

COUNCILMEMBERS
Melissa Hernandez, Mayor
Jean Josey, Vice Mayor
Shawn Kumagai, Councilmember
Dr. Sherry Hu, Councilmember
Michael McCorriston, Councilmember



City Council Chamber
Dublin Civic Center
100 Civic Plaza
Dublin, CA 94568
www.dublin.ca.gov

Regular Meeting of the **DUBLIN CITY COUNCIL**

Tuesday, April 5, 2022

**Location: City Council Chamber
100 Civic Plaza
Dublin, CA 94568**

REGULAR MEETING 7:00 PM

Additional Meeting Procedures Available During the COVID-19 Pandemic

This City Council meeting will be broadcast live on Comcast T.V. channel 28 beginning at 7:00 p.m. This meeting will also be livestreamed at www.tv30.org and on the City's website at: <https://dublin.ca.gov/ccmeetings>

Members of the public who wish to participate in the meeting electronically have the option of giving public comment via Zoom, subject to the following procedures:

- Fill out an online speaker slip available at www.dublin.ca.gov. The speaker slip will be made available at 10:00 a.m. on Tuesday, April 5, 2022. Upon submission, you will receive Zoom link information from the City Clerk. Speakers slips will be accepted until the staff presentation on an agenda item ends, or until the public comment period on non-agenda items is closed.
- Once connected to the Zoom platform using the Zoom link information from the City Clerk, the public speaker will be added to the Zoom webinar as an attendee and muted. The speaker will be able to observe the meeting from the Zoom platform.
- When the agenda item upon which the individual would like to comment is addressed, the City Clerk will announce the speaker in the meeting when it is their time to give public comment. The speaker will then be unmuted to give public comment via Zoom.

- I. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**

3. ORAL COMMUNICATIONS

3.1 Friends of the Dublin Library Presentation and Presentation of Library Week Proclamation

The City Council will receive a presentation from the Friends of the Dublin Library and present the Library Week proclamation.

STAFF RECOMMENDATION:

Receive the presentation and present the proclamation.

[Staff Report](#)

[Attachment 1 - Library Week Proclamation](#)

3.2 Public Comment

At this time, the public is permitted to address the City Council on non-agendized items. Please step to the podium and clearly state your name for the record. COMMENTS SHOULD NOT EXCEED THREE (3) MINUTES. In accordance with State Law, no action or discussion may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may request Staff to report back at a future meeting concerning the matter. Any member of the public may contact the City Clerk's Office related to the proper procedure to place an item on a future City Council agenda. The exceptions under which the City Council MAY discuss and/or take action on items not appearing on the agenda are contained in Government Code Section 54954.2(b)(1)(2)(3).

4. CONSENT CALENDAR

Consent Calendar items are typically non-controversial in nature and are considered for approval by the City Council with one single action. Members of the audience, Staff or the City Council who would like an item removed from the Consent Calendar for purposes of public input may request the Mayor to remove the item.

4.1 Approval of the March 15, 2022 Regular City Council Meeting Minutes

The City Council will consider approval of the minutes of the March 15, 2022 Regular City Council Meeting.

STAFF RECOMMENDATION:

Approve the minutes of the March 15, 2022 Regular City Council Meeting.

[Staff Report](#)

[Attachment 1 - March 15, 2022 Regular City Council Meeting Minutes](#)

4.2 Amendments to Agreements for Senate Bill 1383 Implementation Assistance and Solid Waste Franchise Agreement Support

The City Council will consider approving amendments to agreements for Senate Bill 1383 Implementation Assistance and for Solid Waste Franchise Agreement Support.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group Inc. for Senate Bill 1383 Implementation Assistance; and adopt the **Resolution** Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC for Solid Waste Franchise Agreement Amendment and Senate Bill 1383 Implementation.

[Staff Report](#)

[Attachment 1 - Resolution Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group Inc. for Senate Bill 1383 Implementation Assistance](#)

[Attachment 2 - Exhibit A to the Resolution - Amendment #1 to Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group, Inc.](#)

[Attachment 3 - Resolution Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC for Solid Waste Franchise Agreement Amendment and Senate Bill 1383 Implementation](#)

[Attachment 4 - Exhibit A to the Resolution - Amendment #1 to Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC](#)

[Attachment 5 - Contractor Services Agreement between the City of Dublin and Cascadia Consulting Group, Inc.](#)

[Attachment 6 - Contractor Services Agreement between the City of Dublin and HF&H Consultants, LLC](#)

4.3 Application for Grant Funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space Project, CIP No. PK0422

The City Council will consider approving the application for grant funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space project, CIP No. PK0422.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving the Application for Grant Funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space Project, CIP No. PK0422.

[Staff Report](#)

[Attachment 1 - Resolution Approving the Application for Grant Funds from the Recreational Trails Program](#)

[Attachment 2 - CIP No. PK0422](#)

4.4 Appointing Directors to Pooled Liability Assurance Network (PLAN) Joint Powers Authority (JPA) to Represent the City of Dublin

The City Council will designate employees to represent the City of Dublin on the Board of Directors to the Pooled Liability Assurance Network (PLAN) Joint Powers Authority (JPA).

STAFF RECOMMENDATION:

Adopt the **Resolution** Rescinding Resolution No. 09 - 20 and Appointing Directors to PLAN JPA on Behalf of the City of Dublin.

[Staff Report](#)

[Attachment 1 - Resolution Rescinding Resolution No. 09-20 and Appointing Directors to PLAN JPA on Behalf of the City of Dublin](#)

[Attachment 2 - Resolution 09-20](#)

4.5 Senate Bill 9 Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) (PLPA-2021-00050)

The City Council will consider amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to implement Senate Bill 9 (SB 9), the California Housing Opportunity and More Efficiency (HOME) Act, which allows homeowners to split their single-family lot and/or build additional units. The proposed amendments would regulate the number and type of residential units, establish occupancy requirements, and establish objective design and development standards for projects allowed by SB 9. The first reading of the Ordinance approving the amendments was held at the March 15, 2022 Regular City Council Meeting. The City Council is now being asked to waive the second reading and adopt the Ordinance.

STAFF RECOMMENDATION:

Waive the second reading and adopt the **Ordinance** Approving Amendments to Dublin Municipal Code Title 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide.

[Staff Report](#)

[Attachment 1 - Approving Amendments to Dublin Municipal Code Titles 8 \(Zoning\) and 9 \(Subdivisions\) to Implement Senate Bill 9 Effective Citywide](#)

[Attachment 2 - March 15, 2022 City Council Staff Report](#)

4.6 Default of Non-Residential Electricity Accounts to East Bay Community Energy Renewable 100 Power

The City Council will consider setting the default electricity for non-residential accounts to East Bay Community Energy's Renewable 100 power in support of Climate Action Plan 2030 and Beyond goals to reduce greenhouse gas emissions. East Bay Community Energy is the City of Dublin's energy provider and has supplied municipal accounts with Renewable 100 electricity since July 1, 2019, and residential accounts since January 1, 2022. Renewable 100 provides California-based wind and solar power which is 100% renewable and carbon-free.

STAFF RECOMMENDATION:

Adopt the **Resolution** Requesting East Bay Community Energy Enroll City of Dublin Non-Residential Accounts in Renewable 100 as the Default Electricity Product.

[Staff Report](#)

[Attachment 1 - Resolution Requesting East Bay Community Energy Enroll City of Dublin Non-Residential Accounts in Renewable 100 as the Default Electric Product](#)

[Attachment 2 - March 1, 2022 City Council Staff Report \(without attachments\)](#)

4.7 Change Order No. 1 for Amended and Restated Energy Services Contract Between the City of Dublin and Engie Services, Inc. (formerly OpTerra Energy Services, Inc.)

The City Council will consider approval of a change order to the contract with Engie Services, Inc. (formerly OpTerra Energy Services, Inc.) for operation and maintenance of City solar panels to add the Public Safety Complex into the scope of work.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving Change Order No. 1 to the Amended and Restated Energy Services Contract for Operation and Maintenance between the City of Dublin and Engie Services, Inc. (formerly OpTerra Energy Services, Inc.) to add the Public Safety Complex into the scope of work.

[Staff Report](#)

[Attachment 1 - Resolution Approving Change Order #1 to the Amended and Restated Agreement between the City of Dublin and Engie Services, Inc. \(formerly OpTerra Energy Services\)](#)

[Attachment 2 - Exhibit A to the Resolution - Change Order No.1 to the Amended and Restated Agreement](#)

4.8 Amendment to the Memorandum of Understanding for the Dublin Place Shopping Center

The City Council will consider approval of a second amendment to the Memorandum of Understanding with ASVRF 7300 Amador, LP (as successor in interest to ASVRF Acquisitions, LLC), ASVRF Dublin Place, LP, and ASVRF 6960 Amador, LP regarding Dublin Place Shopping Center. The Amendment includes a 14-month term extension.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving a Second Amendment to the Memorandum of Understanding regarding Dublin Place Shopping Center.

Staff Report

Attachment 1 - Resolution Approving a Second Amendment to the Memorandum of Understanding Regarding Dublin Place Shopping Center

Attachment 2 - Exhibit A to the Resolution - Second Amendment to the Memorandum of Understanding (Dublin Place Shopping Center)

Attachment 3 - Resolution No. 107-19 Approving a Memorandum of Understanding Regarding Dublin Place Shopping Center

Attachment 4 - Resolution No. 26-21 Approving a First Amendment to the Memorandum of Understanding (Dublin Place Shopping Center)

5. WRITTEN COMMUNICATION – None.

6. PUBLIC HEARING

6.1 Weed and Combustible Refuse Abatement Order

The City Council will conduct the public hearing in accordance with Resolution 06-22 (adopted February 1, 2022) declaring that there is a public nuisance created by weeds and combustible debris growing and accumulating upon the streets, sidewalks, and property in the City of Dublin. Notice of this declaration was posted and letters sent to those property owners with violations.

STAFF RECOMMENDATION:

Conduct the public hearing, deliberate, and by motion, direct Staff to continue the weed abatement process.

Staff Report

Attachment 1 - Resolution 06-22 Declaring Weeds and Combustible Refuse a Public Nuisance and Ordering the Abatement Thereof

Attachment 2 - Notice to Destroy or Remove Weeds and Refuse 2022

Attachment 3 - First Notice Letter

7. UNFINISHED BUSINESS

7.1 First Reading of Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 and Providing for an Increase for in Salary for Members of the City Council and the Mayor

The City Council will introduce an ordinance revising the Dublin Municipal Code to provide for a salary adjustment for City Councilmembers and the Mayor following certification of the November 2022 General Municipal Election.

STAFF RECOMMENDATION:

Waive the reading and INTRODUCE the Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 Providing for an Increase in the Salary for Members of the City Council and Mayor.

Staff Report

Attachment 1 - Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 and Providing for an Increase in Salary for Members of the City Council and the Mayor

8. NEW BUSINESS – None.

9. OTHER BUSINESS

Brief information only reports from City Council and/or Staff, including committee reports and reports by City Council related to meetings attended at City expense (AB1234).

10. ADJOURNMENT

This AGENDA is posted in accordance with Government Code Section 54954.2(a)

If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation, please contact the City Clerk's Office (925) 833-6650 at least 72 hours in advance of the meeting.

Mission

The City of Dublin promotes and supports a high quality of life, ensures a safe and secure environment, fosters new opportunities, provides equity across all programs, and champions a culture of diversity and inclusion.



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Friends of the Dublin Library Presentation and Presentation of Library Week Proclamation
Prepared by: Colleen Tribby, Assistant City Manager

EXECUTIVE SUMMARY:

The City Council will receive a presentation from the Friends of the Dublin Library and present the Library Week proclamation.

STAFF RECOMMENDATION:

Receive the presentation and present the proclamation.

FINANCIAL IMPACT:

None.

DESCRIPTION:

The City Council will receive a presentation from the Friends of the Dublin Library and present the Library Week proclamation.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

1) Library Week Proclamation

**A PROCLAMATION OF THE CITY COUNCIL
CITY OF DUBLIN, CALIFORNIA**

“Library Week April 3-9, 2022”

WHEREAS, libraries are accessible and inclusive places that foster a sense of connection and build community; and

WHEREAS, libraries connect people to technology, providing access to broadband internet, computers, and training that are critical for accessing education and employment opportunities; and

WHEREAS, libraries offer opportunities for everyone to connect with new ideas and become their best selves through access to multimedia content, programs, and classes – in addition to books; and

WHEREAS, today’s libraries and their services extend far beyond the four walls of a building and everyone is welcome to use their resources; and

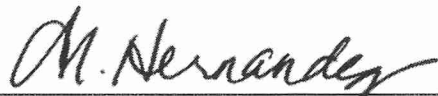
WHEREAS, in times of crises, libraries and library professionals play an invaluable role in supporting their communities both in person and virtually; and

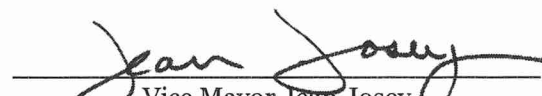
WHEREAS, to adapt to our changing world, libraries are expanding their resources and continuing to meet the needs of their patrons; and

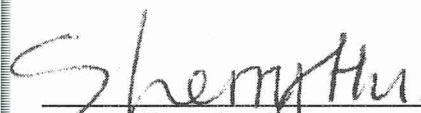
WHEREAS, libraries have long served as trusted and treasured institutions for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender identity, or socio-economic status.

NOW, THEREFORE, BE IT RESOLVED that the Dublin City Council does hereby proclaim April 3-9, 2022 as Library Week in the City of Dublin. During this week, we encourage citizens to connect with their library by visiting online or in person to access resources and services.

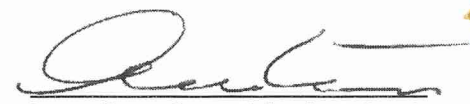
DATED: March 15, 2022


Mayor Melissa Hernandez


Vice Mayor Jean Josey


Councilmember Sherry Hu


Councilmember Shawn Kumagai


Councilmember Michael McCorriston





STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Approval of the March 15, 2022 Regular City Council Meeting Minutes
Prepared by: Marsha Moore, MMC, City Clerk

EXECUTIVE SUMMARY:

The City Council will consider approval of the minutes of the March 15, 2022 Regular City Council Meeting.

STAFF RECOMMENDATION:

Approve the minutes of the March 15, 2022 Regular City Council Meeting.

FINANCIAL IMPACT:

None.

DESCRIPTION:

The City Council will consider approval of the minutes of the March 15, 2022 Regular City Council Meeting.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) March 15, 2022 Regular City Council Meeting Minutes



MINUTES OF THE CITY COUNCIL OF THE CITY OF DUBLIN

Regular Meeting: March 15, 2022

The following are minutes of the actions taken by the City of Dublin City Council. A full video recording of the meeting with the agenda items indexed and time stamped is available on the City's website at: <https://dublin.ca.gov/ccmeetings>

Pursuant to Government Code §54953(b), this meeting included a remote location at the Rose Garden Boardroom, Marriott Marquis, 901 Massachusetts Ave NW, Washington, DC 20001. Vice Mayor Josey attended the Regular Meeting remotely. All votes during the remote session were conducted by roll call vote.

A Regular Meeting of the Dublin City Council was held on **Tuesday, March 15, 2022**, in the City Council Chamber. The meeting was called to order at 7:00 PM., by Mayor Hernandez.

1) CALL TO ORDER

Attendee Name	Status
Melissa Hernandez, Mayor	Present
Jean Josey, Vice Mayor	Present (via Zoom)
Shawn Kumagai, Councilmember	Present
Michael McCorriston, Councilmember	Present
Dr. Sherry Hu, Councilmember	Present

2) PLEDGE OF ALLEGIANCE

3) ORAL COMMUNICATIONS

3.1) Remarks from Doireann O'Brien, Vice Consul of Ireland-Western United States

The City Council received remarks from Doireann O'Brien, Vice Consul of Ireland-Western United States.

3.2) 2021 Volunteer Recognition Winners

The City Council recognized the following award recipients: Steve Wright, City of Dublin 2021 Citizen; Summer Shi, Young Citizen; Breaking BEARriers, Organization of the Year; John Samples, the 2022 Mayor's Award; and Eddie Jo Mack, Mayor's Legacy Award.

3.3) Arts Education Month (March 2022) & Arts, Culture, and Creativity Month (April 2022) Proclamation and Recognition of Janet Lockhart and Claudia McCormick

The City Council presented the Arts Education Month (March 2022) & Arts, Culture, and Creativity Month (April 2022) proclamations and recognized Janet Lockhart and Claudia McCormick for their contributions to the arts in the City of Dublin.

Shawn Costello provided public comment.

3.4) Employee Introduction

The City Council welcomed the new City of Dublin Staff member, Jeff Gallegos, Code Enforcement Officer with Community Development.

3.5) Public Comment

Shirley Lewandowski provided public comment.

Rosel Trolan provided public comment.

Jennifer Situ provided public comment.

Shawn Costello provided public comment.

Setareh A. provided public comment.

4) CONSENT CALENDAR

4.1) Approved the March 1, 2022 Regular City Council Meeting Minutes.

4.2) Approved the 40th Anniversary Temporary Public Art Lawn Display proposals as recommended by the Heritage and Cultural Arts Commission.

4.3) Approved the following proclamations for the month of April in the City of Dublin: Arbor Day, Child Abuse Prevention Month, Donate Life Month, Fair Housing Month, Financial Capability Month, Second Chance Month, Sexual Assault Awareness and Prevention Month, and Library Week.

4.4) Received a report of payments issued from February 1, 2022 - February 28, 2022 totaling \$9,030,040.83.

4.5) Adopted Resolution No. 19-22 titled, "Approving the Memorandum of Agreement with Fort Hunter Liggett for Historic Camp Parks Sign Relocation," and adopted Resolution No. 20-22 titled, "Approving a Consulting Services Agreement with Page and Turnbull

for Design Services for the Restoration/Rehabilitation and Relocation of the Historic Camp Parks Entrance Sign and Guard Shack.”

- 4.6) Adopted Resolution No. 21-22 titled, “Approving the Cities of Dublin and Pleasanton Disaster Debris Management Plan.”
- 4.7) Adopted Ordinance No. 02-22 titled, “Repealing Ordinance No. 11-21 Which Amended the Zoning Map and Approved a Planned Development Zoning District Related Stage 2 Development Plan and CEQA Findings for the East Ranch Project PLPA 2020-00028 (APNs 905-0002-001-01 and 905-0002-002-00).”
- 4.8) Received the Annual Progress Report and directed Staff to forward it to the Governor’s Office of Planning and Research and California Department of Housing and Community Development.
- 4.9) Received the report through the second quarter for Fiscal Year 2021-22 and approved the Fiscal Year 2021-22 Budget change.
- 4.10) Adopted Resolution No. 22-22 titled, “Approving an Agreement with Safe Slide Restoration for Waterslide Repairs at The Wave Without Conducting a Formal Public Bid Process.”
- 4.11) Continued the Public Hearing for the Parks and Recreation Master Plan to a future date uncertain.

RESULT:	ADOPTED [UNANIMOUS]
MOVED BY:	Shawn Kumagai, Councilmember
SECOND:	Jean Josey, Vice Mayor
AYES:	Hernandez, Josey, Kumagai, McCorriston, Hu

5) WRITTEN COMMUNICATION – None.

6) PUBLIC HEARING

6.1) Senate Bill 9 Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) (PLPA-2021-00050)

The City Council received a presentation regarding amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to implement Senate Bill 9 (SB 9), the California Housing Opportunity and More Efficiency (HOME) Act, which allows homeowners to split their single-family lot and/or build additional units.

Mayor Hernandez opened the public hearing.

Richard Li provided public comment.

Mayor Hernandez closed the public hearing.

On a motion by Vice Mayor Josey, seconded by Councilmember Hu, and by unanimous vote the City Council waived the reading, introduced the Ordinance Approving Amendments to Dublin Municipal Code Title 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide as amended removing Sections 8.81.060 and 9.54.070 regarding housing affordability, and adopted Resolution No. 23-22 titled, “Amending the Master Fee Schedule by Establishing One New Application Fee, Based on Time and Materials, for Zoning Clearances for SB 9 Unit Developments.”

RESULT:	ADOPTED [UNANIMOUS]
MOVED BY:	Jean Josey, Vice Mayor
SECOND:	Dr. Sherry Hu, Councilmember
AYES:	Hernandez, Josey, Kumagai, McCorriston, Hu

Mayor Hernandez called for a recess at 9:11 p.m.

Mayor Hernandez resumed the meeting at 9:17 p.m.

7) UNFINISHED BUSINESS

7.1) Housing Element Update Check-In

The City Council received a status report on the Housing Element Update for the 2023-2031 planning period, including a presentation on the updated Preliminary Sites Analysis, policy framework, and project schedule.

By consensus, the City Council directed Staff to proceed with Option C to distribute the remaining need, proceed with the selection of sites identified in Downtown Dublin, and include Downtown RHNA units outside of the Downtown Dublin Development Pool.

8) NEW BUSINESS - None.

9) OTHER BUSINESS

The City Council and/or Staff provided brief information only reports, including committee reports and reports by City Council related to meetings attended at City expense (AB1234).

By consensus, the City Council directed Staff to place a proclamation for Library Week on the April 5 meeting agenda and invite the Friends of the Dublin Library to attend and present.

10) ADJOURNMENT

Mayor Hernandez adjourned the Regular meeting at 10:30 p.m.

Mayor

ATTEST:

City Clerk



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Amendments to Agreements for Senate Bill 1383 Implementation Assistance and Solid Waste Franchise Agreement Support
Prepared by: Michelle Sung, Environmental Technician

EXECUTIVE SUMMARY:

The City Council will consider approving amendments to agreements for Senate Bill 1383 Implementation Assistance and for Solid Waste Franchise Agreement Support.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group Inc. for Senate Bill 1383 Implementation Assistance; and adopt the **Resolution** Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC for Solid Waste Franchise Agreement Amendment and Senate Bill 1383 Implementation.

FINANCIAL IMPACT:

The amendment to the agreement with Cascadia Consulting Group, Inc. increases the not-to-exceed compensation by \$131,220, for a total contract amount (since project inception) of \$407,610.

The amendment to the agreement with HF&H Consultants, LLC extends the term for 12 months, through June 30, 2024, (for a total contract term of three years) and increases the not-to-exceed compensation by \$112,000, for a total contract amount (since project inception) of \$223,075.

Both agreements are funded by the City's Alameda County Waste Reduction and Recycling Initiative (Measure D) Fund, and there is sufficient appropriation to cover the additional costs. There is no impact on the General Fund.

DESCRIPTION:

At the June 1, 2021 meeting, the City Council approved a Contractor Services Agreement with Cascadia Consulting Group, Inc. for Senate Bill (SB) 1383 Implementation Assistance (Attachment 5). The proposed Amendment #1 will add scope of work to conduct route reviews as required by SB 1383 and to increase the compensation for the additional work. The following list summarizes the additional tasks that will be completed:

- Conduct annual lid lift assessments to identify contamination in containers randomly selected on all hauler routes (residential and commercial).
- Design educational cart tags for placement on the cart during route review.
- Track and report on route review data.

