workshop

**Tuesday, February 28, 2017 - City Council**

**Public Hearings/General Business**

**16-0086**                      Appoint Applicants to Boards and Commissions

**16-0242**                      Individual Lockable Storage Requirements for Multi-Family Housing (Study Issue)

**16-0992**                      Approval of Affordable Housing Agreement for Benner Plaza Project

**16-1077**                      El Camino Real Corridor Plan Vision Statement and Land Use Alternatives

**Date to be Determined - City Council**

**Public Hearings/General Business**

**14-0035**                      Pilot Bicycle Boulevard Project on East-West and North-South Routes  
(Study Issue, Deferred to January 2017)

**16-0510**                      File # - 2015-7624  
Location: 767 N. Mathilda Ave. (APN: 165-43-021)  
Zoning: Industrial and Service (MS)  
Proposed Project:  
Conditional Use Permit: To develop a 3.44 acre site into a 6-story,  
238-room hotel (Hilton Garden Inn) with surface parking. Project includes  
a Variance for solar shading.  
Applicant / Owner: Architectural Dimensions / Sinogap, LLC  
Environmental Review: Initial Study / Mitigated Negative Declaration  
Project Planner: Margaret Netto, (408) 730-7628,  
mnetto@sunnyvale.ca.gov

**16-0585**                      Authorization of Additional Property Assessed Clean Energy (PACE)  
Financing Programs to Support Property Upgrades and Find that the  
Actions are Exempt from Environmental Review under CEQA Guidelines  
Section 15378(b)(45)

**16-1083**                      Selection of Silicon Valley Clean Energy's 100% Renewable Energy  
"Green Prime" Program for City Electricity Accounts



# City of Sunnyvale

## Agenda Item

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**16-1098**

**Agenda Date:** 11/29/2016

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Information/Action Items

**2016 INFORMATION/ACTION ITEMS**  
**COUNCIL DIRECTIONS TO STAFF**

No.	Date Assigned	Directive/Action Required	Dept	Due Date	Date Completed
1.	8/18/15	Look for potential matching funds for the Lawrence/Wildwood project and adjust TIF assumptions as needed	DPW	May 2017	
2.	11/1/16	Include a discussion of Climate Action Plan goals and future actions as part of the Council's strategic planning session in January	OCM	Jan 2017	



## NEW STUDY/BUDGET ISSUES SPONSORED BY COUNCIL IN 2016

No.	Date Requested	Study Issue Title	Requested By	Dept	Issue Paper Approved by City Manager
1.	6/28/16	Rent Stabilization for Mobile Home Parks	Davis/ Griffith/ Martin-Milius	CDD	<b>11/9/16</b>
2.	11/15/16	Draft a study issue to evaluate City policy regarding the current prohibition on permanent street furniture on Murphy Ave.	Larsson Griffith	OCM	