At the June 1, 2021 meeting, the City Council approved a Contractor Services Agreement with HF&H Consultants, LLC for Solid Waste Franchise Agreement Amendment and SB 1383 Implementation (Attachment 6). The proposed Amendment #1 will do the following: increase the compensation to account for more negotiation assistance than previously anticipated; add scope of work to provide as-needed franchise agreement technical assistance; extend the term of services by 12 months to June 30, 2024, for a total contract term of three years; and increase the compensation to fund the additional scope of work. The following list summarizes the additional tasks that will be completed on a time-and-materials basis:

- As needed, assist with tasks associated with monitoring, managing, analyzing, benchmarking, negotiating, and providing input regarding the City's solid waste, recyclables, organics materials collection, and post-collection contract.
- As needed, assist with various tasks associated with the rates, charges, and costs of service related to the City's solid waste, recyclables, organics materials collection, and post-collection operations.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group, Inc. for Senate Bill 1383 Implementation Assistance
- 2) Exhibit A to the Resolution – Amendment #1 to Contractor Services Agreement Between the City of Dublin and Cascadia Consulting Group, Inc.
- 3) Resolution Approving Amendment #1 to the Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC for Solid Waste Franchise Agreement Amendment and Senate Bill 1383 Implementation

- 4) Exhibit A to the Resolution – Amendment #1 to the Contractor Services Agreement Between the City of Dublin and HF&H Consultants, LLC
- 5) Contractor Services Agreement between the City of Dublin and Cascadia Consulting Group, Inc.
- 6) Contractor Services Agreement between the City of Dublin and HF&H Consultants, LLC

RESOLUTION NO. XX – 22

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**APPROVING AMENDMENT #1 TO THE CONTRACTOR SERVICES AGREEMENT BETWEEN
THE CITY OF DUBLIN AND CASCADIA CONSULTING GROUP INC. FOR SENATE BILL 1383
IMPLEMENTATION ASSISTANCE**

WHEREAS, in February 2021, the City issued a Request for Proposals (RFP) for California Senate Bill (SB) 1383 Implementation Assistance for support with program development and implementation efforts; and

WHEREAS, Staff reviewed and evaluated the proposals in accordance with the RFP rating criteria and determined that Cascadia Consulting Group, Inc. best met the City desired scope of services, based on quality, completeness of the submission, and the firm's experience with engagements of similar scope and complexity; and

WHEREAS, on June 1, 2021, the City Council approved a Contractor Services Agreement with Cascadia Consulting Group Inc. for SB 1383 implementation assistance; and

WHEREAS, the City and Contractor mutually desire to amend the Agreement to increase the scope of work and increase the compensation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve Amendment #1 to the Contractor Services Agreement with Cascadia Consulting Group Inc., attached hereto as **Exhibit A**.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the amendment to the agreement and make any necessary, non-substantive changes to carry out the intent of this Resolution.

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

**AMENDMENT #1 TO CONTRACTOR SERVICES AGREEMENT
BETWEEN THE CITY OF DUBLIN AND
CASCADIA CONSULTING GROUP, INC.**

WHEREAS, on June 2, 2021, the City of Dublin (hereinafter referred to as "CITY") and Cascadia Consulting Group, Inc. (hereinafter referred to as "CONTRACTOR") entered into a Contractor Services Agreement for SB 1383 Implementation Assistance (hereinafter referred to as the "AGREEMENT"); and

WHEREAS, the CONTRACTOR continues to complete scope of work in the existing AGREEMENT; and

WHEREAS, the CITY and CONTRACTOR mutually desire to amend the AGREEMENT to add scope of work as described in Exhibit A and increase compensation.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the AGREEMENT is amended as follows:

- 1) Section 1 shall be rescinded in its entirety and replaced with the following:

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

- 2) Section 2 shall be rescinded in its entirety and replaced with the following:

COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$407,610, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of

providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 3) Revised Exhibit A (Scope of Services) of the AGREEMENT is amended per the attached.
- 4) Except to the extent inconsistent with this First Amendment, the Parties ratify and confirm all of the terms and conditions of the AGREEMENT.
- 5) All requisite insurance policies to be maintained by the Contractor pursuant to the Agreement, as may have been amended from time to time, shall include coverage for the amended term, as described above.
- 6) The individuals executing this Amendment and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Amendment.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date of the City Manager's signature below.

CITY OF DUBLIN

CASCADIA CONSULTING GROUP, INC

By: _____
Linda Smith, City Manager

DocuSigned by:
By: Julie Bryant
SF5BTE7C01FF43A
Julie Bryant, Director

Dated: _____

ATTEST:

By: _____
Marsha Moore, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A

SCOPE OF SERVICES

The Contractor will be required to deliver technical assistance to businesses, multifamily properties, and edible food generators in Dublin to ensure compliance with SB 1383. The Contractor will be required to conduct the following tasks on an ongoing basis.

Tasks:

1. Conduct waste assessments to identify businesses and/or multifamily properties that are eligible to receive SB 1383 De Minimis Waivers. Coordinate with Amador Valley Industries (AVI) on planned activities.
2. In coordination with City staff, develop and implement an outreach plan for businesses, single-family homeowners, and multifamily properties on SB 1383 requirements. Contractor will also coordinate with AVI on planned activities, work with customers to implement new compost programs, provide cost analyses, education and outreach, and coordinate with AVI as needed to implement service level changes.
3. Conduct outreach to Tier 1 and Tier 2 commercial edible food generators to convey SB 1383 requirements, support set up of edible food donation programs, and confirm written agreements are in place with food recovery organizations, if any.
4. Conduct an analysis and provide a plan to help the City identify SB 1383 procurement options. The analysis shall include an estimate of compost/mulch quantities that could be applied to parks, open space, right-of-way, and other City owned property and shall also consider other options that would satisfy the procurement requirement (e.g. partnering with direct service providers and/or special districts).
5. Provide a report on potential SB 1383 data tracking and management options, including proprietary and non-proprietary database and reporting systems.
6. SB 1383 Route Review. Conduct lid lift assessments to identify contamination in containers randomly selected on all hauler routes. Contractor shall coordinate with the City to randomly select customers for monitoring. Contractor shall design educational cart tags for placement on the cart during route review. Upon finding prohibited contaminants, an educational tag shall be left on the container notifying the generator. If prohibited contaminants are not noted, a tag shall be left on the container notifying the generator that they are sorting properly. Route review data shall be tracked in a database selected by the City. Contractor shall coordinate with the City's franchised waste hauler to minimize disruption to normal waste collection activities and route review results shall also be shared.
7. Track activities and progress towards objectives.
8. Assist with other SB 1383 related items as needed.

Deliverables

At minimum, deliverables for this project shall include one-time and Quarterly Reports that include the following:

1. Community outreach plan for SB 1383 compliance.
2. Compost procurement options report.
3. Database tracking and management report.
4. Activity tracking for outreach and recommendations provided to businesses and multifamily properties.
5. Documentation of businesses or multifamily properties that qualify for De Minimis waivers including location, date of assessment, and name of generator that qualifies for waiver.
6. Documentation of outreach provided to edible food generators, and list of generators that have contracts with food recovery organizations.

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****APPROVING AMENDMENT #1 TO THE CONTRACTOR SERVICES AGREEMENT BETWEEN
THE CITY OF DUBLIN AND HF&H CONSULTANTS, LLC FOR SOLID WASTE FRANCHISE
AGREEMENT AMENDMENT AND SENATE BILL 1383 IMPLEMENTATION**

WHEREAS, in March 2021, the City issued a Request for Proposals (RFP) for Solid Waste Franchise Agreement Amendment and California Senate Bill (SB) 1383 Implementation Assistance for support with contract negotiations with the City of Dublin's franchised waste hauler, Amador Valley Industries; and

WHEREAS, Staff reviewed and evaluated the proposal in accordance with the RFP rating criteria and determined that HF&H Consultants, LLC met the City's desired scope of services, based on quality, completeness of the submission, and the firm's experience with engagements of similar scope and complexity; and

WHEREAS, on June 1, 2021, the City Council approved a Contractor Services Agreement with HF&H Consultants LLC for solid waste franchise agreement amendment and SB 1383 implementation services; and

WHEREAS, the City and Contractor mutually desire to amend the Agreement to increase the scope of work, increase the compensation, and extend the contract term to June 30, 2024.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve Amendment #1 to the Contractor Services Agreement with HF&H Consultants LLC, attached hereto as **Exhibit A.**

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the amendment to the agreement and make any necessary, non-substantive changes to carry out the intent of this Resolution.

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

**AMENDMENT #1 TO CONTRACTOR SERVICES AGREEMENT
BETWEEN THE CITY OF DUBLIN AND
HF&H CONSULTANTS, LLC**

WHEREAS, on June 2, 2021, the City of Dublin (hereinafter referred to as "CITY") and HF&H Consultants, LLC (hereinafter referred to as "CONTRACTOR") entered into a Contractor Services Agreement for Solid Waste Franchise Agreement Amendment and SB 1383 Implementation services (hereinafter referred to as the "AGREEMENT"); and

WHEREAS, the scope of work in the existing AGREEMENT is on-going and additional budget is required to complete the scope of work; and

WHEREAS, the CITY and CONTRACTOR mutually desire to amend the AGREEMENT to include additional scope of work as described in Exhibit A, increase the compensation, and extend the term of services to June 30, 2024.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the AGREEMENT is amended as follows:

- 1) Section 1 shall be rescinded in its entirety and replaced with the following:

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

- 2) Section 1.1 shall be rescinded in its entirety and replaced with the following:

Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2024, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8. Notwithstanding the foregoing this Agreement may be extended on a month to month basis for up to 6 months upon the written consent of the Contractor and the City Manager, provided that: a) sufficient funds have been appropriated for such purchase, b) the price charged by the Contractor for the provision of the serves described in Exhibit A does not increase. None of the foregoing shall affect the City's right to terminate the Agreement as provided for in Section 8.

- 3) Section 2 shall be rescinded in its entirety and replaced with the following:

COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$223,075, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

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

- 4) Revised Exhibit A (Scope of Services) of the AGREEMENT is amended per the attached.
- 5) Except to the extent inconsistent with this First Amendment, the Parties ratify and confirm all of the terms and conditions of the AGREEMENT.
- 6) All requisite insurance policies to be maintained by the Contractor pursuant to the Agreement, as may have been amended from time to time, shall include coverage for the amended term, as described above.
- 7) The individuals executing this Amendment and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Amendment.

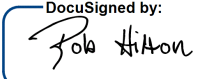
SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date of the City Manager's signature below.

CITY OF DUBLIN

HF&H CONSULTANTS, LLC.

By: _____
Linda Smith, City Manager

By:  _____
Rob Hilton, President

Dated: _____

ATTEST:

By: _____
Marsha Moore, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A

SCOPE OF SERVICES

Task 1- Franchise Agreement Amendments and SB 1383 Implementation

The Consultant will examine the City's existing franchise agreement with AVI to determine what tasks and activities are recommended to be included in the franchise agreement as hauler responsibilities to ensure the City's compliance with SB 1383 regulations. The Consultant will also review the City's solid waste ordinances and provide guidance on recommended updates to the ordinances to meet SB 1383 requirements.

Tasks:

1. Review the City's solid waste franchise agreement and related activities performed by the City's waste hauler to conduct a gap analysis to assess what programs and activities are needed for the City to be in compliance with all SB 1383 provisions. As part of the gap analysis, the Consultant will identify areas where the City is already meeting SB 1383 requirements and areas in which new programs/activities are required to meet SB 1383 mandates.
2. Identify SB 1383 program areas that should be implemented with City staff or resources and those that should be considered during solid waste franchise agreement contract negotiations as hauler obligations.
3. Provide a financial analysis detailing an estimate of SB 1383 program costs, both for City supported programs/activities and hauler programs and activities. The financial analysis must identify potential funding streams for the various programs/activities.
4. Support City staff in contract negotiations with AVI on SB 1383 franchise agreement amendments. Provide recommendations to the City during contract negotiations.
5. Review the City's solid waste ordinances and template ordinances provided by CalRecycle and/or StopWaste and provide a draft ordinance revision and recommendations regarding updating City ordinances to meet SB 1383 mandates.
6. Support City staff with preparations and presentation to City Council

Deliverables:

At minimum, deliverables for Task 1 shall include the following:

1. Gap Analysis on franchise agreement and other solid waste program activities to determine SB 1383 compliance status.

2. Financial Report detailing program implementation costs and potential funding sources to meet SB 1383 mandates.
3. Report outlining suggested amendments to the City's existing solid waste franchise agreement.
4. Provide a draft solid waste ordinance revision with recommendations for updates to the City's solid waste ordinances.

Task 2- Franchise Management Technical Assistance

As directed by the City, HF&H will assist with various tasks associated with monitoring, managing, analyzing, benchmarking, negotiating, and otherwise providing input regarding the City's solid waste, recyclables, and organics materials collection and post-collection contract. As directed by the City, HF&H will also assist with various tasks associated with the rates, charges, and cost of service related to the City's franchised solid waste, recyclables, and organic materials, collection and post-collection operations. Tasks may include, but are not limited to performance reviews, review of annual rate applications, and audits. HF&H will be available on a time and materials basis.

**CONTRACTOR SERVICES AGREEMENT BETWEEN
THE CITY OF DUBLIN AND
CASCADIA CONSULTING GROUP, INC.**

THIS AGREEMENT for contract services is made by and between the City of Dublin (“City”) and Cascadia Consulting Group, Inc. (“Contractor”) (together sometimes referred to as the “Parties”) as of June 2, 2021 (the “Effective Date”).

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2024 the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8. Notwithstanding the foregoing this Agreement may be extended on a month to month basis for up to 6 months upon the written consent of the Contractor and the City Manager, provided that: a) sufficient funds have been appropriated for such purchase, b) the price charged by the Contractor for the provision of the serves described in Exhibit A does not increase. None of the foregoing shall affect the City’s right to terminate the Agreement as provided for in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor’s obligations hereunder.
- 1.5 **[Intentionally Deleted]**
- 1.6 **[Intentionally Deleted]**

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$276,390, notwithstanding any contrary indications that may be contained in Contractor’s proposal, for services to be

performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

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

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. No individual performing work under this Agreement shall bill more than 2,000 hours in a fiscal year unless approved, in writing, by the City Manager or his/her designee. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A copy of the applicable time entries or time sheets shall be submitted showing the following:
 - Daily logs of total hours worked by each individual performing work under this Agreement
 - Hours must be logged in increments of tenths of an hour or quarter hour
 - If this Agreement covers multiple projects, all hours must also be logged by project assignment
 - A brief description of the work, and each reimbursable expense
- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of

Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and City, if applicable.

- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

- 3.1 Safety Requirements.** In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED

SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the City, toilets shall be furnished by Contractor where needed for use of its employees and their use shall be strictly enforced. Contractor shall not use the City's existing sanitary facilities, unless previously authorized by the City.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

City reserves the right to require that Contractor bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If Contractor does not have a licensed safety engineer on staff, then City may require that Contractor engage a subcontractor or subconsultant as the project's safety engineer. Contractor shall bear all costs in connection with meeting the requirements of this section.

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

4.1 Workers' Compensation.

4.1.1 General Requirements. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Contractor may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

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

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Contractor shall submit the following:

- a. Certificate of Workers' Compensation Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.

- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 All Policies Requirements.

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

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

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

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

4.3.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR’S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Contractor’s negligence, recklessness, or willful misconduct in the performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor’s obligation to defend and indemnify shall not be excused because of the Contractor’s inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

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

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

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. This Agreement shall not be construed as an agreement for employment. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor further acknowledges that Contractor performs Services outside the usual course of the City's business; and is customarily engaged in an independently established trade, occupation, or business of the same nature as the Contractor performs for the City, and has the option to perform such work for other entities. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, sex, gender, religion (including religious dress and grooming practices), national origin, ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), marital status, age, sexual orientation, color, creed, pregnancy, genetic information, gender identity or expression, political affiliation or belief, military/veteran status, or any other classification protected by applicable local, state, or federal laws (each a "Protected Characteristic"), against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide

Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.6.3** Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or
 - 8.6.4** Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described

above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

- 10.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

- 10.7 Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 Contract Administration.** This Agreement shall be administered by the City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.9 Notices.** Any written notice to Contractor shall be sent to:

Cascadia Consulting Group
Att: Julie Bryant, Director
315 Washington St
Oakland, CA 94607

Any written notice to City shall be sent to:

City of Dublin
Att: Michelle Sung, Environmental Technician
100 Civic Plaza
Dublin, CA 94568

- 10.10 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule

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

10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

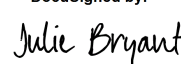
The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

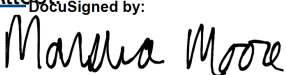
CITY OF DUBLIN

DocuSigned by:

E33836CEFC044E0...
Linda Smith, City Manager

Cascadia Consulting Group

DocuSigned by:

3F3B1E7C01FF43A...
Julie Bryant, Director

Attest:
DocuSigned by:

9BB70813D22F40A...
Marsha Moore, City Clerk

Approved as to Form:

DocuSigned by:

5ED7F36873DC464...
City Attorney

3070365.1

EXHIBIT A

SCOPE OF SERVICES

The Contractor will be required to deliver technical assistance to businesses, multifamily properties, and edible food generators in Dublin to ensure compliance with SB 1383. The Contractor will be required to conduct the following tasks on an ongoing basis.

Tasks:

1. Conduct waste assessments to identify businesses and/or multifamily properties that are eligible to receive SB 1383 De Minimis Waivers. Coordinate with Amador Valley Industries (AVI) on planned activities.
2. In coordination with City staff, develop and implement an outreach plan for businesses, single-family homeowners, and multifamily properties on SB 1383 requirements. Contractor will also coordinate with AVI on planned activities, work with customers to implement new compost programs, provide cost analyses, education and outreach, and coordinate with AVI as needed to implement service level changes.
3. Conduct outreach to Tier 1 and Tier 2 commercial edible food generators to convey SB 1383 requirements, support set up of edible food donation programs, and confirm written agreements are in place with food recovery organizations, if any.
4. Conduct an analysis and provide a plan to help the City identify SB 1383 procurement options. The analysis shall include an estimate of compost/mulch quantities that could be applied to parks, open space, right-of-way, and other City owned property and shall also consider other options that would satisfy the procurement requirement (e.g. partnering with direct service providers and/or special districts).
5. Provide a report on potential SB 1383 data tracking and management options, including proprietary and non-proprietary database and reporting systems.
6. As necessary and as directed by City staff: Conduct lid lift assessments to identify contamination in organics and recycling streams, address contamination by providing technical assistance.
7. As necessary and as directed by City staff: Conduct lid lift assessments to identify target materials (organics and/or recyclables) in the garbage. Identify opportunities to reduce target materials from garbage stream by recommending service level changes, providing cost analyses, and coordinating with AVI to implement changes as needed.
8. Track activities and progress towards objectives.
9. Assist with other SB 1383 related items as needed.

Deliverables

At minimum, deliverables for this project shall include one-time and Quarterly Reports that include the following:

1. Community outreach plan for SB 1383 compliance.
2. Compost procurement options report.

3. Database tracking and management report.
4. Activity tracking for outreach and recommendations provided to businesses and multifamily properties.
5. Documentation of businesses or multifamily properties that qualify for De Minimis waivers including location, date of assessment, and name of generator that qualifies for waiver.
6. Documentation of outreach provided to edible food generators, and list of generators that have contracts with food recovery organizations.

Contingency

This contract includes a contingency amount of \$75,000 which may only be expended upon written pre-verification approval by the City for lid lift assessments and/or other SB 1383 related items that will be conducted as necessary and as directed by City staff. Because the City has not yet engaged in contract negotiations with AVI for SB 1383 implementation, it has not yet been determined if AVI or the Contractor will conduct lid lift assessments or if other SB 1383 activities will be required of the Contractor.

EXHIBIT B

COMPENSATION SCHEDULE

Key Staff	Hourly Rate
Julie Bryant, Principal-in-Charge	\$225
Angela Pan, Project Manager	\$150
Terry Ng, Outreach Lead	\$100
Maddie Seibert, Edible Food Generator Outreach Lead	\$120
Jennifer de Graaf, Organic Waste Procurement & MWELO Advisor	\$150

**CONTRACTOR SERVICES AGREEMENT BETWEEN
THE CITY OF DUBLIN AND
HF&H CONSULTANTS, LLC**

THIS AGREEMENT for contract services is made by and between the City of Dublin ("City") and HF&H Consultants, LLC ("Contractor") (together sometimes referred to as the "Parties") as of June 2, 2021 (the "Effective Date").

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2023 the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8. Notwithstanding the foregoing this Agreement may be extended on a month to month basis for up to 6 months upon the written consent of the Contractor and the City Manager, provided that: a) sufficient funds have been appropriated for such purchase, b) the price charged by the Contractor for the provision of the serves described in Exhibit A does not increase. None of the foregoing shall affect the City's right to terminate the Agreement as provided for in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **[Intentionally Deleted]**
- 1.6 **[Intentionally Deleted]**

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$111,075, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be

performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

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

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. No individual performing work under this Agreement shall bill more than 2,000 hours in a fiscal year unless approved, in writing, by the City Manager or his/her designee. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- A copy of the applicable time entries or time sheets shall be submitted showing the following:
 - Daily logs of total hours worked by each individual performing work under this Agreement
 - Hours must be logged in increments of tenths of an hour or quarter hour
 - If this Agreement covers multiple projects, all hours must also be logged by project assignment
 - A brief description of the work, and each reimbursable expense
- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of

Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and City, if applicable.

- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

3.1 Safety Requirements. In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED

SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the City, toilets shall be furnished by Contractor where needed for use of its employees and their use shall be strictly enforced. Contractor shall not use the City's existing sanitary facilities, unless previously authorized by the City.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

City reserves the right to require that Contractor bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If Contractor does not have a licensed safety engineer on staff, then City may require that Contractor engage a subcontractor or subconsultant as the project's safety engineer. Contractor shall bear all costs in connection with meeting the requirements of this section.

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

4.1 Workers' Compensation.

4.1.1 General Requirements. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Contractor may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

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

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Contractor shall submit the following:

- a. Certificate of Workers' Compensation Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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

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

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.

- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 All Policies Requirements.

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

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

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

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

4.3.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR’S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Contractor’s performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor’s obligation to defend and indemnify shall not be excused because of the Contractor’s inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

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

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

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. This Agreement shall not be construed as an agreement for employment. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor further acknowledges that Contractor performs Services outside the usual course of the City's business; and is customarily engaged in an independently established trade, occupation, or business of the same nature as the Contractor performs for the City, and has the option to perform such work for other entities. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, sex, gender, religion (including religious dress and grooming practices), national origin, ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), marital status, age, sexual orientation, color, creed, pregnancy, genetic information, gender identity or expression, political affiliation or belief, military/veteran status, or any other classification protected by applicable local, state, or federal laws (each a "Protected Characteristic"), against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide

Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.6.3** Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or
 - 8.6.4** Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described

above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

- 10.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

- 10.7 Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.8 Contract Administration.** This Agreement shall be administered by the City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.9 Notices.** Any written notice to Contractor shall be sent to:

HF&H Consultants, LLC
Att: Rob Hilton, President
201 North Civic Drive, Suite 230
Walnut Creek, CA 94596

Any written notice to City shall be sent to:

City of Dublin
Att: Michelle Sung, Environmental Technician
100 Civic Plaza
Dublin, CA 94568

- 10.10 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule

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

10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

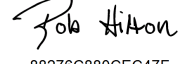
The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF DUBLIN

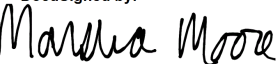
DocuSigned by:

E33836CFFC044E0...
Linda Smith, City Manager

HF&H Consultants, LLC

DocuSigned by:

88276C889CEC47F...
Rob Hilton, President

Attest:

DocuSigned by:

98B70816D23F40A...
Marsha Moore, City Clerk

Approved as to Form:

DocuSigned by:

5ED7F389739C484...
City Attorney

3070365.1

EXHIBIT A

SCOPE OF SERVICES

The Consultant will examine the City's existing franchise agreement with AVI to determine what tasks and activities are recommended to be included in the franchise agreement as hauler responsibilities to ensure the City's compliance with SB 1383 regulations. The Consultant will also review the City's solid waste ordinances and provide guidance on recommended updates to the ordinances to meet SB 1383 requirements.

Tasks:

1. Review the City's solid waste franchise agreement and related activities performed by the City's waste hauler to conduct a gap analysis to assess what programs and activities are needed for the City to be in compliance with all SB 1383 provisions. As part of the gap analysis, the Consultant will identify areas where the City is already meeting SB 1383 requirements and areas in which new programs/activities are required to meet SB 1383 mandates.
2. Identify SB 1383 program areas that should be implemented with City staff or resources and those that should be considered during solid waste franchise agreement contract negotiations as hauler obligations.
3. Provide a financial analysis detailing an estimate of SB 1383 program costs, both for City supported programs/activities and hauler programs and activities. The financial analysis must identify potential funding streams for the various programs/activities.
4. Support City staff in contract negotiations with AVI on SB 1383 franchise agreement amendments. Provide recommendations to the City during contract negotiations.
5. Review the City's solid waste ordinances and template ordinances provided by CalRecycle and/or StopWaste and provide a draft ordinance revision and recommendations regarding updating City ordinances to meet SB 1383 mandates.
6. Support City staff with preparations and presentation to City Council

Deliverables:

At minimum, deliverables for this project shall include the following:

1. Gap Analysis on franchise agreement and other solid waste program activities to determine SB 1383 compliance status.
2. Financial Report detailing program implementation costs and potential funding sources to meet SB 1383 mandates.
3. Report outlining suggested amendments to the City's existing solid waste franchise agreement.
4. Provide a draft solid waste ordinance revision with recommendations for updates to the City's solid waste ordinances.

EXHIBIT B
COMPENSATION SCHEDULE

Executive	Project Manager	Project Advisor	Lead Analyst	Admin	Labor
\$ 305	\$ 225	\$ 260	\$ 165	\$ 115	Hours



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Application for Grant Funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space Project, CIP No. PK0422
Prepared by: Laurie Sugang, City Engineer

EXECUTIVE SUMMARY:

The City Council will consider approving the application for grant funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space project, CIP No. PK0422.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving the Application for Grant Funds from the Recreational Trails Program for the Iron Horse Nature Park and Open Space Project, CIP No. PK0422.

FINANCIAL IMPACT:

As approved in the 2020-2025 Capital Improvement Program (CIP), the total budget for the Iron Horse Nature Park and Open Space Project, CIP No. PK0422 is currently \$11,563,000, funded by Public Facilities Fees (\$7,081,000), a Local Assistance Specified Grant from the State of California (\$2,294,000), and unidentified funds (\$2,188,000). The Regional Trails Program Grant, if awarded, will help to close the current funding shortfall for the project.

DESCRIPTION:

The 2020-2025 Capital Improvement Program (CIP) includes the Iron Horse Nature Park and Open Space Project (Project), CIP No. PK0422, and provides for the planning, design, and construction of 12.13 acres of a nature park and open space adjacent to the Iron Horse Trail, from the Dublin/San Ramon city limit to the confluence of Alamo and South San Ramon Creeks.

In 2013, City Council adopted the Iron Horse Nature Park and Open Space Master Plan (Master Plan) in partnership with the Alameda County Flood Control and Water Conservation District Zone 7 (Zone 7) to seek project grant funding and develop the site. The total scope encompasses

approximately 43 acres of land (12 acres owned by the City of Dublin as the public park and 24 acres owned by Zone 7 and 7 acres owned by Alameda County).

On December 7, 2021, City Council approved the filing of an application for the Local Assistance Specified Grant from the State of California, Natural Resources Agency, Department of Parks and Recreation, and the Office of Grants and Local Services (State Grant) in the amount of \$2,294,000 (Resolution No. 135-21). The State Grant program guidelines require that the project construction be completed by December 31, 2023.

On February 15, 2022, City Council approved a budget change authorizing the appropriation of funds to Fiscal Year 2021-2022 to allow for the design of the first phase of the Project to begin in the current fiscal year in order to meet the State Grant deadline.

Staff and the consultant immediately began work on the design of the first phase of the Project; approximately 2,000 linear feet of new trail along with park-like amenities, such as seating, shade features, trail markers, signage, etc. Staff and the consultant also continued to identify other potential funding sources that could be pursued for the Project.

The federal Recreational Trails Program (RTP) is one such funding opportunity. The RTP provides competitive grant funds annually for recreational trails and trails-related projects. The RTP is administered at the federal level by the Federal Highway Administration (FHWA). It is administered at the state level by the California Department of Parks and Recreation (DPR) and the Department of Transportation (Caltrans) Active Transportation Program (ATP). The Iron Horse Nature Park and Open Space project will be submitted as a “non-motorized DPR project,” which will be directly administered by the Office of Grants and Local Services. The RTP grant application includes the requirement of a City Council adopted Resolution approving the application for grant funds.

The Project strongly supports the RTP program goals to increase biking and walking, improve non-motorized safety, and generate environmental and public health benefits. Staff has received letters of support for the application for RTP grant funds from Zone 7, East Bay Regional Park District, and the City of San Ramon.

California Environmental Quality Act (CEQA)

The City Council adopted Resolution No. 166-13 adopting the mitigated negative declaration and mitigation monitoring and reporting for the Project.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution Approving the Application for Grant Funds from the Recreational Trails Program
- 2) CIP No. PK0422

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE RECREATIONAL TRAILS
PROGRAM FOR THE IRON HORSE NATURE PARK AND OPEN SPACE PROJECT, CIP NO.
PK0422**

WHEREAS, the Fixing America's Surface Transportation Act (FAST-ACT) provides funds to the State of California for Grants to federal, state, local and non-profit organizations to acquire, develop and/or maintain motorized and non-motorized trail Projects; and

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing Project Application under the program; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of Application(s) before submission of said Application(s) to the State.

WHEREAS, the Applicant will enter into a Contract with the State of California to Complete the Project(s).

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

1. Approves the filing of an Application for the Recreational Trails Program; and
2. Certifies that the Project is consistent with the Applicant's general plan or the equivalent planning document; and
3. Certifies that said Applicant has or will have available prior to commencement of any work on the Project included in this Application, sufficient funds to operate and maintain the Project; and
4. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the Contract shown in the Procedural Guide; and
5. Appoints the City Manager as agent to conduct all negotiations, execute and submit all documents, including, but not limited to Applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the Project.
6. Agrees to comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and guidelines.

{Signatures on the following page}

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

Number	PK0422	IRON HORSE NATURE PARK AND OPEN SPACE	Program	PARKS
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PROJECT DESCRIPTION

This project provides for the planning, design, and construction of 12.13 acres of a nature park and open space adjacent to the Iron Horse Trail, from the Dublin/San Ramon city limit to the confluence of Alamo and South San Ramon Creeks, that will be developed in partnership with Zone 7 Water Agency. The park size could increase to over 20 acres of usable parkland when combined with adjacent Zone 7 Water Agency property. The park will be designed in accordance with the Iron Horse Nature Park and Open Space Master Plan, which was approved by City Council on October 1, 2013. The City has already acquired the 12.13 acres and the balance of the parkland would be accessible through an easement and operational agreement with Zone 7 Water Agency. The City will continue to pursue the acquisition of the Alameda County portion of the Iron Horse Trail corridor to add to the City's portion of the parkland. It is anticipated that planning and design will begin in Fiscal Year 2021-2022 and construction of the first phase will begin in Fiscal Year 2022-2023.

In addition to the Public Facility Fee, possible funding sources are additional statewide grants for projects that provide non-motorized infrastructure and enhancements that promote new or alternate access to parks, waterways, outdoor recreational pursuits, and forested or other natural environments to encourage health-related active transportation and opportunities for Californians to reconnect with nature, such as Active Transportation Program grants or Proposition 68.

ANNUAL OPERATING IMPACT: TBD

		2020-2025 CAPITAL IMPROVEMENT PROGRAM							
ESTIMATED COSTS		PRIOR YEARS	2020-2021 BUDGET	2021-2022	2022-2023	2023-2024	2024-2025	FUTURE YEARS	TOTALS
9100	Salaries & Benefits			\$60,400	\$102,900	\$42,500	\$42,500		\$248,300
9200	Contract Services			\$400,000	\$630,000	\$600,000	\$196,505		\$1,826,505
9400	Improvements				\$2,294,000	\$344,100	\$6,229,595		\$8,867,695
9500	Miscellaneous			\$1,250	\$109,250	\$255,000	\$255,000		\$620,500
TOTAL				\$461,650	\$3,136,150	\$1,241,600	\$6,723,600		\$11,563,000

		PRIOR YEARS	2020-2021 BUDGET	2021-2022	2022-2023	2023-2024	2024-2025	FUTURE YEARS	TOTALS
4100	Public Facility Fees			\$461,650	\$842,150	\$1,241,600	\$4,535,600		\$7,081,000
9998	Unidentified						\$2,188,000		\$2,188,000
2403	State Park Grant				\$2,294,000				\$2,294,000
TOTAL				\$461,650	\$3,136,150	\$1,241,600	\$6,723,600		\$11,563,000

ANNUAL OPERATING IMPACT									
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STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Appointing Directors to Pooled Liability Assurance Network (PLAN) Joint Powers Authority (JPA) to Represent the City of Dublin
Prepared by: Renuka Dhadwal, Management Analyst

EXECUTIVE SUMMARY:

The City Council will designate employees to represent the City of Dublin on the Board of Directors to the Pooled Liability Assurance Network (PLAN) Joint Powers Authority (JPA).

STAFF RECOMMENDATION:

Adopt the **Resolution** Rescinding Resolution No. 09 - 20 and Appointing Directors to PLAN JPA on Behalf of the City of Dublin.

FINANCIAL IMPACT:

Adoption of the resolution will have no direct financial impact. Participation on the Board of Directors provides the City with one vote on the approval of PLAN JPA business including premiums for programs provided by PLAN JPA (formerly ABAG PLAN). Service on the Board of Directors is assumed as part of the employee's regular duties and the Board Members do not receive additional compensation.

DESCRIPTION:

The City of Dublin has been a charter member of ABAG PLAN Corporation since 1986 for the provision of liability insurance, property insurance, and employee bonds. In June 1992, the City Council approved a Risk Coverage Agreement which established procedures by which ABAG PLAN could also offer partially self-insured property insurance program. This document was unanimously approved by all 26 cities which were member agencies in ABAG PLAN Corporation. On July 27, 1992, the City Council adopted Resolution No. 90-92 designating City Staff as the regular and alternate voting members to the ABAG PLAN Board of Directors. Later in 2014, the

City Council updated its regular and alternate voting members to the ABAG PLAN Board of Directors due to changes in City Staff.

In 2017, ABAG PLAN Corporation separated from the former model of service and moved to a new risk management-focused joint powers authority that provides the same pooled risk coverage for its member agencies, with preference for the existing members of ABAG PLAN, under a new risk coverage agreement to ensure these essential insurance services continued in a seamless manner.

On December 19, 2017, the City Council authorized the City Manager to execute the PLAN JPA Agreement, pursuant to California Government Code §6500 et seq., including the powers delegated. Late in 2018, the City Council adopted its regular and alternate voting members to the PLAN JPA Board of Directors. In February 2020, due to Staff transition, the City Council updated its regular and alternate voting members to the PLAN JPA Board of Directors (Attachment 2).

With a change in Staff leadership (the hiring of the City's new Human Resources Director), it is now appropriate to appoint new Board representatives via the proposed Resolution (Attachment 1), which rescinds Resolution 09-20 and appoints Staff representation to the PLAN JPA Board of Directors.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

A copy of this Staff Report has been provided to Jon Paulsen, General Manager / Executive Director PLAN JPA, and the City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution Rescinding Resolution No. 09-20 and Appointing Directors to PLAN JPA on Behalf of the City of Dublin
- 2) Resolution No. 09-20

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****RESCINDING RESOLUTION NO. 09-20 AND APPOINTING
DIRECTORS TO PLAN JPA ON BEHALF OF THE CITY OF DUBLIN**

WHEREAS, the City of Dublin has been a charter member of ABAG PLAN Corporation since 1986; and

WHEREAS, ABAG Plan Corporation officially dissolved on June 20, 2018; and

WHEREAS, on December 19, 2017, the City Council approved membership in PLAN JPA and this succession JPA is now providing the City with liability insurance, property insurance, and employee bonds; and

WHEREAS, PLAN JPA is a self-funded insurance pool serving public agencies; and

WHEREAS, the operations of these programs are governed by a Board of Directors consisting of one representative from each member agency; and

WHEREAS, participation on the Board of Directors has been carried out by City Staff as part of its regular duties and does not result in any remuneration to the employee; and

WHEREAS, it is recommended that the City Council revise its designees to PLAN JPA.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Dublin rescinds Resolution No. 09-20.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Dublin does hereby designate the following individuals as appointees to the PLAN JPA Board of Directors:

Title	Designation
Human Resources Director	Director
Administrative Services Director / Finance Director	Voting Alternate Director
City Manager	Second Voting Alternate Director

BE IT FURTHER RESOLVED that these appointments shall be in accordance with PLAN JPA Corporation Bylaws and the Memorandum of Coverage.

{Signatures on the following page}

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

RESOLUTION NO. 09 - 20**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**RESCINDING RESOLUTION NO. 97-18 AND APPOINTING
DIRECTORS TO PLAN JPA ON BEHALF
OF THE CITY OF DUBLIN**

WHEREAS, the City of Dublin has been a charter member of ABAG PLAN Corporation since 1986; and

WHEREAS, ABAG Plan Corporation officially dissolved on June 20, 2018; and

WHEREAS, on December 19, 2017, the City Council approved membership in PLAN JPA and this succession JPA is now providing the City with liability insurance, property insurance, and employee bonds; and

WHEREAS, PLAN JPA is a self-funded insurance pool serving public agencies; and

WHEREAS, the operations of these programs are governed by a Board of Directors consisting of one representative from each member agency; and

WHEREAS, participation on the Board of Directors has been carried out by City Staff as part of its regular duties and does not result in any remuneration to the employee; and

WHEREAS, it is recommended that the City Council revise its designees to the new PLAN JPA.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Dublin rescinds Resolution No. 97-18.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Dublin does hereby designate the following individuals as appointees to the PLAN JPA Board of Directors:

Name	Title	Designation
Julie E. Carter	Human Resources Director	Director
Lisa Hisatomi	Administrative Services Director / Finance Director	Voting Alternate Director
Linda Smith	City Manager	Second Voting Alternate Director

BE IT FURTHER RESOLVED that these appointments shall be in accordance with PLAN JPA Corporation Bylaws and the Memorandum of Coverage.

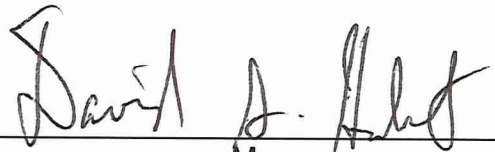
PASSED, APPROVED AND ADOPTED this 18th day of February 2020, by the following vote:

AYES: Councilmembers Goel, Hernandez, Josey, Kumagai and Mayor Haubert

NOES:

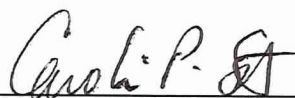
ABSENT:

ABSTAIN:



Mayor

ATTEST:



City Clerk



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Senate Bill 9 Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) (PLPA-2021-00050)
Prepared by: Mayank Patel, Associate Planner

EXECUTIVE SUMMARY:

The City Council will consider amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to implement Senate Bill 9 (SB 9), the California Housing Opportunity and More Efficiency (HOME) Act, which allows homeowners to split their single-family lot and/or build additional units. The proposed amendments would regulate the number and type of residential units, establish occupancy requirements, and establish objective design and development standards for projects allowed by SB 9. The first reading of the Ordinance approving the amendments was held at the March 15, 2022 Regular City Council Meeting. The City Council is now being asked to waive the second reading and adopt the Ordinance.

STAFF RECOMMENDATION:

Waive the second reading and adopt the Ordinance Approving Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide.

FINANCIAL IMPACT:

The cost to the General Fund to prepare the proposed Ordinance implementing SB 9 includes staff time. The Zoning Clearance application fee for SB 9 developments is based on actual time and materials.

DESCRIPTION:

Senate Bill (SB) 9 was adopted to minimize the restrictions and limitations of traditional single-family zoning by allowing additional housing units on single-family lots and/or allowing for single-family lots to be split into two parcels with additional residential units constructed on each lot. This law allows by right, two residential units per lot of at least 800 square feet that could be conveyed (sold separately). The new law effectively limits the City's ability to regulate these developments and prohibits a discretionary review process for qualified projects. However, the

City does have the ability to apply certain objective standards to development and subdivisions allowed by SB 9.

In response to the legislation, Staff prepared amendments to the Dublin Municipal Code (DMC) to establish objective standards to regulate SB 9 Units and Urban Lot Splits. A new chapter (Chapter 8.81) in the Zoning Ordinance would regulate SB 9 Unit Developments and a new chapter (Chapter 9.54) in the Subdivisions Ordinance would regulate Urban Lot Splits. Additional amendments to the Zoning and Subdivision Ordinances would ensure internal consistency.

On March 15, 2022, the City Council held a public hearing, waived the first reading, and introduced the Ordinance approving amendments to the DMC without the proposed affordability provisions originally included as Sections 8.81.60 and 9.54.070. The City Council directed staff to return with additional information regarding affordability for consideration at a future meeting. The proposed Ordinance is included as Attachment 1. Refer to Attachment 2 for a complete discussion of the proposed amendments.

ENVIRONMENTAL DETERMINATION:

The California Environmental Quality Act (CEQA), together with the State CEQA Guidelines and City of Dublin CEQA Guidelines and Procedures, require that certain projects be reviewed for environmental impacts and when applicable, environmental documents be prepared. To facilitate local jurisdictions in implementing SB 9, the legislature included an exemption from CEQA for any local ordinance that is adopted to implement the new law. Staff is recommending that the project be found statutorily exempt from the requirements of CEQA pursuant to Division 13 (commencing with §21000) of the Public Resources Code.

STRATEGIC PLAN INITIATIVE:

Strategy 3: Create More Affordable Housing Opportunities.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Ordinance Approving Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide
- 2) City Council Staff Report, dated March 15, 2022, without attachments

ORDINANCE NO. XX-22

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**APPROVING AMENDMENTS TO DUBLIN MUNICIPAL CODE TITLES 8 (ZONING) AND 9
(SUBDIVISIONS) TO IMPLEMENT SENATE BILL 9 EFFECTIVE CITYWIDE
PLPA-2021-00050**

WHEREAS, the City occasionally initiates amendments to the Zoning Ordinance to clarify, add, or amend certain provisions to ensure that the Zoning Ordinance remains current with federal and state law, internally consistent, simple to understand and implement, and relevant to changes occurring in the community; and

WHEREAS, on September 16, 2021, Governor Newson signed into law Senate Bill (SB) 9, which among other things, added Government Code Sections 65852.21 and 66411.7 and amended Government Code Section 66452.6, allowing additional housing units on properties within single-family residential zoning districts; and

WHEREAS, SB 9 went into effect January 1, 2022, and preempts any conflicting City ordinance; and

WHEREAS, SB 9 allows a local jurisdiction to adopt an ordinance that provides ministerial approval of: 1) no more than two housing units on a lot within a single-family residential zoning district; and 2) urban lot splits; and

WHEREAS, SB 9 allows a local jurisdiction to adopt objective design, development, and subdivision standards for up to two housing units and urban lot splits; and

WHEREAS, the proposed amendments to the Dublin Municipal Code implement the requirements of SB 9 and add local regulations that are within the scope of the State law; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 22, 2022, during which all interested persons were heard, and adopted Resolution No. 22-03 recommending City Council adoption of the proposed Amendments to Dublin Municipal Code Titles 8 and 9; and

WHEREAS, a Staff Report was submitted to the Dublin City Council recommending approval of the proposed Amendments to Dublin Municipal Code Titles 8 and 9; and

WHEREAS, the City Council held a public hearing on the proposed Zoning Ordinance Amendments on March 15, 2022, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the City Council did hear and consider all said reports, recommendations and testimony herein above set forth and used its independent judgment to evaluate the project.

NOW, THEREFORE, the City Council of the City of Dublin does ordain as follows:

Section 1. Consistency with Local Plans. Pursuant to Section 8.120.050.B of the Dublin Municipal Code, the City Council hereby finds that the Zoning Ordinance Amendments are consistent with the General Plan and all applicable Specific Plans in that the amendments are necessary to comply with State law and are consistent with applicable land use regulations and development policies. Specifically, amendments to the Zoning Ordinance are proposed to ensure consistency with State law and implementation of SB 9.

Section 2. CEQA. The California Environmental Quality Act (CEQA), together with State Guidelines and City of Dublin CEQA Guidelines and Procedures, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. The City Council hereby finds that the proposed amendments are statutorily exempt from the requirements of CEQA pursuant to Division 13 (commencing with §21000) of the Public Resources Code.

Section 3. Amendments. Thirty days following the adoption of the Ordinance, the Dublin Municipal Code is amended as follows:

Section 8.08.020 (Definitions (A-Z) of Title 8 of the Dublin Municipal Code is amended to add the following definitions in alphabetical order:

SB 9 Unit. The term SB 9 Unit shall mean a dwelling unit that is developed using the provisions in Chapter 8.81, and the provisions identified in California Government Code Sections 65852.21 or 66411.7.

SB 9 Unit Development. The term SB 9 Unit Development shall mean a housing development as defined in California Government Code Section 65852.21.

Section 8.12.050 (Permitted and Conditionally Permitted Land Uses) of Title 8 of the Dublin Municipal Code is amended to add the following row to the existing Residential Use Type table:

RESIDENTIAL USE TYPE	A	R-1	R-2	R-M	C-O	C-N	C-1	C-2	M-P	M-1	M-2
SB 9 Unit Developments	-	ZC	-	-	-	-	-	-	-	-	-

Section 8.20.030 (Permitted and Conditionally Permitted Land Uses, Regulations, and Performance Standards) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

K. SB 9 Unit Developments. For SB 9 Unit Developments, see Chapter 8.81.

The remainder of Section 8.20.030 to be re-lettered accordingly.

Subsection A of Section 8.36.020 (Agricultural and Residential Development Regulations) of Title 8 of the Dublin Municipal Code is amended to revise the tables as follows and to add additional footnotes:

STANDARD	A	R-1	R-2	R-M
LOT AREA				

STANDARD	A	R-1	R-2	R-M
Interior lot	100 acres	4,000 sq. ft. (5)	8,000 sq. ft.	5,000 sq. ft.
Corner lot	100 acres	5,000 sq. ft. (5)	9,000 sq. ft.	6,000 sq. ft.
LOT SQUARE FOOTAGE PER DU	NA	4,000 sq. ft. and larger as consistent with General Plan (5)	4,000 sq. ft. and larger as consistent with General Plan	750 sq. ft. and larger as consistent with General Plan
LOT WIDTH & FRONTAGE				
Interior lot	300 feet	50 feet (5)	80 feet	50 feet
Corner lot	300 feet	60 feet (5)	90 feet	60 feet
LOT DEPTH	NA	100 feet (5)	100 feet	100 feet
RESIDENTIAL USE (maximum per lot)	1 du (4)	1 du (4)(5)	2 du (4)	1 du per full 750 sq. ft. (and larger as consistent with General Plan) (4)
SETBACKS				
Front	50 feet	20 ft. avg. 18 ft minimum to garage (1)	20 ft. avg. 18 ft. minimum	20 ft.
Side	30 feet	(2)(5)	10 feet	10 feet (3)
Street Side	50 feet	10 feet	10 feet	10 feet
Rear	50 feet	20 feet (5)	20 feet	30 feet

- (1) Living spaces may encroach to 15 ft. from Front Lot Line with Site Development Review on lots up to 6,000 square feet in size.
- (2) Side Yard setbacks in the R-1 zoning district shall be a minimum of 5 feet plus one foot for each full 10 feet by which lot width exceeds minimum lot width up to a maximum of 10 feet.
- (3) Buildings with 4 or more residences in the R-M zoning district shall have a 15 foot Side Yard on one side.
- (4) See Chapter 8.80, Accessory Dwelling Unit Regulations, regarding the allowable number of ADUs.
- (5) See Chapter 8.81, SB 9 Unit Developments, regarding the standards for qualified SB 9 Unit Developments.

STANDARD	A	R-1	R-2	R-M
DISTANCE BETWEEN RESIDENCES	100 feet	10 feet (4)	20 feet	20 feet
MAXIMUM LOT COVERAGE	NA	40% 1 story, 35% 2 stories (4)	40% 1 story, 35% 2 stories	40% 1 story, 35% 2 stories

STANDARD	A	R-1	R-2	R-M
COMMON USEABLE OUTDOOR SPACE	NA	NA	NA	30% of net site area
ACCESSORY STORAGE - MULTIFAMILY (1)	NA	NA	200 cubic feet minimum per unit	200 cubic feet minimum per unit
HEIGHT LIMITS	(2)	(2)	(2)	(3)

- (1) Multifamily accessory storage shall be provided for each unit in a multifamily project that has a private, enclosed garage attached or assigned to the unit. In addition to the R-2 and R-M Zoning Districts, multifamily accessory storage shall also be provided in comparable PD (Planned Development) Zoning Districts and the Downtown Dublin Zoning District. See also Chapter 8.08 (Definitions).
- (2) West of Dougherty Road 25 feet and 2 stories; may be increased to 35 feet and 2 stories pursuant to a Site Development Review approval by the Zoning Administrator. East of Dougherty Road; 35 feet and 2 stories.
- (3) 35 feet if 4 or fewer du.; 45 feet if 5 or more du.; 75 feet if 5 or more du. and lot coverage does not exceed 35%.
- (4) See Chapter 8.81, SB 9 Unit Developments, regarding the standards for qualified SB 9 Unit Developments.

Subsection B (Residential Use Types) of Section 8.76.080 (Parking Requirements by Use Type) of Title 8 of the Dublin Municipal Code is amended to add the following use type and number of parking spaces required to the existing table as follows, with residential use types listed alphabetically:

RESIDENTIAL USE TYPES	NUMBER OF PARKING SPACES REQUIRED
SB 9 Unit Developments	See Section 8.81.060 relating to SB 9 Unit parking.

Title 8 of the Dublin Municipal Code is amended to add Chapter 8.81 (SB 9 Unit Developments) as follows:

8.81.010 Purpose.

The purpose of this Chapter is to implement Government Code Section 65852.21 by:

- A. Establishing objective standards for qualified SB 9 Unit Developments;
- B. Regulating the development of new residential housing units in a manner that is compatible with existing single-family residential uses; and
- C. Ensuring sound standards of public health and safety.

8.81.020 Definitions.

For the purposes of this Chapter, the following definitions apply:

- A. **Primary Dwelling Unit.** The term Primary Dwelling Unit shall mean an existing single-family residence on a parcel constructed prior to the approval of an SB 9 Unit.
- B. **Sufficient for Separate Conveyance.** The term Sufficient for Separate Conveyance shall mean that an SB 9 Unit Development is constructed in a manner adequate to allow for the transfer of title, ownership, rights, and interests in the property, from one entity to another.

8.81.030 Applicability.

The provisions of this Chapter are applicable to SB 9 Unit Developments on lots within the R-1 (Single-Family Residential) zoning district or any Planned Development District where Single-Family Residential uses are allowed. This Chapter shall not apply in the following situations:

- A. Projects located on lots that are included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
- B. Projects located on any site described in Government Code Section 65913.4(a)(6)(B)-(K), as may be amended.
- C. Projects involving the demolition or alteration of any of the following:
 - 1. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - 3. Housing that has been occupied by a rental tenant at any time within the last three years.
- D. Projects located on lots which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the California Government Code to withdraw accommodations from rent or lease within the last 15 years.
- E. Projects involving the demolition of more than 25 percent of the existing exterior structural walls, unless the site has not been occupied by a rental tenant within any time in the last three years.

8.81.040 Maximum Number of Units.

- A. **Urban Lot Split.** For SB 9 Units on parcels where an Urban Lot Split is proposed or approved, under the provisions specified in Chapter 9.54 and Government Code Section 66411.17, the following shall apply:
 - 1. **Vacant Lot.** A maximum of two SB 9 Units on a vacant lot created by an Urban Lot Split. No Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be permitted.
 - 2. **Developed Lot.** If there is an existing Primary Dwelling Unit on a lot created by an Urban Lot Split, a maximum of one of the following units may be added to that lot: an SB 9 Unit, an Accessory Dwelling Unit, or a Junior Accessory Dwelling Unit. An Accessory Dwelling

Unit or Junior Accessory Dwelling Unit shall be permitted in accordance with Chapter 8.80, except that no Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be permitted with the development of a SB 9 Unit on the same lot. No more than two units of any kind may be constructed or maintained on a lot created by an Urban Lot Split. If there are two existing units of any kind on a lot created by an Urban Lot Split, no additional units of any kind shall be permitted on that lot.

B. All Other Lots. For parcels where an Urban Lot Split is not proposed or approved, the following shall apply:

1. **Vacant Lot.** A maximum of two SB 9 Units are allowed per lot.
2. **Developed Lot.** If there is an existing Primary Dwelling Unit on a lot, a maximum of one SB 9 Unit is allowed per lot.
3. **Accessory Dwelling Units and Junior Accessory Dwelling Units.** Accessory Dwelling Units and Junior Accessory Dwelling Units shall be permitted in accordance with Chapter 8.80, provided that there are no more than four units in total.

8.81.050 Intent to Occupy.

The applicant for a SB 9 Unit shall sign an affidavit, on a form approved by the City, stating that the applicant intends to occupy the Primary Dwelling Unit or an SB 9 Unit as their principal residence for a minimum of three years from the issuance of a Certificate of Occupancy for the SB 9 Unit.

8.81.060 Standards.

A. General.

1. **By Right Provision.** The objective standards set forth in this section shall not physically preclude a maximum of two units, comprising any combination of SB 9 Units and Primary Dwelling Unit, per parcel and shall not physically preclude each of those units from being at least 800 square feet in area. If the objective standards would physically preclude two 800 square foot units, the City will provide relief from one or more of the objective standards set forth in this section to accommodate two 800 square foot units. The City shall determine the extent of relief necessary.
2. **Zoning.** Except as modified by this Chapter, SB 9 Units shall comply with all objective standards of the Dublin Municipal Code including the requirements for the applicable zoning district where the property is located, provided that such regulations do not conflict with standards set forth by Government Code Sections 65852.21.

B. Balconies/Decks. Balconies and decks shall not be located on an elevation directly facing a side lot line. Allowed balconies shall be located a minimum of 10 feet the rear property lines. Rooftop terraces/rooftop decks are not permitted.

C. Building Facades and Materials.

1. **Street-Facing Elevations.**

- a. Shall provide volumetric elements with a minimum projection of two feet beyond the plane of the façade with use of window bays, building recesses, or porches with columns.
 - b. Shall be designed with a minimum four-foot landscaping zone adjacent to their foundation or porch face.
- 2. A minimum of three exterior building colors shall be used on the front facades.
- 3. Attached units shall provide a minimum two-foot offset at the shared wall.
- 4. Transitions for both material and color shall be located at interior corners
- 5. Facades that use stucco as the primary material shall be combined with a secondary wall material.
- 6. T-111 and similar plywood siding, corrugated and standing seam metal, vinyl and plastic siding, and foam and stucco trim façade materials shall be prohibited.
- 7. Fire-resistant alternatives such as, fiber cement siding, are permitted as a substitution for traditional materials such as wood shake, horizontal siding, or board and batten paneling.

D. Building Height.

- 1. **Within Setbacks.** The maximum height of an SB 9 Unit, or any portion thereof, located within the setbacks established for the zoning district where the lot is located shall not exceed 16 feet.
- 2. **Outside of Setbacks.** The maximum height of an SB 9 Unit located outside of the setbacks established for the zoning district where the lot is located shall conform to the height requirements of the zoning district.

E. Building Separation.

- 1. **Single-Story Structures.** A minimum separation of 15 feet shall be provided between the upper story and a single-story structure on an adjacent property.
- 2. **Multi-Story Structures.** A minimum separation of 20 feet shall be provided between the upper story and a multi-story structure on an adjacent property.

F. Building Setbacks.

- 1. **Existing Structures.** No setback shall be required for an existing legal structure or a structure constructed in the same location and to the same dimensions as an existing legal structure.
- 2. **Front Yard.** The minimum front yard setback shall conform to the requirements of the zoning district where the lot is located.
- 3. **Street Side Yard.** The minimum street side yard setback shall be 10 feet.

4. **Interior Side and Rear Yard.** The minimum interior side and rear yard setback shall be four feet.

G. Fenestration. Windows and glazing areas shall comply with the following:

1. Tinted windows and colored glazing are prohibited.
2. Plastic glazing shall be prohibited for windows and skylights.
3. Functional and decorative shutters shall maintain the same dimensions as the associated glazing. Functional and decorative shutters shall be half the width of the associated window glazing (for paired shutters), or matching width for a single shutter.
4. Window materials, color, and style shall be consistent on all elevations.
5. Window trim, sills, and shutters shall be differentiated with accent materials or colors that vary from the adjacent building wall surfaces.
6. Windows shall be recessed at least two inches from surrounding exterior wall to the window glass surface or windows shall provide built-up sills and trim, at a minimum one-half inch thick, to create surface relief and texture.
7. Simulated mullions shall be allowed only when mullions are located on both the inside and outside faces of the glazing.

H. Floor Area. The floor area of the upper stories shall be limited to 40 percent of the floor area of the first floor.

I. Garages.

1. Front or side-entry attached garages are permitted and shall meet the dimensional requirements specified in Chapter 8.76.
2. An attached, front-entry garage shall be set back at least four feet behind the front plane of the structure to which it is attached.
3. Garage doors located in stucco walls shall be recessed a minimum of three inches from the surrounding building wall.
4. Garage doors located in masonry, wood clad, or similar siding, shall provide surrounding trim with a minimum width of three inches.

J. Impervious Area. Front and side yard setbacks shall be limited to a total of 40 percent impervious coverage.

K. Lighting. The following information for proposed exterior lighting fixtures shall be provided:

1. Manufacturer cut sheets with Backlight/Uplight/Glare (B.U.G.) rating.

2. Lighting locations indicated on building and/or site plans.
3. Mounting heights.
4. Exterior light fixtures shall be shielded from view off the site.

L. Lot Coverage. The Lot Coverage for any combination of SB 9 Units and Primary Dwelling Unit shall be cumulatively limited to the maximum lot coverage allowed by the residential zoning district where the lot is located, except as required to meet the By Right Provisions of this Chapter.

M. Mechanical Equipment. Mechanical and utility equipment shall be concealed from view from the public right-of-way. With the objective of fully screening the equipment, ground-mounted equipment shall be screened by a combination of walls or fencing and landscaped plant material up to a maximum height of four feet.

N. Parking. Parking shall conform to the Off-Street Parking and Loading Regulations (Chapter 8.76) except as modified by this Chapter.

1. A minimum of one off-street parking space shall be provided per unit, except if the parcel is located within:
 - a. One-half mile walking distance of either a high-quality transit corridor, as defined in Public Resources Code Section 21155 or a major transit stop, as defined in the Public Resource Code Section 21064.3. The transit frequency shall be based on the schedule posted by the transit agency when the City issues the first “completeness” letter for the respective application for a SB 9 Unit Development; or
 - b. One block of a car share vehicle.
2. Parking spaces shall not be located within the minimum side and rear yard setbacks. Parking spaces within an enclosed structure are encouraged.

O. Refuse Containers. Refuse containers or areas shall not be located within private driveways or be visible from the public right-of-way.

P. Rental Restrictions. Rental of any SB 9 Units or Primary Dwelling Unit shall not be less than for 30 consecutive days. Prior to the construction of an SB 9 Unit, a deed restriction, in a form approved by the City Attorney, shall be recorded setting forth setting for this limitation, and that the deed restriction may be enforced against future purchasers.

Q. Roof.

1. Roofs that result from alteration or addition to an existing main structure shall match the existing slope, form, and materials of the main structure.
2. Roof material and color shall be consistent throughout the entirety of the roof within each new or modified building. Except where its use is documented on existing adjacent structures, non-dimensional three-tab asphalt shingles, wood shake roofing, and

corrugated metal, metal roll and standing seam, and plastic roofing materials shall be prohibited.

3. Fire-resistant alternatives such as, cement S-tile roofing, is permitted as a substitution for traditional materials such as clay tile.
4. New structures shall provide a roof that has a minimum slope of 3:12. A sloped roof shall be defined as a gable, hip, cross gable roof, or any combination thereof. Mansard roofs shall be prohibited.
5. A minimum of 25 percent of the roof area shall be articulated with any combination of hip, gable, or shed dormers.
6. Roofs shall have a minimum overhang of 12 inches.
7. The roof styles and materials of detached garages and carports shall match the materials and detailing of main and accessory structures.

R. Separate Connections.

1. All attached or detached SB 9 Units shall have separate utility connections and meters.
2. Any attached or detached Accessory Dwelling Unit that becomes reclassified to a Primary Dwelling Unit as a result of an SB 9 Unit Development shall have separate utility connections and meters.

S. Separate Conveyance. SB 9 Units shall be designed for separate conveyance, as defined in this Chapter, in accordance with applicable building and fire code requirements.

T. Stairs. Notwithstanding provisions in Chapter 8.36, stairs leading to an upper story shall be fully enclosed within the interior of a unit. A staircase on the exterior of a unit shall not be permitted.

U. Street Frontage.

1. **Interior Lots.** The front-entry of at least one unit shall be oriented to the street.
2. **Corner Lots.** The front-entry of each unit shall be oriented to face a street, and the front-entry of each unit shall not face the same street.
3. **Connectivity.** Street-facing entries shall be clearly identifiable and connected to the street by a pedestrian path with a minimum width of five feet.
4. **Porch/Stoop.** Street-facing entries shall provide either a porch or stoop that is a minimum of seven feet wide and five feet deep. Unroofed porches or stoops, with three open sides and not greater than six feet above the ground level, may not project more than three feet in the front yard setback and may not project more than two feet into the side yard setback.

8.81.070 Permitting Procedure.

In addition to the standard submittal requirements for a Building Permit, a SB 9 Unit Development shall comply with this Chapter and shall be subject to a ministerial Zoning Clearance to be reviewed and approved by the Community Development Director, without public hearings or discretionary review, in accordance with Chapter 8.116.

8.81.080 Action.

- A. In any case, and notwithstanding the requirements of this Title, an application for an SB 9 Unit Development shall be ministerially reviewed and approved in accordance with this Chapter, and shall not be subject to any hearings or discretionary review.
- B. Notwithstanding subsection A above, an application for an SB 9 Unit Development may be denied if the Chief Building Official, upon making written findings to the Community Development Director based on the preponderance of the evidence, finds the project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

Section 8.104.020 (Exemptions from Site Development Review) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

- K. **SB 9 Unit Developments.** Projects that are eligible for ministerial approval pursuant to the provisions of Chapter 8.81, SB 9 Unit Developments.

Section 8.116.020 (Applications Requiring a Zoning Clearance) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

- K. **SB 9 Unit Developments.** Projects that are requesting approval of an SB 9 Unit Development that meet the standards specified in Chapter 8.81.

Section 8.116.030 (Application) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

- K. **SB 9 Unit Developments.** If the Zoning Clearance is for an SB 9 Unit Development, the Applicant shall submit a “Zoning Clearance for SB 9 Unit Development” application form provided by the Community Development Department with such information requested on said form.

Section 8.116.040 (Approval) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

- K. **SB 9 Unit Developments.** SB 9 Unit Developments shall be reviewed for consistency with Chapter 8.81, Government Code Sections 65852.21, and all other applicable objective standards in the Dublin Municipal Code. The Zoning Clearance approval for an SB 9 Unit Development shall be a completed “Zoning Clearance for SB 9 Unit Development” application form and any pertinent attachments as required on the form with the date and signature of the Community Development Director or his/her designee.

Section 8.116.050 (Expiration of Zoning Clearance) of Title 8 of the Dublin Municipal Code is amended to add the following subsection:

K. SB 9 Unit Developments. A Zoning Clearance issued in conjunction with a Building Permit for an SB 9 Unit Development shall expire when the Building Permit expires. If a Building Permit Application for an SB 9 Unit Development is not filed within a year of the Zoning Clearance approval, the Zoning Clearance shall become null and void.

Section 9.04.090 (Definitions) of Title 9 of the Dublin Municipal Code is amended to add the following definitions in alphabetical order:

“Flag Lot” means a lot as defined in Chapter 8.08.

“Primary Dwelling Unit” means a unit as defined in Chapter 8.81.

“SB 9 Unit” means a unit as defined in Chapter 8.81.

“Unit” means an Accessory Dwelling Unit, a Junior Accessory Dwelling unit, a Primary dwelling Unit, or an SB 9 Unit.

“Urban Lot Split” means a subdivision of an existing single-family residential zoned parcel into two parcels using the provisions in Chapter 9.54 and the provisions identified in California Government Code Section 66411.7.

Chapter 9.08 (Tentative Tract and Tentative Parcel Maps) of Title 9 of the Dublin Municipal Code is amended to add the following Section:

9.08.015 Exemptions.

A tentative map is not required for an Urban Lot Split proposed under the provisions of Government Code Section 66411.7.

Title 9 of the Dublin Municipal Code is amended to add Chapter 9.54 (Urban Lot Splits) as follows:

9.54.010 Authority and purpose.

The purpose of this chapter is to implement Government Code Section 66411.7 by:

- A. Establishing objective standards and regulations to govern the review and approval of Urban Lot Splits, which are qualified Senate Bill 9 properties in single-family residential zones;
- B. Establishing a ministerial process to approve an Urban Lot Split in accordance with Government Code Section 66411.7;
- C. Promoting the development of small ownership or rental housing units designed to meet the housing needs of individuals and families, particularly those of low and moderate incomes; and
- D. Ensuring sound standards of public health and safety.

9.54.020 Applicability.

The provisions of this Chapter shall apply within the R-1 (Single-Family Residential) zoning district or any Planned Development District where Single-Family Residential uses are allowed. This Chapter shall not apply in the following situations:

- A. Projects located on lots that are included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
- B. Projects located on any site described in Government Code Section 65913.4(a)(6)(B)-(K), as may be amended.
- C. Projects involving the demolition or alteration of any of the following:
 - 1. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - 3. Housing that has been occupied by a rental tenant at any time within the last three years.
- D. Projects located on lots which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the California Government Code to withdraw accommodations from rent or lease within the last 15 years.
- E. Any parcel previously subdivided through prior exercise of an Urban Lot Split as provided for under this Chapter.
- F. Any parcel proposing to be subdivided that is adjacent to another parcel where either the owner of the parcel proposing to be subdivided or any person acting in concert with said owner has previously subdivided that adjacent parcel using the provisions in this Chapter. For the purposes of this section, "any person acting in concert" with the owners includes, but is not limited to, an individual or entity operating on behalf of, acting jointly with, or in partnership or another form of cooperative relationship with, the property owner.

9.54.030 Application.

A parcel map application shall be required for all proposed Urban Lot Splits.

9.54.040 Form.

The form of the parcel map associated with an Urban Lot Split shall conform to the requirements of the Subdivision Map Act and Chapter 9.24 of this Title.

9.54.050 Filing and processing.

- A. The parcel map shall be filed with the City Engineer for his or her examination for conformance to this Title 9 and the Subdivision Map Act.

- B. Notwithstanding any other requirement under this Title 9, the City shall ministerially review and approve applications for an Urban Lot Split, without public hearings or discretionary review, subject only to the requirements of this Chapter.

9.54.060 Standards.

- A. An Urban Lot Split shall result in no more than two parcels.
- B. Parcels shall not be smaller than 40 percent of the lot area of the original parcel.
- C. Each parcel shall have a minimum net area of 1,200 square feet.
- D. The side property line of all lots, so far as possible, shall be at right angles to the street which the lot faces, or approximately radial to the center of curvature, if such street is curved. Side property lines of lots shall be approximately radial to the center of curvature of a cul-de-sac on which the lot faces.
- E. Parcels shall have a minimum width of 30 feet.
- F. Parcels shall have a minimum depth of 40 feet.

G. Flag Lots.

- 1. A flag lot shall be allowed with an Urban Lot Split in a situation where a conventional lot would not allow for a second lot of at least 1,200 square feet.
 - 2. The portion of the flag lot constituting the access corridor shall be excluded when determining compliance with minimum lot size requirement of this Chapter, from the site area, lot coverage, lot width, and lot depth as defined in Chapter 8.08.
 - 3. The maximum width of the access corridor of the flag lot shall be 20 feet, except where greater width is required for fire department access.
 - 4. Any fence constructed between the access corridor of a flag lot and the adjacent parcel shall not exceed 48 inches within the front yard of the adjacent property.
- H. Each parcel shall provide for direct vehicular access to and have a minimum frontage of 30 feet on the public right-of-way, except for flag lots, where the frontage shall be the width needed to meet access standards as specified in this Chapter.
- I. Public utility, service and/or access easements shall be provided within the subdivision where required for public utility purposes, in accordance with Title 9.
- J. Notwithstanding the requirements of this Chapter or the Zoning Ordinance, dedications of rights-of-way or the construction of offsite improvements for the parcels being created shall not be required.
- K. **Improvements Required.** The following improvements shall be required of all Urban Lot Splits. The design and layout of such improvements shall conform to the generally acceptable

engineering standards and to such objective standards as approved by the City Engineer that are in effect at the time of the parcel map application submittal.

1. **Sanitary Sewers.** Each unit or lot within the Urban Lot Split shall be served by a community sewer collection system as required, unless an individual system is permitted.
 2. **Water Supply.** Each unit or lot within the Urban Lot Split shall be served by an approved domestic water system.
 3. **Utilities.** Each unit or lot within the Urban Lot Split shall be served by gas (if required), electric, telephone, and cable television facilities. All new utilities within the Urban Lot Split shall be placed underground except those facilities exempted by the Public Utilities Commission Regulations and as otherwise provided in this Title.
 4. **Storm Drainage.** Storm water runoff from the Urban Lot Split shall be collected and conveyed by an approved storm drain system consistent with City standards.
- L. Prior to the recordation of the parcel map, the applicant shall sign an affidavit, on a form approved by the City, stating that the applicant intends to occupy the Primary Dwelling Unit or an SB 9 Unit as their principal residence for a minimum of three years from the date of the approval of the subdivision. This requirement shall not apply if the applicant is a community land trust or a qualified nonprofit corporation as provided in Sections 402.1 and 214.15 of the California Revenue and Taxation Code.
- M. The parcel map created pursuant to an Urban Lot Split shall contain a note on the map, and respective deed restrictions shall be recorded with the Alameda County Recorder's Office, indicating that parcels resulting from the Urban Lot Split were created using the provision of this Chapter and Government Code Section 66411.7, and that no further subdivision of the parcels is permitted.
- N. The proposed Urban Lot Split shall comply with all other applicable objective requirements of the Subdivision Ordinance and the Subdivision Map Act (Government Code Section 66410 et seq.) except as otherwise provided for in this Chapter. In the event of a conflict between the requirements of this Chapter and the requirements contained elsewhere in this Municipal Code, the provisions of this Chapter shall apply to the review and approval of Urban Lot Splits created hereunder.

9.54.070 Action.

Final action of a parcel map for an Urban Lot Split shall be in accordance with Chapter 9.24.

Section 4. Effective Date. This Ordinance shall take effect and be enforced thirty (30) days following its final adoption.

Section 5. Posting. The City Clerk of the City of Dublin shall cause this Ordinance to be posted in at least three (3) public places in the City of Dublin in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk



STAFF REPORT

CITY COUNCIL

DATE: March 15, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Senate Bill 9 Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) (PLPA-2021-00050)
Prepared by: Mayank Patel, Associate Planner

EXECUTIVE SUMMARY:

The City Council will consider amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to implement Senate Bill 9 (SB 9), the California Housing Opportunity and More Efficiency (HOME) Act, which allows homeowners to split their single-family lot and/or build additional units. The proposed amendments would regulate the number and type of residential units, establish affordability requirements, and establish objective design and development standards for projects allowed by SB 9. The City Council will also consider amending the City's Master Fee Schedule pertaining to Zoning Clearances for SB 9 Unit Developments. Staff recommends finding the amendments to the DMC statutorily exempt from the California Environmental Quality Act.

STAFF RECOMMENDATION:

Conduct the public hearing, deliberate, and take the following actions: 1) waive the reading and INTRODUCE the **Ordinance** Approving Amendments to Dublin Municipal Code Title 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide; and 2) adopt the **Resolution** Amending the Master Fee Schedule by Establishing One New Application Fee, Based on Time and Materials, for Zoning Clearances for SB 9 Unit Developments.

FINANCIAL IMPACT:

The City Council will consider amending the Master Fee Schedule pertaining to Zoning Clearances for SB 9 Unit Developments. The new application fee is proposed to be based on time and materials to ensure the City recovers the actual costs associated with processing applications for SB 9 Unit Developments.

DESCRIPTION:

Background

On September 16, 2021, Governor Newsom signed into law Senate Bill (SB) 9, titled the California Housing Opportunity and More Efficiency (HOME) Act, which went into effect on January 1, 2022. The bill has two major components: 1) the right to develop more than one home on a single-family residential lot; and 2) the right to subdivide a single-family residential lot. Units created by exercising the rights provided under SB 9 are referred to here as “SB 9 Units.” The term “Urban Lot Split” is used to describe a subdivision of an existing single-family residential parcel into two lots under SB 9. If certain criteria are met, SB 9 requires local jurisdictions to ministerially approve SB 9 Unit Developments and Urban Lot Splits. Table 1 summarizes the criteria set forth in SB 9.

Table 1. Qualifying Criteria for SB 9 Projects.

Requirement	SB 9 Unit Developments	Urban Lot Split
1. Project site is in a single-family residential zoning district.	X	X
2. Project site is not in a “sensitive” area as identified under Government Code Section 65913.4 .	X	X
3. Project does not result in the demolition of below market rate/deed-restricted affordable housing or rent-controlled units.	X	X
4. Property has not occupied by tenants in the past three years.	X	X
5. Property has not been withdrawn from the rental market under the Ellis Act for the past 15 years.	X	X
6. Property is not located in a historic district or included on the State Historic Resources Inventory, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.	X	X
7. Units constructed via SB 9 must be used for residential purposes and cannot be used for short-term rentals of less than 30 days.	X	X
8. Project creates two new parcels of approximately equal lot area—each at least 40 percent of the lot area of the original parcel.		X
9. Each new lot is at least 1,200 square feet.		X
10. The parcel was not created through prior exercise of an Urban Lot Split under SB 9.		X

Requirement	SB 9 Unit Developments	Urban Lot Split
11. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split under SB 9.		X
12. The applicant must indicate, by affidavit, their intention to reside in one of the units built on either parcel for at least three years.		X

SB 9 was adopted to minimize the restrictions and limitations of traditional single-family zoning by allowing additional housing units on single-family lots and/or allowing for single-family lots to be split into two parcels with additional residential units constructed on each lot. This law allows by right, two residential units per lot of at least 800 square feet that could be conveyed (sold separately) and additional ADUs as further discussed below. Under SB 9, new units and subdivisions need not comply with the City's development standards for the Single-Family Residential (R-1) zoning district and similar Planned Development Zoning Districts. The new law effectively limits the City's ability to regulate these developments and prohibits a discretionary review process for qualified projects. However, the City does have the ability to apply certain objective standards to development and subdivisions allowed by SB 9.

Staff proposes to create objective standards to regulate SB 9 Units and Urban Lot Splits with a focus on the following areas: 1) the number of allowed units; 2) affordability requirements; 3) occupancy requirements; and 4) design and development standards. Staff proposes to create a new chapter (Chapter 8.81) in the Zoning Ordinance to regulate SB 9 Unit Developments and a new chapter (Chapter 9.54) in the Subdivisions Ordinance to regulate Urban Lot Splits. Additional amendments to the Zoning and Subdivision ordinances are proposed to ensure internal consistency. The draft Ordinance is included as Attachment 1. Refer to Attachment 2 for a redline version of the proposed ordinance text changes where the added text is underlined and any text to be removed is marked with a ~~strike through~~.

Analysis

Staff prepared amendments to the Dublin Municipal Code (DMC) to implement SB 9 and to reduce the impact to existing single-family residential neighborhoods within the confines allowed by State law. The proposed Chapter 8.81 would implement SB 9 and provide the City's objective standards to regulate housing developments allowed by the bill. The use and development of lots within the R-1 Zoning District would continue to be regulated by the provisions of the Zoning Ordinance except as modified by SB 9 and Zoning Ordinance Chapter 8.81. Chapter 9.54 would implement SB 9 and provide the City's objective standards to regulate Urban Lot Splits. The following provides a summary of the key provisions of the proposed DMC Amendments.

Number of Units. Currently, the DMC allows up to three units on a single-family residential lot: A Primary Dwelling Unit (PDU), an Accessory Dwelling Unit (ADU), and a Junior Accessory Dwelling Unit (JADU). SB 9 would allow up to four units on an existing lot, including an additional housing

unit (“SB 9 Unit”), an ADU, and a JADU. However, SB 9 allows the City to restrict the total number of units per lot with an Urban Lot Split. The proposed Chapter 8.81 seeks to limit the number of units per lot to the extent allowed by State law. Table 2 reflects the maximum number of units allowed per lot by Chapter 8.81. ADUs and JADUs would continue to be regulated by Chapter 8.80 (Accessory Dwelling Unit Regulations), except as modified by SB 9 and Chapter 8.81.

Table 2. Maximum Number of Units Allowed on a Single-Family Lot: Pre- and Post-SB 9

Unit Type	Pre-SB 9: Number of Units Allowed Per Lot	Post-SB 9: Number of Units Allowed Per Lot			
		No Urban Lot Split		Urban Lot Split	
		Vacant Lot	Developed Lot	Vacant Lot	Developed Lot
<i>PDU</i>	1	-	1	-	1
<i>ADU</i>	1	1	1	0	1*
<i>JADU</i>	1	1	1	0	1*
<i>SB 9 Unit</i>	-	2	1	2	1*
Max.	3	4	4	2	2
* An Urban Lot Split parcel developed with a PDU would be limited to one additional unit, for a total of two units on the respective lot. The additional unit can be an SB 9 Unit, an ADU, or a JADU.					

Affordability. While SB 9 is silent regarding affordability provisions for residential units, the proposed amendments to the Zoning Ordinance (Section 8.81.060) and the Subdivision Ordinance (Section 9.54.070) require at least one unit created under SB 9 to be deed restricted as affordable to moderate income households. The affordable unit cannot be an ADU or JADU. The affordable unit would be subject to the applicable provisions of the City’s Inclusionary Zoning Regulations (Chapter 8.68).

Intent to Occupy. The proposed amendments require an applicant for an SB 9 Unit Development or an Urban Lot Split to sign an affidavit, indicating intent to occupy either the PDU or SB 9 Unit as their principal residence for a minimum of three years from the issuance of an SB 9 unit’s Certificate of Occupancy, or in the case of an Urban Lot Split, from the date of approval of the subdivision.

Design and Development Standards. The proposed design and development standards for an SB 9 Unit under Section 8.81.070 are intended to safeguard the characteristics of existing single-family neighborhoods in Dublin. For example, to help address potential concerns about aesthetics, the proposed standards regulate street-facing elevations, building color and materials, as well as roof roofs. Additionally, standards pertaining to second-story massing and height limits are proposed to help maintain privacy and access to light and air. Required parking is limited to a maximum of one space per unit, and no required parking if located near transit, as required by SB 9. Similarly, the proposed subdivisions standards for an Urban Lot Split under Section 9.54.060 are intended to

limit changes to the fabric of existing neighborhoods by limiting the creation of irregularly configured lots and requiring lots to have frontage to the public right-of-way.

Permitting. In accordance with State law, decisions on development and subdivisions under SB 9 are not subject to a public hearing nor can they be appealed if the application is found to comply with the requirements of SB 9 and the DMC. Thus, development under SB 9 would be subject to review and ministerial approval of a Zoning Clearance by the Community Development Director (Sections 8.81.080 and 8.81.090). Similarly, Urban Lot Splits would be subject to review and ministerial approval of a Parcel Map by the City Engineer (Section 9.54.080).

Senate Bill 9 is complicated legislation and still being interpreted throughout the State. Future amendments and interpretations of the law are likely which could result in the need to modify Chapters 8.81 and 9.54. Additional amendments to these chapters may also be necessary as Staff implements SB 9 and these Ordinances.

Master Fee Schedule Amendment

The California Constitution authorizes local governments to recover the reasonable costs of providing services. SB 9 Unit Developments would be subject to a Zoning Clearance to review the proposal for consistency with the proposed new Chapter 8.81 and all other applicable objective standards within the Zoning Ordinance. The actual cost for Staff to review a “Zoning Clearance for SB 9 Unit Development” application would vary significantly depending on the scope of work. Therefore, Staff recommends establishing an application fee based on actual time and materials to recover the City’s full costs.

A draft Resolution amending the Master Fee Schedule to establish an application fee for a Zoning Clearance for SB 9 Unit Development is included as Attachment 3.

Consistency with the General Plan, Specific Plans, and Zoning Ordinance

The proposed amendments are consistent with the Dublin General Plan and all applicable specific plans in that the amendments are necessary to comply with State law and are consistent with applicable land use regulations and development policies. Amendments to the Zoning Ordinance are proposed to ensure consistency with State law and implementation of SB 9.

ENVIRONMENTAL DETERMINATION:

The California Environmental Quality Act (CEQA), together with the State CEQA Guidelines and City of Dublin CEQA Guidelines and Procedures, require that certain projects be reviewed for environmental impacts and when applicable, environmental documents be prepared. To facilitate local jurisdictions in implementing SB 9, the legislature included an exemption from CEQA for any local ordinance that is adopted to implement the new law. Staff is recommending that the project be found statutorily exempt from the requirements of CEQA pursuant to Division 13 (commencing with §21000) of the Public Resources Code.

PLANNING COMMISSION REVIEW:

On February 22, 2022, the Planning Commission held a public hearing to consider the proposed amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) and unanimously adopted Resolution No. 22-03 (Attachment 4), recommending City Council approval.

STRATEGIC PLAN INITIATIVE:

Strategy 3: Create More Affordable Housing Opportunities.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

In accordance with State law, a public notice was published in the *East Bay Times* on March 5, 2022, and March 10, 2022, and posted at several locations throughout the City. Additionally, the City Council Agenda and the Staff Report for this public hearing was also made available on the City's website.

ATTACHMENTS:

- 1) Ordinance Approving Amendments to Dublin Municipal Code Titles 8 (Zoning) and 9 (Subdivisions) to Implement Senate Bill 9 Effective Citywide
- 2) Redlines of Proposed Dublin Municipal Code Amendments
- 3) Resolution Amending the Master Fee Schedule by Establishing One New Application Fee, Based on Time and Materials, for Zoning Clearances for SB 9 Unit Developments
- 4) Planning Commission Resolution No. 22-03



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Default of Non-Residential Electricity Accounts to East Bay Community Energy Renewable 100 Power
Prepared by: Shannan Young, Environmental & Sustainability Manager

EXECUTIVE SUMMARY:

The City Council will consider setting the default electricity for non-residential accounts to East Bay Community Energy's Renewable 100 power in support of Climate Action Plan 2030 and Beyond goals to reduce greenhouse gas emissions. East Bay Community Energy is the City of Dublin's energy provider and has supplied municipal accounts with Renewable 100 electricity since July 1, 2019, and residential accounts since January 1, 2022. Renewable 100 provides California-based wind and solar power which is 100% renewable and carbon-free.

STAFF RECOMMENDATION:

Adopt the **Resolution** Requesting East Bay Community Energy Enroll City of Dublin Non-Residential Accounts in Renewable 100 as the Default Electricity Product.

FINANCIAL IMPACT:

There is no impact to the General Fund. Municipal electricity accounts are currently supplied with Renewable 100 power. A discussion of the potential cost impacts to non-residential accounts is included below.

DESCRIPTION:

Background

At its March 1, 2022 meeting, the City Council received a report on the status of the default of residential accounts to East Bay Community Energy's (EBCE) Renewable 100 power (Attachment 2) and provided direction to Staff regarding enrollment of non-residential accounts to Renewable 100. The City Council directed Staff to bring back a resolution requesting that the EBCE Board enroll non-residential accounts in Renewable 100 power in support of the goals in the City's

Climate Action Plan 2030 and Beyond (CAP 2030). CAP 2030 includes 22 measures intended to reduce greenhouse gas (GHG) emissions by 40% below 1990 levels by 2030 and to put the City on the path to reach carbon neutrality by 2045. Defaulting community-wide accounts to Renewable 100 is the most impactful measure in CAP 2030, with the potential to reduce GHG emissions in Dublin by 53% when both residential and non-residential accounts are defaulted to Renewable 100.

Cost Impact to Non-Residential Accounts

The impact to non-residential account holders depends on the amount of energy consumed and the electric rate category of the account holder. Renewable 100 is one cent per kilowatt-hour more than PG&E's standard rates. Non-residential bills vary widely, depending on the type of business or entity it is. Examples of businesses in the B1, B10, and B19 categories are provided in the table below (prior to a recent PG&E nomenclature change, these rate categories were called A1, A10, and E19). The average monthly electricity bill increases due to the default to Renewable 100 in these rate categories is 3.8%, 4.3%, and 5.1%, respectively. A more specific rate increase estimate for an individual account holder may be obtained by contacting EBCE.

Table 1. Example Business Types by Rate Schedule

B1 – Small/Medium Commercial	B10 – Small/Medium Commercial	B19 – Large Commercial
Coffee shop	Small Grocery	High School
Small Retail	Car Dealer or Medium Retail	Large Office Building
Common Areas in Multi-Family Dwellings	Elementary School	Light Manufacturing
Small Medical Office (Dentist)	Quick Service Restaurant	Movie Theater

Update on Status of Default Enrollments

In Dublin, residential accounts started transitioning to Renewable 100 in January. In Albany, Hayward, and Pleasanton, community-wide accounts (residential and non-residential) made the Renewable 100 transition at the same time. Depending on the billing cycle, account holders may have seen the Renewable 100 rate on their bill as of March 1, 2022. To date, there has been very little new movement by account holders to opt down to Bright Choice or to opt out to PG&E in response to higher electric bills.

Outreach to Non-Residential Accounts

If the City Council approves the attached resolution requesting that EBCE enroll city-wide non-residential accounts to Renewable 100 as the default electricity product, a robust outreach effort about the transition will occur in the six months leading up to the transition. The outreach effort will focus on educating non-residential account holders about what the transition will mean for their business and inform the account holders of the option to remain on EBCE's discount product, Bright Choice, or opt-out to PG&E. At the minimum, outreach through the following methods will be used:

- Collaborating with EBCE to provide one-on-one outreach, particularly to large energy users.

- Collaborating with the City's Economic Development Staff to provide information in the Dublin Business Brief.
- Coordinating with the Dublin Chamber of Commerce to provide written information and workshops for Chamber members.
- Providing direct mail notifications.
- Revising the Green Shamrock Business Recognition Program to promote Renewable 100 businesses.
- Providing information on the City's website and through social media, as appropriate.

Conclusion and Next Steps

With City Council approval of the attached resolution, the EBCE Board will vote on the request at its April 20, 2022 Board meeting. If the EBCE Board approves the request, the default transition would begin in October 2022, aligning with non-residential account transitions occurring in Berkeley and San Leandro. EBCE would begin the procurement process for appropriate electricity resources and conduct the necessary system adjustments for the default enrollments. During this time, outreach to non-residential account holders will be conducted. If the default energy product is switched to Renewable 100, account holders will retain the option to opt-down to EBCE's discount power product, Bright Choice, or opt out to PG&E.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution Requesting East Bay Community Energy Enroll City of Dublin Non-Residential Accounts in Renewable 100 as the Default Electric Product
- 2) March 1, 2022 Staff Report on the Status of Community Default to East Bay Renewable 100 Power (without attachments)

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****REQUESTING EAST BAY COMMUNITY ENERGY ENROLL CITY OF DUBLIN
NON-RESIDENTIAL ACCOUNTS IN RENEWABLE 100 AS THE DEFAULT
ELECTRICITY PRODUCT**

WHEREAS, the City of Dublin has been a leader in the fight against climate change, having adopted its first Climate Action Plan in 2010 with an update in 2013, with the goal to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020; and

WHEREAS, on September 15, 2020, the City Council adopted the City of Dublin Climate Action Plan 2030 and Beyond (CAP 2030) which includes goals to reduce GHG emissions by 40% below 1990 levels by 2030 and to put the City on a path to reach carbon neutrality by 2045; and

WHEREAS, CAP 2030 identifies renewable and carbon-free electricity as the biggest opportunity to reduce GHG emissions within the City of Dublin; and

WHEREAS, the City's electricity provider, East Bay Community Energy (EBCE), offers a 100% carbon-free and 100% renewable electricity product called Renewable 100; and

WHEREAS, residential accounts were enrolled in Renewable 100 beginning January 1, 2022, reducing GHG emissions in Dublin by approximately 28%; and

WHEREAS, enrolling non-residential accounts in Renewable 100 has the potential to reduce GHG emissions in Dublin by an additional 25%; and

WHEREAS, non-residential accountholders in the City would retain the option to opt down to EBCE's discounted power portfolio, Bright Choice, which offers a lower percentage of carbon-free electricity, or opt out to electricity provided by Pacific Gas & Electric; and

WHEREAS, establishing Renewable 100 as the default electricity for both residential and non-residential accounts would allow Dublin to showcase its continued environmental leadership and demonstrate efforts to create a sustainable community in line with the goals of CAP 2030.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does request that EBCE hereby enroll the City of Dublin in the Renewable 100 electric power portfolio as the default electricity product for all non-residential accounts in the City.

BE IT FURTHER RESOLVED that the City Council of the City of Dublin requests that the EBCE Board consider Dublin's Renewable 100 default power portfolio request at the earliest possible upcoming EBCE Board Meeting.

{Signatures on the following page}

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk



STAFF REPORT

CITY COUNCIL

DATE: March 1, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Status of Community Default to East Bay Community Energy Renewable 100 Power
Prepared by: Shannan Young, Environmental & Sustainability Manager

EXECUTIVE SUMMARY:

The City Council will receive a report on the status of the default of residential accounts to Renewable 100 electricity through the City's electricity provider, East Bay Community Energy, and will consider the default electricity power portfolio for non-residential accounts.

STAFF RECOMMENDATION:

Receive the report and provide direction on the East Bay Community Energy default electricity power portfolio for non-residential accounts.

FINANCIAL IMPACT:

There is no impact to the General Fund but a discussion regarding the potential cost impacts of the Renewable 100 electricity power portfolio for non-residential accounts is included below. Municipal electricity accounts are currently supplied with the Renewable 100 power portfolio.

DESCRIPTION:

Background

At its January 12, 2021 meeting, the City Council adopted Resolution 04-21 (Attachment 1) requesting East Bay Community Energy (EBCE) enroll City of Dublin residential accounts in Renewable 100 as the default product. Renewable 100 is 100% greenhouse gas (GHG) emission-free and 100% renewable power (California-based wind and solar). The action was taken in support of the City's Climate Action Plan 2030 and Beyond (CAP 2030) which was approved by the Council via Resolution 100-20 (Attachment 2) on September 15, 2020. CAP 2030 includes 22 measures that have the potential to achieve GHG emissions reductions of approximately 48,000 metric tons carbon dioxide equivalent by 2025. Approximately 28% of those GHG emissions reductions are expected to be achieved through the default enrollment of

residential accounts into Renewable 100 beginning in January 2022. An additional 25% GHG emissions reductions can be achieved by transitioning non-residential accounts (e.g., commercial and industrial accounts) to Renewable 100. CAP 2030 Measure CF-1, Opt Up to 100% Renewable and Carbon-Free Electricity, planned for enrollment of all community-wide accounts into a GHG-free electric power portfolio, but due to the rapidly evolving Covid-19 pandemic and economic uncertainty in January 2021, it was decided to postpone consideration of transitioning non-residential accounts to Renewable 100 to a later date since those accounts typically use more electricity than residential accounts.

Residential Account Transition

EBCE anticipated that the enrollment of residential accounts into Renewable 100 would occur in October 2021, however the transition was delayed until January 2022 to align with similar default transitions occurring in the cities of Pleasanton, Hayward, and Albany. These three cities requested that all accounts, including non-residential accounts, be defaulted to Renewable 100. To help EBCE staff manage the activities required to transition the four cities, all the transitions were scheduled for January 2022.

Individual account transitions do not occur all at once. The exact date of an account transitioning to Renewable 100 is based on the individual Pacific Gas & Electric (PG&E) meter read date, which varies from customer to customer. Residents enrolled in California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs, as well as Medical Baseline accounts will remain on EBCE's Bright Choice power portfolio which is offered at a 1% discount compared to PG&E's standard rates and provides approximately 5% more renewable energy than PG&E's standard service. All customers retain the option to choose Bright Choice at any time. The discounted Bright Choice rates will be reflected on a customer's PG&E bill in one or two billing cycles, depending on the timing of the customer request in relation to the meter read date.

Residential Outreach

Outreach to residents about the transition to Renewable 100 is occurring via several methods, as shown in Table 1 below. Residents have been provided information regarding why the transition is occurring, what their choices are, and how they can take action if they desire to remain on Bright Choice or opt out to PG&E. Samples of the outreach material are provided in Attachment 3.

Table 1. Renewable 100 Residential Outreach

Communication Method	Message Provided By	Date Provided
Press Release	EBCE	11/22/2021
Direct mail notification, by letter (Notice 1)	EBCE	Beginning 11/30/2021 (sent to customers based on their meter read dates)
Backyard Brief Newsletter	City	12/1/2021
Print and digital ads in The Independent	EBCE	8 weeks in December 2021 and January 2022
Tabling at the Holiday Tree Lighting Ceremony	City and EBCE	12/2/2021
Tabling at Breakfast with Santa	City and EBCE	12/4/2021
Email to customers with email addresses on file with PG&E (Notice 1)	EBCE	12/7/2021 and 12/8/2021
Webinars	EBCE	Various dates beginning 12/8/2021
City of Dublin News Flash	City	12/8/2021 (City list) 12/13/2021 (Environmental list)
Social media posts (Twitter and Facebook) – retweet of 11/22/2021 press release	City	12/2/2021 and 12/8/2021
Direct mail notification by postcard (Notice 2)	EBCE	Beginning 1/2/2022 (sent to customers based on their meter read dates)
Email to customers with email addresses on file with PG&E (Notice 2)	EBCE	1/11/2022
Direct mail notification	City	February 2022
City Report	City	February 2022
Web page updates	City and EBCE	On-going

Consideration of Non-Residential Accounts Transition to Renewable 100

To reach the CAP 2030 goals, community-wide participation in and engagement with many of the 22 measures is required. This includes setting the default for non-residential electricity accounts from EBCE's discount power product, Bright Choice, to Renewable 100. Non-residential accounts consume approximately 46.4% of the total electricity used in Dublin, which equates to about 11,844 metric tons carbon dioxide equivalent. This is a little more than a third of the remaining GHG emissions reductions that can be achieved by 2025 with the measures in CAP 2030.

Table 2 below shows average monthly electricity usage and associated billing for the different rate categories in Dublin. With the exception of A10 and E20P, these are estimates using summary rates, based on annual kilowatt hours (kWh) electricity usage, and averaged using the March 2021

Joint Rate Comparison blended rates, which are available from EBCE at <https://ebce.org/rates/>. The numbers for A10 and E20P rate categories are based upon EBCE territory-wide averages for each of these two rate categories instead of Dublin-specific usage. This is necessary because Senate Bill 1476, Public Utilities, Customer Privacy, Advanced Metering Infrastructure, requires aggregated data from a minimum of 15 customers to ensure customer data privacy.

Table 2. Average Monthly Electricity Usage for Non-Residential Accounts in Dublin

Summary Rate & Rate Category	Accounts	Avg. Monthly Usage (kWh)	Monthly Bright Choice Avg.	Monthly Renewable 100 Avg.	Monthly Bright Choice Avg. Discount	Monthly Renewable 100 Avg. Premium	Increase
A1- Small/ Medium Commercial	193	346.5	\$91.38	\$95.22	\$0.38	\$3.47	3.8%
A1 TOU* - Small/ Medium Commercial	1,630	1,463.5	\$395.40	\$411.65	\$1.60	\$14.65	3.7%
A10 - Small/ Medium Commercial**	1	11,747	\$2,819.72	\$2,950.85	\$13.86	\$117.47	4.2%
A10 TOU – Small/ Medium Commercial	211	15,548.6	\$3,641.02	\$3,814.70	\$18.35	\$155.33	4.3%
E19 – Large Commercial	121	31,561.3	\$6,215.38	\$6,564.76	\$33.77	\$315.61	5.1%
E20P -Large Commercial**	1	754,170	\$131,029.50	\$139,310.28	\$739.09	\$7,541.69	5.8%

* TOU means time-of-use. TOU rates change based on the time of day, with higher rates during peak electricity use times, typically 4 pm to 9 pm.

** A10 and E20P rates based upon territory-wide averages, not actual Dublin accounts

The rate categories shown above roughly correspond with the size of electricity load consumed by the customer. Rate A1 is for a typical small business such as a small office or small food establishment. The next rate category, A10, is for operations that involve higher load activities such as power tools or refrigeration, such as a small market or grocery store. Rate categories E19 and E20 involve the largest commercial or industrial scale enterprises, such as those with heavy machinery or giant conditioned spaces that require a lot of onsite energy use. A large grocery store could be in the E19 rate category.

PG&E's Annual Rate Setting

A factor that will impact electricity rates of all customers in PG&E's territory was approved in December 2021 by the California Public Utilities Commission (CPUC) as part of PG&E's annual rate review and true-up. To generate revenue needed to complete maintenance and repairs to the electric grid and to prevent equipment failures that spark wildfires, the CPUC approved a 10%

rate increase for the transmission and distribution of electricity. The transmission and distribution fee, which on the PG&E bill is referenced as the PG&E electric delivery charge, is determined based on the amount of electricity consumed, the rate category, and the time of day it is consumed. The fee is lower during off-peak hours and highest in peak hours (4 pm to 9 pm). The 10% rate increase went into effect on January 1.

Status of Default Enrollments

EBCE has been tracking enrollment status in Dublin, Albany, Hayward, and Pleasanton to determine how the new community default enrollments are impacting customer decisions to opt down to Bright Choice or opt out to PG&E. Tables 3 and 4 below show residential account enrollment status and non-residential account enrollment status, respectively. As can be seen in the tables, most of the enrollment actions taken since November 2021, when outreach concerning the default enrollments began, have been taken by residential customers. As of January 4, 2022, 3.47% of residential customers in Dublin acted to either stay on EBCE's Bright Choice power or opt out to PG&E. This is a relatively low rate of enrollment actions compared to Albany, Hayward, and Pleasanton (12.42%, 11.86%, and 5.39%, respectively). The non-residential enrollment actions in those cities have been minor compared to the residential actions. In all three cities, fewer than 2% of non-residential customers made enrollment actions to either opt out of the default enrollment to Renewable 100 or opt down to Bright Choice. Non-residential accounts in Dublin are currently in Bright Choice. Noticing to date has been targeted to residential accounts about the default enrollment to Renewable 100, however non-residential accounts may have taken action in response to the outreach. This may explain the non-residential enrollment action since November 2021 in Dublin.

Table 3. EBCE Residential Account Enrollment Status

	As of January 4, 2022		Change from November 2021	
	Total Eligible	Total % Move to/Stay on Bright Choice	% Opt Out	% Move to/Stay on Bright Choice
Dublin	25,126	3.20%	0.27%	3.20%
Albany	6,674	13.35%	0.21%	12.21%
Hayward	50,425	12.51%	0.19%	11.67%
Pleasanton	28,105	5.46%	0.66%	4.73%
All EBCE	608,087	1.72%	0.10%	1.58%

Table 4. EBCE Non-Residential Account Enrollment Status

	As of January 4, 2022		Change from November 2021	
	Total Eligible	Total % Move to/Stay on Bright Choice	% Opt Out	% Move to/Stay on Bright Choice
Dublin	2,377	0.34%	0.05%	0.34%
Albany	668	2.25%	-0.03%	1.34%
Hayward	7,376	1.99%	0.10%	1.01%
Pleasanton	3,980	2.56%	0.19%	1.76%
All EBCE	65,985	4.11%	0.04%	3.93%

Conclusion and Next Steps

Dublin made great strides to meet the goals established in CAP 2030 to reduce GHG emissions by 40% below 1990 levels by 2030 and achieve carbon neutrality by 2045 when the City Council requested that the EBCE Board default residential accounts to Renewable 100. The City can make additional gains towards achieving the goals by requesting the EBCE Board do the same with non-residential accounts. As with the residential consumers, commercial and industrial users would retain the option to remain on Bright Choice or opt out to PG&E.

With City Council direction to default non-residential accounts to Renewable 100, Staff would bring a resolution back to the City Council for adoption at the next meeting. This would allow EBCE time to align Dublin's transition with those occurring in Berkeley and San Leandro in October 2022. Staff would partner with EBCE to conduct a robust outreach effort to commercial and industrial customers about the default to Renewable 100.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution 04-21 Requesting East Bay Community Energy (EBCE) Enroll City of Dublin Residential Accounts in Renewable 100 as the Default Electricity Product
- 2) Resolution 100-20 Adopting the City of Dublin Climate Action Plan 2030 and Beyond
- 3) Samples of Renewable 100 Residential Outreach



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Change Order No. 1 for Amended and Restated Energy Services Contract
Between the City of Dublin and Engie Services, Inc. (formerly OpTerra Energy
Services, Inc.)
Prepared by: Jordan Foss, Management Analyst II

EXECUTIVE SUMMARY:

The City Council will consider approval of a change order to the contract with Engie Services, Inc. (formerly OpTerra Energy Services, Inc.) for operation and maintenance of City solar panels to add the Public Safety Complex into the scope of work.

STAFF RECOMMENDATION:

Adopt the Resolution Approving Change Order No. 1 to the Amended and Restated Energy Services Contract for Operation and Maintenance between the City of Dublin and Engie Services, Inc. (formerly OpTerra Energy Services, Inc.) to add the Public Safety Complex into the scope of work.

FINANCIAL IMPACT:

The cost of the additional services at the Public Safety Complex is \$12,414.00 over the remaining two years of the contract. The costs will be paid from the maintenance operating budget, which is funded by the General Fund.

DESCRIPTION:

In May 2011, the City Council approved an agreement with Chevron Energy Solutions to conduct an energy audit of all City facilities. In August 2011, based on the findings of the audit, the City entered into an Energy Service Contract and an associated financing contract with Chevron Energy Solutions for the implementation and funding of certain energy related improvements to city facilities. On May 2, 2017, the City Council adopted Resolution 41-17, approving an Amended and Restated Agreement with OpTerra Energy Services, Inc. (as successor-in-interest to Chevron Energy Solutions) to remove the Annual Performance Guarantee Fee of \$35,000. The fee was

determined to be unnecessary because the constructed energy improvements were consistently outperforming the original performance projections.

Engie Services, Inc. purchased Opterra Energy Services, Inc. and its subsidiaries, and in July 2018, Engie Services, Inc. began providing services to the City as outlined in the Amended and Restated Agreement.

In February 2020, the Public Safety Complex (PSC) project was completed. As part of this project, solar canopies were installed in the secured parking lot. The PSC solar panels have been receiving complimentary monitoring services from the installer (Fronius) as part of the solar package, however the PSC panels do not have an annual maintenance plan. Staff recommends the PSC solar panels be added to the existing annual maintenance plan that covers the solar panels at other City facilities, which is provided by Engie Services, Inc. The maintenance plan includes monthly reporting on historical and comparative photovoltaic production, comprehensive monitoring services, quarterly maintenance of the panels (visual washing of solar panel surfaces), and preventative maintenance of solar panel and grid connectivity. The addition of these services at the PSC will increase the agreement fee by \$12,414.00.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution Approving Change Order #1 to the Amended and Restated Agreement between the City of Dublin and Engie Services, Inc. (formerly OpTerra Energy Services, Inc.)
- 2) Exhibit A to the Resolution – Change Order No.1 to the Amended and Restated Agreement

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****APPROVING CHANGE ORDER NO. 1 FOR AMENDED AND RESTATED ENERGY
SERVICES CONTRACT BETWEEN THE CITY OF DUBLIN AND ENGIE SERVICES, INC.
(FORMERLY OPTERRA ENGERY SERVICES)**

WHEREAS, on August 1, 2011, the City Council approved an Energy Service Contract and an associated financing contract with Chevron Energy Solutions Company for the implementation and funding of certain energy related improvements to City of Dublin Facilities; and

WHEREAS, on October 24, 2015, the City Council approved an amendment to the Energy Services Contract; and

WHEREAS, on May 2, 2017, the City Council approved an Amended and Restated Contract between the City of Dublin and OpTerra Energy Services, Inc. (successor-in-interest to Chevron Energy Solutions Company, a division of Chevron U.S.A. Inc.) clarifying the operation and maintenance services to the City of Dublin; and

WHEREAS, Engie Services, Inc. purchased Opterra Energy Services, Inc., and in July 2018, began providing services to the City as outlined in the Amended and Restated Agreement; and

WHEREAS, on February 22, 2020, the City of Dublin Public Safety Complex was dedicated and opened, and the Public Safety Complex parking lot includes solar panels that require routine annual maintenance; and

WHEREAS, the City Council desires to approve a Change Order No.1 to the Amended and Restated Agreement Amendment between the City of Dublin and Engie Services Inc. (formerly OpTerra Energy Services, Inc.), to provide for the routine annual maintenance of the Public Safety Complex solar panels.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve Change Order No. 1 to the Amended and Restated Energy Services Contract for Operation and Maintenance attached hereto as **Exhibit A**.

BE IT FURTHER RESOLVED that that upon the effective date of Change Order No. 1 to the Amended and Restate Energy Services Contract for Operations and Maintenance, the Public Safety Complex is added as a location to the agreement scope of work.

BE IT FURTHER RESOLVED that the City Manager or designee is authorized to execute the Change Order No. 1 to the Amended and Restated Energy Services Contract for Operation and Maintenance and make any necessary, non-substantive changes to carry out the intent of this Resolution.

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mayor

City Clerk



ENGIE Services Project #: CN-000692
ENGIE Services Contract # CU1286

Change Order No. 01

Customer Contract Title: Operation and Maintenance Agreement	Customer Contract No. CU1286
Customer Contract Effective Date: 3/29/2017	Change Order Effective Date: 2/1/2022

Customer Name:	City of Dublin
Customer Address:	100 Civic Plaza
	Dublin, CA 94568
Contact:	Dean McDonald, Public Works Maintenance Superintendent
Job Location:	Public Safety Complex

Description of Change Order:	The Scope of Work set forth in <u>Attachment A</u> to the Operation and Maintenance Agreement referenced above is hereby amended to add the following scope and cost revisions in this Change Order. Further explanation is as follows:
	<u>PCO #1:</u>
	1. Project Location to add the existing PV System services at the Public Safety Complex.
	2. <u>Article 1</u> , "Annual Maintenance and Monitoring Fee". Start the O&M and monitoring services in year nine 2/1/2022, and year ten, 2/2/2023 of the O&M term.
	Change from:

Year	Period	M&V Services	Monitoring Services	PV O&M Services	Total Fee
9	2022	\$ -	\$ 12,238	\$ 19,926	\$ 32,164
10	2023	\$ -	\$ 12,238	\$ 20,524	\$ 32,762

Change to:					
Year	Period	M&V Services	Monitoring Services	PV O&M Services	Total Fee
9	2022	\$ -	\$ 13,419	\$ 24,679	\$ 38,099
10	2023	\$ -	\$ 13,822	\$ 25,420	\$ 39,241

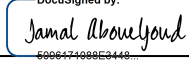
Original Contract Amount for year 9 & 10:	\$64,926.00
Prior Amendment(s) Added (+):	\$.00
This Amendment Will Add (+):	\$12,414.00
Revised Contract Amount:	\$77,340.00

The changes within are hereby authorized, subject to the terms and conditions of that certain Customer Contract referenced above by and between **ENGIE Services U.S. Inc.**, and **City of Dublin**. Except as set forth herein, the Customer Contract is not amended, modified, impaired or otherwise affected, and is hereby confirmed in full force and effect.

CITY OF DUBLIN

By: _____
Print Name: _____
Title: _____

ENGIE SERVICES U.S. INC.

By: 
Print Name: Jamal Aboueljoud
Title: Director, Service Management

RETURN EXECUTED COPY TO: ENGIE Services U.S. Inc., 500 Twelfth Street, Suite 300, Oakland, CA 94607, Attn.: Contract Administrator



DIR Project Registration # _____
 OpTerra ES Project #: ACEOM32396
 OpTerra ES Contract # CU1286

AMENDED AND RESTATED ENERGY SERVICES CONTRACT FOR OPERATION & MAINTENANCE

This AMENDED AND RESTATED ENERGY SERVICES CONTRACT FOR OPERATION & MAINTENANCE (this "Agreement") is made and entered into as of 29 March 2017 by and between **OpTerra Energy Services, Inc.**, a Delaware corporation ("**OpTerra ES**"), and **The City of Dublin** (the "Customer") and together with OpTerra ES the "Parties" and each of Customer and OpTerra ES a "Party").

RECITALS

WHEREAS, OpTerra ES is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, maintenance of Generating Facilities (as defined below);

WHEREAS, in order to curtail the high cost of energy and to promote greater sustainability, on 3 May 2011 the Customer and Chevron Energy Solutions Company, a division of Chevron U.S.A. Inc. ("**CES**"), entered into a Consulting Services Agreement to conduct a comprehensive energy analysis of all Customer facilities;

WHEREAS, CES completed the analysis and provided the Customer with a proposed Energy Action Plan that included a detailed implementation strategy highlighting energy efficient upgrades and renewable energy productions projects;

WHEREAS, on 1 August 2011, the Customer entered into an Energy Services Contract (the "**ESC**") with CES for the implementation of certain energy related improvements to Customer's Facilities;

WHEREAS, CES assigned the ESC to OpTerra ES in September 2014, and OpTerra ES and Customer amended the ESC on 24 October 2015, by Amendment No. 1;

WHEREAS, the Customer and OpTerra ES desire to amend and restate the ESC in its entirety in order, among other things, to cancel the "Savings Guarantee" and to retain only the "PM Services" (each as defined in the ESC), as amended by this Agreement; and

WHEREAS, OpTerra ES has agreed to provide preventive maintenance services for the Generating Facilities on the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, the Customer and OpTerra ES hereby agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement and its Attachments, the defined terms herein shall have the meaning set forth as follows:

"**AAA**" is defined in ARTICLE 9.

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Services are then being performed. For the avoidance of doubt, the term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

"**Agreement**" is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein), as well as all amendments, restatements, supplements and other modifications hereto.

"**Annual Maintenance and Monitoring Fee**" means a fee payable annually in advance by the Customer to OpTerra ES. The Annual Maintenance and Monitoring Fee for each O&M Period shall be as stated in the below fee schedule table. The Annual Maintenance and Monitoring Fee shall be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding O&M Period. The Annual Maintenance and Monitoring Fee for each O&M Period after the tenth (10th) O&M Period will be negotiated in

Operation & Maintenance Agreement
The City of Dublin and OpTerra Energy Services

good faith by the Parties, not later than ninety (90) days prior to the end of the preceding O&M Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

Fee Schedule (includes only monitoring services portion of the Annual Guarantee Fee (as defined in the ESC); does not include remainder of Annual Guarantee Fee):

O&M Period	Start Date	End Date	Monitoring Services	PV O&M Services	Total Fee	Payment Status
1	1 Feb 2014	31 Jan 2015	\$12,238	\$11,097 (net of \$4,633 credit)	\$23,335	Paid in full
2	1 Feb 2015	31 Jan 2016	\$12,238	\$16,202	\$28,440	Paid in full
3	1 Feb 2016	31 Jan 2017	\$12,238	\$16,688	\$28,926	Paid PV O&M Services only
4	1 Feb 2017	31 Jan 2018	\$12,238	\$17,189	\$29,427	Billed for PV O&M Services only
5	1 Feb 2018	31 Jan 2019	\$12,238	\$17,704	\$29,942	
6	1 Feb 2019	31 Jan 2020	\$12,238	\$18,235	\$30,473	
7	1 Feb 2020	31 Jan 2021	\$12,238	\$18,782	\$31,020	
8	1 Feb 2021	31 Jan 2022	\$12,238	\$19,346	\$31,584	
9	1 Feb 2022	31 Jan 2023	\$12,238	\$19,926	\$32,164	
10	1 Feb 2023	31 Jan 2024	\$12,238	\$20,524	\$32,762	

"Applicable Law" means any statute, law, treaty, building codes, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority or competent jurisdiction, as may be in effect at the time the Services are undertaken.

"Applicable Permits" means all permits, waivers, authorizations, or licenses issued or required to be issued by any Governmental Authority in connection with the Services.

"Customer" is defined in the Preamble.

"Dispute" is defined in ARTICLE 9.

"Force Majeure" means acts or events that are beyond the reasonable control of the affected Party and not caused by the negligence or fault of the Party affecting, including but not limited to any of the following: (i) acts of God; (ii) acts of the public enemy or terrorist acts; (iii) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (iv) work by local utility; (v) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (vi) sabotage, vandalism, riots or civil disobedience; (vii) labor disputes or strikes; (viii) labor or material shortages, delay in manufacturing and deliveries of equipment (if such delay is caused by an event that would otherwise constitute Force Majeure); (ix) restraint by court order or public authority (whether valid or invalid); (x) inability to obtain or keep in force any Applicable Permit; (xi) Abnormally Severe Weather Conditions; (xii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Project Location and/or other reliable calibrated and appropriate weather station representative of such Project Location; (xiii) requirement by utility that any Generating Facility discontinue operation for any reason; (xiv) appropriation or diversion of electricity by sale or order of any Governmental Authority; (xv) any other action by any Governmental Authority which prevents or inhibits the Parties from carrying out their respective obligations under this Agreement (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xvi) any utility power outage at any Project Location.

"Generating Facility" means each photovoltaic, solar powered generating facility located at a Project Location, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect such solar power plant to the applicable utility meter.

"Governmental Authority" means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

"Hazardous Substances" means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at

any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.

"Interest" shall mean interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The "prime rate" shall be "Prime Rate" of interest per annum for domestic banks as published in The Wall Street Journal in the "Money Rates" section, or if such rate ceases to be published in The Wall Street Journal or The Wall Street Journal ceases publication, such other rate as agreed by the Parties.

"O&M Commencement Date" means the first day of the month immediately following the later of (i) the full execution of the ESC, and (ii) OpTerra ES's receipt of the Annual Maintenance and Monitoring Fee for the first O&M Period.

"O&M Period" means each one-year period following the O&M Commencement Date.

"OpTerra ES" is defined in the Preamble.

"Party" and "Parties" are defined in the Preamble.

"Project Location" means that area or areas where the Generating Facilities are installed, as set forth in Attachment A.

"Services" means the maintenance services to be performed by OpTerra ES in accordance with the terms and subject to the conditions of this Agreement.

"Term" is defined in Section 2.01.

ARTICLE 2. TERM

Section 2.01 So long as Customer pays to OpTerra ES the Annual Maintenance and Monitoring Fee, OpTerra ES will provide the Services with respect to the Generating Facilities at the Project Locations, all as described in this Agreement, up to ten (10) years (the "Term") from the O&M Commencement Date on an annualized basis. The Parties may agree to renew the Term for additional five-year periods. Customer may cancel service with one hundred eighty (180) days prior written notice to OpTerra ES.

ARTICLE 3. ANNUAL MAINTENANCE AND MONITORING FEE; REPORTING

Section 3.01 The Annual Maintenance and Monitoring Fee for the first O&M and Monitoring Period shall be invoiced by OpTerra ES to the Customer in a lump sum upon the execution of this Agreement. All subsequent Annual Maintenance and Monitoring Fees will be invoiced by OpTerra ES on the first day of the corresponding O&M Period. The Customer, or its designee, shall pay OpTerra ES such Annual Maintenance and Monitoring Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless the Customer gives OpTerra ES prior written notice of its intent to terminate the Services, any failure to timely pay the Annual Maintenance and Monitoring Fee in accordance with this Agreement shall be a material default by Customer hereunder, and OpTerra ES, in addition to any other legal, contractual and equitable remedies available to it, shall have no obligation thereafter to provide Services.

Section 3.02 Any amount not paid when due shall, from and after the due date, bear interest. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

Section 3.03 The Annual Maintenance and Monitoring Fee is not refundable for any reason.

Section 3.04 Upon completion of any maintenance or repair work, OpTerra ES will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to the Customer on a semi-annual basis.

Section 3.05 Authority to Subcontract. OpTerra ES may delegate its duties and performance under this Agreement, and has the right to enter into agreements with any subcontractors and other service or material providers as OpTerra ES may select in its discretion to perform the Services. OpTerra ES will not be required to enter into any subcontracts with parties whom OpTerra ES has not selected or subcontractors whom OpTerra ES has objection to using.

Section 3.06 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of OpTerra Energy Services and OpTerra Energy Services' subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Customer will obtain from the Director

of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Customer will promptly notify OpTerra Energy Services of any changes to any such prevailing wage determination.

ARTICLE 4. MAINTENANCE and Monitoring SERVICES

Section 4.01 OpTerra ES will provide the following O&M Services during the term:

- (a) Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- (b) Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- (c) Cleaning:
 - (i) Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
 - (ii) Wash PV modules per manufacturer's warranty specification, and remove accumulated dust and debris on an annual basis for optimal system performance.
 - (iii) Identify broken modules on a site plan for follow up with the Customer for replacement.
 - (iv) Use clean fresh water with soft brush abrasion on problematic areas only. No detergents or chemicals will be used on PV modules.
 - (v) Collect and properly dispose of run-off water where arrays are in parking lots per local authority requirement.
 - (vi) Provide detailed annual inspection and cleaning report with before and after photo to customer

Section 4.02 Monitoring: Daily Performance Monitoring and Notification

- i. Continuous monitoring of the Customer's System via experienced solar monitoring technicians. Report performance anomalies to the Customer, resolve issues as needed.
- ii. Operational status (inverter and system on/off) and performance alerts (actual vs. expected performance) are continuously monitored by system computers and monitoring technicians that automatically receive alerts of system anomalies.
- iii. Monitoring technicians identify and respond to system alerts including contacting authorized Customer personnel.
- iv. Monitoring technicians actively coordinate with Customer personnel to resolve data communication and meter data quality issues.
- v. Troubleshoot network-related data outages.

Performance Monitoring Website

- i. Customer website for monitoring operational and environmental performance of the solar power system.
- ii. All site data can be downloaded to the Customer's computer in Microsoft Excel format.
- iii. Customer will be provided with login credentials for use during the term of the Agreement.

Section 4.03 Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, Customer must contact the OpTerra ES PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by OpTerra ES can be repaired or reconstructed by OpTerra ES at Customer's request. Customer must submit a request for quotation to the OpTerra ES PV Operations & Maintenance Manager. OpTerra ES will inspect the damage and provide a written quotation and complete scope of work to Customer to restore the Generating Facility to normal operational condition. Before proceeding with repairs, OpTerra ES and Customer must execute a work order, on OpTerra ES' form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

- Hourly technician labor rate \$150/hr.
- Materials markup 15%

Section 4.04 Services and Equipment to Be Covered By Customer

- (a) OpTerra ES's obligations under this Agreement are expressly conditioned upon Customer's payment of the Annual Maintenance and Monitoring Fee and providing and being responsible for the following, without cost to OpTerra ES:
- (i) Making the Generating Facilities described herein available to OpTerra ES as of the O&M Commencement Date.
 - (ii) Operating and maintaining security systems associated with the Generating Facilities.
 - (iii) Maintaining all landscaping in and around Generating Facilities including tree trimming.
 - (iv) Allowing OpTerra ES and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Services, including reasonable work, parking, and equipment staging areas.
 - (v) Allowing OpTerra ES and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for OpTerra ES to satisfy its obligations under this Agreement.
 - (vi) Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by OpTerra ES during the performance of the Services which Hazardous Substances were not deposited by OpTerra ES, including any backfill with clean soil as may be reasonably required.
 - (vii) Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- (b) OpTerra ES will have no obligation to provide the Services to the extent such provision of Services is materially adversely affected by Customer's failure to satisfy the conditions set forth in this Agreement.

ARTICLE 5. WARRANTY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 5, OPTERRA ES MAKES NO WARRANTIES IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CUSTOMER WILL HAVE NO REMEDIES AGAINST EITHER OPTERRA ES OR ANY OPTERRA ES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER OPTERRA ES, NOR OPTERRA ES's SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

Section 5.01 OpTerra ES warrants to Customer that material and equipment furnished under this Agreement will be of good quality and new, unless otherwise specifically required or permitted by this Agreement. OpTerra ES further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of installation ("OpTerra ES Warranty").

Section 5.02 Equipment and material warranties that exceed the OpTerra ES Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Customer, after the one (1) year period. During the OpTerra ES Warranty period, OpTerra ES will be Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the OpTerra ES Warranty period, OpTerra ES, or OpTerra ES's subcontractors, will correct its defects, and/or OpTerra ES will work with the equipment or material manufacturer as Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Customer. If a warranty issue arises on any equipment or material installed after the OpTerra ES Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Customer will contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer will have sole responsibility for such issues.

Section 5.03 The warranties in this ARTICLE 5 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than OpTerra ES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra ES subcontractor, improper use or operation, or normal wear and tear under normal usage. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of installation; and thereafter, OpTerra ES will have no liability for

breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.15 and 338.

ARTICLE 6. CONSENTS

Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Agreement, and this Agreement does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the other Party's performance under this Agreement.

ARTICLE 7. LIMITATION OF LIABILITY; INSURANCE

Section 7.01 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by Applicable Law.

Section 7.02 OpTerra ES Insurance. OpTerra ES will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Customer via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which OpTerra ES is not a qualified self-insured. Limits as follows:

*	Workers' Compensation:	Statutory
*	Employers Liability:	Bodily Injury by accident \$1,000,000 each accident
		Bodily Injury by disease \$1,000,000 each employee
		Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

*	\$2,000,000 each occurrence for Bodily Injury and Property Damage
*	\$4,000,000 General Aggregate - other than Products/Completed Operations
*	\$4,000,000 Products/Completed Operations Aggregate
*	\$2,000,000 Personal & Advertising Injury
*	\$ 100,000 Damage to premises rented to OpTerra ES

Coverage to be written on a claims made form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

- (c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

- (d) Professional Liability insurance with limits of:

*	\$1,000,000 per occurrence
*	\$1,000,000 aggregate

Coverage to be written on a claims-made form.

- (e) Umbrella/Excess Liability Insurance. Limits as follows:

*	\$1,000,000 each occurrence
*	\$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- * The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Customer.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (i) include Customer as an additional insured with respect to Work performed under this Agreement, and
 - (ii) provide that the insurance is primary coverage with respect to all insureds.

ARTICLE 8. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

ARTICLE 9. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

If a dispute arises out of or relates to this Agreement, or the services contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 9 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.

If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association. The following provisions apply to all arbitration proceedings pursuant to this Article: (i) The place of arbitration will be the American Arbitration Association office closest to where the Services were performed; (ii) one arbitrator will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules") (to the extent of any conflicts between the Arbitration Rules and the provisions of this Agreement, the provisions of this Agreement prevail); (iii) the Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply (in the discretion of the arbitrator, the production of additional documents that are relevant and material to the determination of the Dispute may be required); (iv) the arbitrator does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated); all arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails, and each Party will pay its own costs of legal representation and witness expenses; (v) the award must be in the form of a reasoned award; (vi) the Dispute will be resolved as quickly as possible, and the arbitrator will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced; and (vii) the award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

This Agreement is governed by and must be interpreted under the laws of the State where the Services are performed, without regard to the jurisdiction's choice of law rules.

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

ARTICLE 10. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO OPTERRA ES: OpTerra Energy Services
500 12th Street, Suite 300
Oakland CA, 94607
Attention: Carrie Dixon, Project Manager

With a COPY TO: OpTerra Energy Services
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105
Tel: 626-377-4948
Attention: Contract Administrator

TO CUSTOMER: The City of Dublin, California
100 Civic Plaza
Dublin, CA, 94568
Tel: (925) 833-6630
Fax: (925) 829-9248
Attention: Dan Stevenson, Public Works Manager

ARTICLE 11. CONSTRUCTION OF AGREEMENT

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

ARTICLE 12. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

ARTICLE 13. NO WAIVER

The failure of OpTerra ES or Customer to insist upon the strict performance of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of OpTerra ES or Customer.

ARTICLE 14. HEADINGS

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

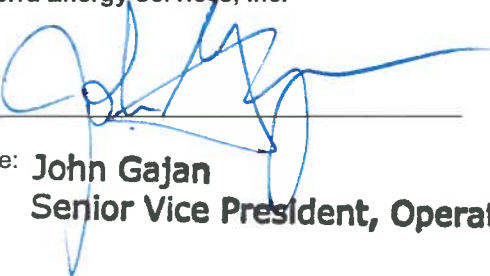
ARTICLE 15. COUNTERPARTS; INTEGRATION

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

OPTERRA ES:
OpTerra Energy Services, Inc.

CUSTOMER:
City of Dublin

By: 

By: 

Name: **John Gajan**

Name: **CHRISTOPHER L. FOSS**

Title: **Senior Vice President, Operations**

Title: **CITY MANAGER**

ATTACHMENT A
PROJECT LOCATIONS

Site	Address	Array Type
Dublin Civic Center	100 Civic Plaza, Dublin CA 94568	Parking Canopy
Dublin Library	200 Civic Plaza, Dublin CA 94568	Parking Canopy
Dublin Senior Center	7600 Amador Valley Blvd, Dublin CA 94568	Rooftop
Fire Station 16	7494 Donohue Dr, Dublin CA 94568	Rooftop
Fire Station 17	6200 Madigan Dr, Dublin CA 94568	Parking Canopy
Fire Station 18	4800 Fallon Dr, Dublin CA 94568	Parking Canopy
Shannon Center	11600 Shannon Ave, Dublin CA 94568	Parking Canopy



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Amendment to the Memorandum of Understanding for Dublin Place Shopping Center
Prepared by: Hazel L. Wetherford, Economic Development Director

EXECUTIVE SUMMARY:

The City Council will consider approval of a second amendment to the Memorandum of Understanding with ASVRF 7300 Amador, LP (as successor in interest to ASVRF Acquisitions, LLC), ASVRF Dublin Place, LP, and ASVRF 6960 Amador, LP regarding Dublin Place Shopping Center. The Amendment includes a 14-month term extension.

STAFF RECOMMENDATION:

Adopt the **Resolution** Approving a Second Amendment to the Memorandum of Understanding regarding Dublin Place Shopping Center.

FINANCIAL IMPACT:

There is no financial impact associated with the approval of this Amendment.

DESCRIPTION:

On October 15, 2019, the City Council adopted Resolution No. 107-19 (Attachment 3) approving a Memorandum of Understanding (MOU) between the City of Dublin and ASVRF Acquisitions, LLC, ASVRF Dublin Place, LP, and ASVRF 6960 Amador LP for Dublin Place Shopping Center.

On April 6, 2021, the City Council adopted Resolution No. 26-21 (Attachment 4) approving a First Amendment to the Memorandum of Understanding extending the term by 12-months.

Located in the Retail District of Downtown Dublin, Dublin Place Shopping Center contains eight parcels with two property owners. ASVRF Dublin Place, LP, also known as American Realty Advisors (ARA), now owns six of the eight parcels. At the time of the initial MOU in September

2019, ARA only owned five of the eight parcels and desired to acquire 7300 Amador Plaza Rd. in partnership with the City of Dublin.

During that time, the City was working on the development of the Downtown Preferred Vision project and was working with ARA to develop new and more appropriate uses for the Shopping Center consistent with the City's Downtown Dublin Specific Plan, and to amend the Covenants, Conditions and Restrictions (CC&Rs) and Reciprocal Easement Agreement (REA) encumbering the Shopping Center.

The MOU outlined the terms between ARA and the City as it related to the joint commitment of funds towards the acquisition of 7300 Amador Plaza Rd. As part of the acquisition, the City contributed \$3,000,000 and ARA contributed \$3,775,000. The MOU outlined the following requirements of ARA:

- Acquire the other portions of the Shopping Center, and if successful in acquiring the remaining sites, cooperate in the City's efforts to site a town square park and sell the City the necessary acreage as outlined in the MOU;
- Identify and create a separate site for the development of an up-to-80-unit affordable senior housing site;
- Obtain termination rights and/or relocation rights within the leases for any future lease(s) within both the 7950 Amador Valley Blvd. property and 7300 Amador Plaza Rd. property;
- Apply for a permit for a new monument signage program which would include a rebranding effort of the Shopping Center; and
- If, during the 18-month period as outlined in the MOU, the City does not approve a higher and better use of 7505 Dublin Blvd. as part of a larger redevelopment of the Shopping Center, or if ARA decides that it would be beneficial not to develop 7505 Dublin Blvd. as part of a larger redevelopment of the Shopping Center, then ARA will obtain a building permit for the development of 7505 Dublin Blvd.

Due to the COVID-19 pandemic and the ongoing impact to owners and tenants of retail properties, priorities were shifted and substantial delays in negotiations occurred. ARA has commenced negotiations again with the remaining property owner; however, additional time is needed. It is for this reason that the City and ARA have agreed to extend the MOU for a period of 14 months to June 30, 2023.

STRATEGIC PLAN INITIATIVE:

Strategy 1: Implement the City's Adopted Preferred Vision for Downtown Dublin.

Objective B: Work with property owners on acquisitions that result in the creation of a future town square.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted, and a copy of this Staff Report has been provided to ARA.

ATTACHMENTS:

- 1) Resolution Approving a Second Amendment to the Memorandum of Understanding Regarding Dublin Place Shopping Center
- 2) Exhibit A to the Resolution – Second Amendment to the Memorandum of Understanding (Dublin Place Shopping Center)
- 3) Resolution No. 107-19 Approving a Memorandum of Understanding Regarding Dublin Place Shopping Center
- 4) Resolution No. 26-21 Approving a First Amendment to the Memorandum of Understanding (Dublin Place Shopping Center)

RESOLUTION NO. XX – 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****APPROVING A SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING
REGARDING DUBLIN PLACE SHOPPING CENTER**

WHEREAS, on October 15, 2019, the City Council adopted Resolution No. 107-19 approving a Memorandum of Understanding (MOU) between the City of Dublin and ASVRF Acquisitions, LLC, ASVRF Dublin Place, LP, and ASVRF 6960 Amador, LP also known as American Realty Advisors (ARA) for Dublin Place Shopping Center; and

WHEREAS, on April 6, 2021, the City Council adopted Resolution No. 26-21 approving a First Amendment to the MOU; and

WHEREAS, upon the City's request, ARA agreed to use commercially reasonable efforts to facilitate future development of the Shopping Center and site a Town Square, including the acquisition of 7300 Amador Plaza Rd. (the "Property"); and

WHEREAS, the MOU outlined the terms between ARA and the City as it related to the joint commitment of funds towards the acquisition of the Property; and

WHEREAS, due to the COVID-19 pandemic and the ongoing significant impact to owners and tenants of retail properties, priorities were shifted and substantial delays in negotiations occurred; and

WHEREAS, ARA has commenced negotiations again with the remaining property owner; however, additional time is needed; and

WHEREAS, the City requested, and ARA agreed, to extend the MOU for a period of 14-months.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve the Second Amendment to the Memorandum of Understanding between the City of Dublin and ASVRF 7300 Amador, LP, ASVRF Dublin Place, LP, and ASVRF 6960 Amador, LP regarding Dublin Place Shopping Center.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the amendments to the agreements, attached hereto as **Exhibit A**, and make any necessary, non-substantive changes to carry out the intent of this Resolution, as deemed appropriate by the City Manager.

{Signatures on the following page}

PASSED, APPROVED AND ADOPTED this 5th day of April 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING (Dublin Place Shopping Center)

This Second Amendment to Memorandum of Understanding ("Second Amendment") dated as of **April 5, 2022** ("Effective Date"), is entered into between and among the **City of Dublin** (the "City"), **ASVRF 7300 Amador, LP**, a Delaware limited partnership ("**ASVRF 7300**") as successor in interest to **ASVRF Acquisitions, LLC**, a Delaware limited liability company ("ASVRF Acquisitions"), **ASVRF Dublin Place, LP**, a Delaware limited partnership ("ASVRF Dublin") and **ASVRF 6960 Amador, LP**, a Delaware limited partnership ("ASVRF Amador" and collectively "Owners"). The City and Owners are each individually referred to as a "Party" and collectively referred to as the "Parties." Capitalized terms not defined in this First Amendment shall have the meanings specified in the MOU.

RECITALS

WHEREAS, ASVRF Acquisitions assigned all of its interest under the Purchase Agreement to ASVRF 7300 which has acquired 7300 Amador Plaza Road, Dublin, California, Assessor's Parcel No. 941-0305-027 (the "7300 Amador Property"), located within the Dublin Place Shopping Center (the "Shopping Center"); and

WHEREAS, the Owners wish to develop new and more appropriate uses for the Shopping Center consistent with the City's Downtown Dublin Specific Plan, including the siting of a Town Square and the City is supportive of these efforts; and

WHEREAS, Owners and the City desire to see the Covenants, Conditions & Restricts (CC&Rs) and Reciprocal Easement Agreement (REA) encumbering the Shopping Center amended to allow more appropriate uses at the Shopping Center, consistent with the City's Downtown Dublin Specific Plan, redevelopment opportunities of various areas within the Shopping Center, and/or improved signage; and

WHEREAS, to bring specificity to their joint commitment and to set out in general terms and actions to encourage future development of the Shopping Center and siting of a Town Square, consistent with the City's Downtown Specific Plan, the Parties entered into a Memorandum of Understanding dated October 15, 2019 (the "MOU"); and

WHEREAS, the Parties executed the First Amendment to the MOU on April 6, 2021 extending the term of the MOU to April 14, 2022;

WHEREAS, in response to a request by the City, Owners have agreed to extend the Term of the MOU upon the terms and conditions set forth herein.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Recitals. The Recitals stated above are hereby ratified by the Parties as being true, accurate and correct and are incorporated herein as if set forth in full.

Section 2. Term. The Term of this MOU shall be extended to the close of business on June 30, 2023 and any other time periods specified in the MOU shall be extended accordingly.

Section 3. Entire Agreement. The MOU, as modified by this Second Amendment, contains all of the agreements and understandings related to the subject matter hereof.

Section 4. Remainder of MOU Unmodified. Except as set forth in this Second Amendment, the Parties agree that the MOU is unmodified and in full force and effect and that no Party is in breach of any obligations thereunder. To the extent that the terms of the MOU conflict with the terms of this Second Amendment, the terms of this Second Amendment shall be controlling.

Section 5. Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment, effective as of the date first written above.

CITY OF DUBLIN

By: _____
Linda Smith, City Manager

Attest:

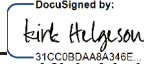
By: _____
Marsha Moore, City Clerk

Approved as to form

By: _____
John D. Bakker, City Attorney

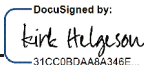
ASVRF 7300 Amador, LP
a Delaware limited liability partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation,
its General Partner

By:  _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: March 24, 2022

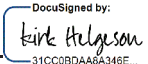
ASVRF DUBLIN PLACE, LP
a Delaware limited liability partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By:  _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: March 24, 2022

ASVRF 6960 AMADOR, LP
a Delaware limited partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By:  _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: March 24, 2022

RESOLUTION NO. 107 - 19**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**APPROVING A MEMORANDUM OF UNDERSTANDING REGARDING DUBLIN PLACE
SHOPPING CENTER**

WHEREAS, ASVRF Acquisitions, LLC, ASVRF Dublin Place, LP, and ASVRF 6960 Amador LP also known as American Realty Advisors (ARA) and the City desire to see redevelopment opportunities of various areas within the Dublin Place Shopping Center; and

WHEREAS, the City has requested, and ARA has agreed, to use commercially reasonable efforts to facilitate future development of the Shopping Center and site a Town Square, including acquisition of 7300 Amador Plaza Rd (the "Property"); and

WHEREAS, the purchase price for the Property is Six Million Seven Hundred Seventy-Five Thousand dollars (\$6,775,000); and

WHEREAS, ARA and the City wish to partner together towards acquiring the Property, with ARA depositing Three Million Seven Hundred Seventy-Five Thousand dollars (\$3,775,000) into escrow and the City contributing Three Million dollars (\$3,000,000) towards the purchase of the Property; and

WHEREAS, the parties now wish to enter into a Memorandum of Understanding (MOU) to bring clarity to their joint commitment and to set out in general terms the various roles each party will play and procedures to be followed; and

WHEREAS, for a period of 18 months following the effective date of the Memorandum of Understanding (MOU), ARA will attempt to:

- Acquire the other portions of the Shopping Center, and if successful in acquiring the remaining sites, will cooperate in the City's efforts to site a town square park and sell the City the necessary acreage as outlined in the MOU;
- Identify and create a separate site for the development of an up to 80-unit affordable senior housing site;
- Obtain termination rights and/or relocation rights within the leases for any future lease(s) within both 7950 Amador Valley Blvd. and the Property;
- Apply for a permit for a new monument signage program which would include a rebranding effort of the Shopping Center; and
- If during the 18-month period as outlined in the MOU, the City does not approve a higher and better use of 7505 Dublin Blvd. as part of a larger redevelopment of the Shopping Center, or if ARA decides that it would be beneficial not to develop 7505 Dublin Blvd. as part of a larger redevelopment of the Shopping Center, then ARA will obtain a building permit for the development of 7505 Dublin Blvd.; and

WHEREAS, if during the 18-month period, the City and ARA mutually agree that ARA has failed to comply with the terms of the MOU, ARA shall reimburse the City's contribution of Three Million dollars (\$3,000,000).

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve the Memorandum of Understanding regarding Dublin Place Shopping Center for the acquisition of 7300 Amador Plaza Road.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the MOU in substantially the form attached as **Exhibit A** to this Resolution, and to take such other and further action, as necessary and appropriate to carry out the intention of this Resolution, including execution of a Funding Agreement related to acquisition of the Property, as deemed appropriate by the City Manager.

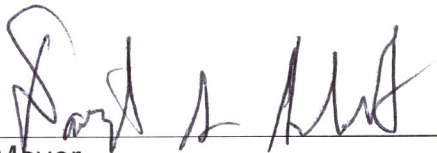
PASSED, APPROVED AND ADOPTED this 15th day of October, 2019, by the following vote:

AYES: Councilmembers Goel, Hernandez, Josey, Kumagai and Mayor Haubert

NOES: None

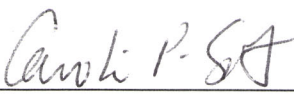
ABSENT: None

ABSTAIN: None



Mayor

ATTEST:



City Clerk

**MEMORANDUM OF UNDERSTANDING
(Dublin Place Shopping Center)**

This Memorandum of Understanding ("MOU") dated **October 15, 2019** ("Effective Date") is entered into between and among the **City of Dublin** (the "City"), **ASVRF Acquisitions, LLC**, a Delaware limited liability company ("ASVRF Acquisitions"), **ASVRF Dublin Place, LP**, a Delaware limited partnership ("ASVRF Dublin") and **ASVRF 6960 Amador, LP**, a Delaware limited partnership ("ASVRF Amador" and collectively "Owners"). The City and Owners are each individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, ASVRF Acquisitions has entered into that certain Purchase and Sale Agreement dated August 2, 2019 with EVCAP Amador Plaza LLC and TA Amador Plaza, LLC (the "Purchase Agreement") to purchase 7300 Amador Plaza Road, Dublin, California, Assessor's Parcel No. 941-0305-027 (the "7300 Amador Property"), located within the Dublin Place Shopping Center (the "Shopping Center") for a purchase price of Six Million Seven Hundred Seventy-Five Thousand dollars (\$6,775,000); and

WHEREAS, the Owners wish to develop new and more appropriate uses for the Shopping Center consistent with the City's Downtown Dublin Specific Plan, including the siting of a Town Square and the City is supportive of these efforts; and

WHEREAS, Owners and the City desire to see the Covenants, Conditions & Restricts (CC&Rs) and Reciprocal Easement Agreement (REA) encumbering the Shopping Center amended to allow more appropriate uses at the Shopping Center, consistent with the City's Downtown Dublin Specific Plan, redevelopment opportunities of various areas within the Shopping Center, and/or improved signage; and

WHEREAS, in furtherance of the Parties' desire to amend the CC&Rs and REA, Owners intend to work with any other property owners or tenants within the Shopping Center, whose consent may be necessary to complete such amendments; and

WHEREAS, the City has requested, and Owners have agreed, to use commercially reasonable efforts to facilitate future development of the Shopping Center and site a Town Square; and

WHEREAS, ASVRF Acquisitions will deposit into escrow the amount of Three Million Seven Hundred Seventy-Five Thousand dollars (\$3,775,000), together with its share of any closing costs for the purchase of the 7300 Amador Property; and

WHEREAS, subject to the terms of this MOU, City will contribute Three Million Dollars (\$3,000,000) towards the purchase price of the 7300 Amador Property; and

WHEREAS, the Parties now wish to enter into an agreement to bring specificity to their joint commitment and to set out in general terms and actions needed to be taken to by all Parties to complete the acquisition of the 7300 Amador Property and encourage future development of the Shopping Center and siting of a Town Square, consistent with the City's Downtown Dublin Specific Plan.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Term. The provisions of this MOU shall expire the earlier of (i) eighteen (18) months from the Effective Date of this MOU or (ii) upon completion of the Parties' obligations under this MOU or (iii) by mutual consent of the Parties.

Section 2. Contribution by the City for the 7300 Amador Property.

- A. The City and ASVRF Acquisitions shall, in good faith, negotiate and execute a funding agreement governing their rights and obligations with respect to the City's contribution toward the purchase of the 7300 Amador Property (the "Funding Agreement").
- B. On or before two business days prior to the Closing Date (as defined in the Purchase Agreement), City shall deposit Three Million Dollars (\$3,000,000) into escrow towards the purchase of the 7300 Amador Property ("City's Share") pursuant to the terms of the Funding Agreement.
- C. In the event that the Parties mutually determine that ASVRF Acquisitions has failed to comply with the terms of the Funding Agreement (including the provisions of Section 3 below as incorporated in the Funding Agreement), ASVRF Acquisitions shall reimburse the City's Share pursuant to the terms of said Funding Agreement.

Section 3. Owner's Obligations.

A. Acquisitions, leases, and improvements

For a period of 18 months following the effective date of this MOU, Owners shall:

- 1. Owners shall, in good faith attempt to acquire (either in their own names or through related entities), at no more than Fair Market Value, the other portions of the Shopping Center not currently owned by Owners.
- 2. Owners shall, in good faith attempt to identify and create a separate site within the area proximate to 7950 Amador Valley Boulevard (the former Grocery Outlet building) and the 7300 Amador Property to provide for the development of an up to 80-unit affordable senior housing site, which the City will have the opportunity to acquire based upon the land's Fair Market Value as further provided for herein.
- 3. ASVRF Dublin and ASVRF Acquisitions shall use good faith efforts to obtain termination rights and/or relocation rights within the leases for any future lease(s) within both the 7950 Amador Valley Boulevard Property and, upon its acquisition by ASVRF Acquisitions or affiliated entity, the 7300 Amador Property. However, temporary seasonal leases shall not be restricted on either property.
- 4. Owners shall apply for a permit to the City for a new monument signage program to serve the Shopping Center. The new signage program would

incorporate an immediate rebranding effort, which would be subject to City consultation and approval as part of the City's permit process.

5. If during the 18-month period described above, the City does not approve a higher and better use of the 7505 Dublin Boulevard (the former Coco's building) as part of a larger redevelopment of the Shopping Center, or if ASVRF Dublin decides that it would be beneficial not to develop 7505 Dublin Boulevard as part of a larger redevelopment of the Shopping Center, then ASVRF Dublin shall obtain a building permit for the development of 7505 Dublin Boulevard.

B. Siting of Town Square

1. If ASVRF Acquisitions or a related entity is successful in acquiring the parcel of land comprised of 6850 Amador Plaza Road, 6900 Amador Plaza Road, and 575 Dublin Boulevard (APN 941-0305-4300) within the Shopping Center (the "941 Parcel"), ASVRF Acquisitions will cooperate in the City's efforts to site a Town Square and park, which collectively could take up to approximately 1 acre of land within the Shopping Center in a location generally depicted in Exhibit A.
 - i. Upon acquisition of the 941 Parcel, ASVRF Acquisitions shall sell the necessary acreage, consistent with the area and location as depicted on Exhibit A or an area to be mutually agreed upon by the Parties, to the City at its Fair Market Value pursuant to the terms of a mutually agreed upon purchase and sale agreement. Nothing herein prevents the City from using the power of eminent domain to acquire a parcel or parcels within the Dublin Place Shopping Center for use as a Town Square.
 - ii. Owners shall not oppose the City's efforts to site a Town Square and park or other related public infrastructure in the Shopping Center (i.e., would not initiate a public opposition campaign, file a CEQA lawsuit, etc.) so long as its location, size and phasing of development is consistent with Exhibit A or as otherwise mutually agreed upon by the Parties.

Section 4. Successors and Assigns. This MOU is binding upon and shall inure to the benefit of the Parties, and each of them, and their respective successors in interest and assigns.

Section 5. Fair Market Value. Whenever used in this MOU, the term "Fair Market Value" shall mean the most probable price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, as of a specific date. As between and among the Parties to this MOU, fair market value may be determined by the following process:

- A. Each Party shall appoint an appraiser and notify the other party in writing of the name and address of the appraiser so chosen, along with the appraiser's qualifications. Each appraiser shall be an MAI certified real estate appraiser duly licensed by the State of California, having at least 10 years of experience

appraising commercial real estate with an emphasis on mixed use retail in the Tri-Valley Area of Alameda County, consisting of the cities of Dublin, Livermore, Pleasanton and San Ramon.

- B. The appraisers shall then meet and confer during the thirty (30) day period, commencing on the date on which the last of the appraisers has been appointed ("Appraiser Negotiation Period") to attempt to mutually agree upon fair market value of the subject property. If the appraisers cannot agree upon fair market value as of the expiration of the Appraiser Negotiation Period, the two appraisers shall, within twenty (20) days thereafter; (i) each make their own determination of fair market value, and (ii) attempt to select a third appraiser meeting the qualifications stated in this section. If the two appraisers are not able to agree upon the third appraiser, either party, by giving fifteen (15) days written notice to the other party, can apply to the Presiding Judge of the Superior Court of Alameda County for the selection of a third appraiser who meets the qualifications stated in this section. Each of the parties shall bear one half (1/2) of the cost of appointing the third appraiser and paying the third appraiser's fees.
- C. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party. The third appraiser shall, within thirty (30) days after his or her appointment, make a determination of fair market value using the same criteria specified above. The determinations of fair market value prepared by all three appraisers shall be compared and fair market value shall be whichever determination by either party appraiser is closer to the determination of the third appraiser (and if they are equally close, fair market value shall be the determination of the third appraiser).
- D. In the event the City elects to proceed with eminent domain to acquire a property which was previously the subject of a Fair Market Value determination in accordance with this section, the opinions of value expressed by any of the appraisers utilized in this process shall be inadmissible except in the event one of said appraisers is retained as an expert witness by a party in the eminent domain proceeding in which event said opinion may be used for purposes of impeachment of said appraiser. Furthermore, the compensation to be paid in any such eminent domain action shall be determined in accordance with California Eminent Domain Law.

Section 6. Entire Agreement. This MOU constitutes the entire understanding between the parties with respect to the matters contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, letters of intent and proposals, in each case with respect to the transaction contemplated herein, are hereby superseded and rendered null and void and of no further force and effect and are merged into this MOU. Neither this MOU nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

Section 7. Construction. This MOU shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all Parties have contributed substantially

and materially to the preparation of this MOU. The headings of various sections in this MOU are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof. The Parties further intend that this MOU be broadly construed to achieve its stated purposes.

Section 8. Cooperation. The Parties shall reasonably cooperate with each other to achieve the stated purposes of this MOU, including executing such additional documents as may be reasonably necessary therefore.

Section 9. Governing Law. This MOU will be governed and interpreted in accordance with the law of California as if it was fully executed in California by persons domiciled in California and is to be wholly performed in California.

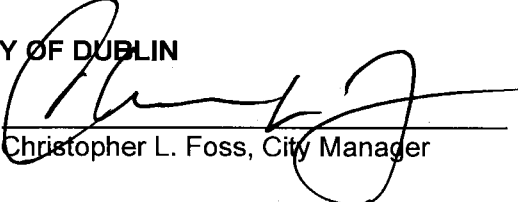
Section 10. Partial Invalidity. If any provision or provisions of this MOU shall be held in a judicial proceeding to be invalid, illegal or void, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided the purposes of this MOU remain legal and enforceable.

Section 11. Attorney Fees. In the event of litigation between the parties with respect to the MOU, the performance of their respective obligations hereunder or the effect of a termination under this MOU, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including, but not limited to, reasonable attorneys' fees of counsel selected by the prevailing party. Notwithstanding any provision of this MOU on the contrary, the obligations of the parties under this shall survive termination of this Agreement or the Closing and the delivery of any conveyance documentation.

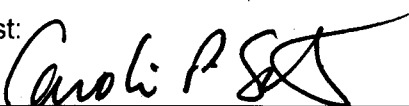
Section 12. Counterparts. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding, effective as of the date first written above.

CITY OF DUBLIN

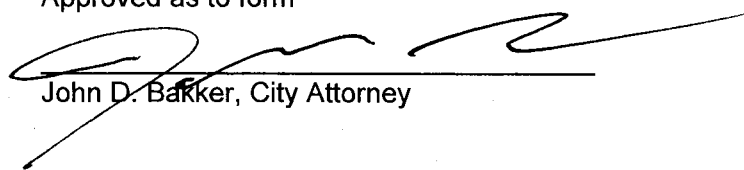
By: 

Christopher L. Foss, City Manager

Attest: 

Caroline P. Soto, City Clerk

Approved as to form


John D. Bakker, City Attorney

ASVRF ACQUISITIONS, LLC

a Delaware limited liability company

By: First Fiduciary Realty Advisors, Inc.,
a California corporation,
its manager

By: 

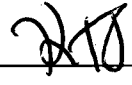
Name: Kirk Helgeson

Its: Executive Vice President

Date: 10/17/19

ASVRF DUBLIN PLACE, LP
a Delaware limited partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By: 

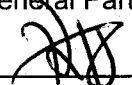
Name: Kirk Helgeson

Its: Executive Vice President

Date: 10/17/19

ASVRF 6960 AMADOR, LP
a Delaware limited partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By: 

Name: Kirk Helgeson

Its: Executive Vice President

Date: 10/17/19

3363736.1

Exhibit A

Siting Area of a Town Square Park



RESOLUTION NO. 26 - 21**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****APPROVING A FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING
(DUBLIN PLACE SHOPPING CENTER)**

WHEREAS, on October 15, 2019, the City Council adopted Resolution No. 107-19 approving a Memorandum of Understanding (MOU) between the City of Dublin and ASVRF Acquisitions, LLC, ASVRF Dublin Place, LP, and ASVRF 6960 Amador LP also known as American Realty Advisors (ARA) for the Dublin Place Shopping Center; and

WHEREAS, upon the City's request, ARA agreed to use commercially reasonable efforts to facilitate future development of the Shopping Center and site a Town Square, including the acquisition of 7300 Amador Plaza Rd. (the "Property"); and

WHEREAS, the MOU outlined the terms between ARA and the City as it related to the joint commitment of funds towards the acquisition of the Property; and

WHEREAS, due to the COVID-19 pandemic and the significant impact to owners and tenants of retail properties, priorities were shifted and substantial delays in negotiations occurred; and

WHEREAS, the City requested, and ARA agreed, to extend the MOU for a period of 12 months.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin does hereby approve the First Amendment to Memorandum of Understanding between the City of Dublin and ASVRF 7300 Amador, LP, ASVRF Dublin Place, LP, and ASVRF 6960 Amador LP.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the amendments to the agreements, attached hereto as **Exhibit A**, and make any necessary, non-substantive changes to carry out the intent of this Resolution, including amendments to the Funding Agreement related to the acquisition of the Property, as deemed appropriate by the City Manager.

PASSED, APPROVED AND ADOPTED this 6th day of April 2021, by the following vote:

AYES: Councilmembers Hu, Josey, Kumagai, McCorriston and Mayor Hernandez

NOES:

ABSENT:

ABSTAIN:

DocuSigned by:

M. Hernandez

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Mayor

ATTEST:

DocuSigned by:

Marsha Moore

98B70845D22F40A...

City Clerk

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING
(Dublin Place Shopping Center)**

This First Amendment to Memorandum of Understanding ("First Amendment") dated as of **April 6, 2021** ("Effective Date"), is entered into between and among the **City of Dublin** (the "City"), **ASVRF 7300 Amador, LP**, a Delaware limited partnership ("**ASVRF 7300**") as successor in interest to **ASVRF Acquisitions, LLC**, a Delaware limited liability company ("**ASVRF Acquisitions**"), **ASVRF Dublin Place, LP**, a Delaware limited partnership ("**ASVRF Dublin**") and **ASVRF 6960 Amador, LP**, a Delaware limited partnership ("**ASVRF Amador**" and collectively "Owners"). The City and Owners are each individually referred to as a "Party" and collectively referred to as the "Parties." Capitalized terms not defined in this First Amendment shall have the meanings specified in the MOU.

RECITALS

WHEREAS, ASVRF Acquisitions assigned all of its interest under the Purchase Agreement to ASVRF 7300 which has acquired 7300 Amador Plaza Road, Dublin, California, Assessor's Parcel No. 941-0305-027 (the "7300 Amador Property"), located within the Dublin Place Shopping Center (the "Shopping Center"); and

WHEREAS, the Owners wish to develop new and more appropriate uses for the Shopping Center consistent with the City's Downtown Dublin Specific Plan, including the siting of a Town Square and the City is supportive of these efforts; and

WHEREAS, Owners and the City desire to see the Covenants, Conditions & Restricts (CC&Rs) and Reciprocal Easement Agreement (REA) encumbering the Shopping Center amended to allow more appropriate uses at the Shopping Center, consistent with the City's Downtown Dublin Specific Plan, redevelopment opportunities of various areas within the Shopping Center, and/or improved signage; and

WHEREAS, to bring specificity to their joint commitment and to set out in general terms and actions to encourage future development of the Shopping Center and siting of a Town Square, consistent with the City's Downtown Specific Plan, the Parties entered into a Memorandum of Understanding dated October 15, 2019 (the "MOU"); and

WHEREAS, Owners and / or City have satisfied the requirements of Sections 2.A. and 2.B of the MOU; and

WHEREAS, in response to a request by the City, Owners have agreed to extend the Term of the MOU upon the terms and conditions set forth herein.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Recitals. The Recitals stated above are hereby ratified by the Parties as being true, accurate and correct and are incorporated herein as if set forth in full.

Section 2. Term. The Term of this MOU shall be extended to the close of business on April 14, 2022 and any other time periods specified in the MOU shall be extended accordingly.

Section 3. Acquisitions. Pursuant to its obligations under Section 3.A.1. of the MOU, ASVRF Acquisitions and subsequently ASVRF 7300 have made good faith efforts to acquire the other portions of the Shopping Center consistent with its obligations under Section 3.A.1 thereunder. The foregoing notwithstanding, ASVRF 7300, or an affiliate thereof, shall continue such good faith efforts during the extended Term of this MOU. It is understood and agreed that the inability of ASVRF 7300 or an affiliate thereof to reach an agreement with the owner of the 941 Parcel to purchase said parcel for reasons that include, but are not limited to, the unwillingness of the owner of the 941 Parcel to negotiate or negotiate in good faith or a failure by said owner to respond to ASVRF 7300 or an affiliate thereof in a timely fashion shall not constitute a breach by, or failure of ASVRF 7300 or an affiliate thereof to satisfy its obligations hereunder.

Section 4. Senior Housing Site. Pursuant to its obligations under Section 3.A.2 of the MOU, ASVRF Acquisitions and subsequently Owners have made good faith efforts to identify and create a separate site for the development of an affordable senior housing site consistent with its obligations under Section 3.A.2 thereunder. The foregoing notwithstanding, Owners shall continue such good faith efforts under Section 3.A.2. of the MOU to attempt to identify and create a separate site for the development of an up to 80-unit affordable senior housing site, which the City will have the opportunity to acquire based upon the land's Fair Market Value, is conditioned upon Owners' successful acquisition of the land identified in Section 3.A.1 and shall be tied to the approval by the City of a master plan development, approval by existing tenants (where applicable) and issuance of building permits related to that portion of the Dublin Place Shopping Center where the affordable senior housing site would be located.

Section 5. Sitting of Town Square. Pursuant to its obligations under Section 3. B. of the, MOU, ASVRF Acquisitions and subsequently ASVRF 7300 made good faith efforts to acquire the 941 Parcel consistent with its obligations thereunder. The foregoing notwithstanding, ASVRF 7300, or an affiliate thereof, shall continue such good faith efforts during the extended Term of this MOU. It is understood and agreed that the inability of ASVRF 7300 or an affiliate thereof to reach an agreement with the owner of the 941 Parcel to purchase said parcel for reasons that include, but are not limited to, the unwillingness of the owner of the 941 Parcel to negotiate or negotiate in good faith or a failure by said owner to respond to ASVRF 7300 or an affiliate thereof in a timely fashion shall not constitute a breach by, or failure of ASVRF Acquisitions to satisfy its obligations hereunder. Furthermore, the timing of the close of a purchase and sale agreement, as defined in Section 3.B.1.(i) of the MOU, shall be tied to the approval by the City of a master plan development, approval by existing tenants (where applicable) and issuance of building permits related to the portion of the Dublin Place Shopping Center where the Town Square would be located.

Section 6. Entire Agreement. The MOU, as modified by this First Amendment, contains all of the agreements and understandings related to the subject matter hereof.

Section 7. Remainder of MOU Unmodified. Except as set forth in this First Amendment, the Parties agree that the MOU is unmodified and in full force and effect and that no Party is in breach of any obligations thereunder. To the extent that the terms of the MOU conflict with the terms of this First Amendment, the terms of this First Amendment shall be controlling.

Section 8. Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this First Amendment, effective as of the date first written above.

CITY OF DUBLIN

By: _____
Linda Smith, City Manager

Attest:

By: _____
Marsha Moore, City Clerk

Approved as to form

By: _____
John D. Bakker, City Attorney

ASVRF 7300 Amador, LP
a Delaware limited liability partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation,
its General Partner

By: _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: _____

ASVRF DUBLIN PLACE, LP
a Delaware limited partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By: _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: _____

ASVRF 6960 AMADOR, LP
a Delaware limited partnership

By: ASVRF Dublin Place GP Corporation,
a Delaware corporation
its General Partner

By: _____
Name: Kirk Helgeson
Its: Executive Vice President
Date: _____

3720871.1



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: Weed and Combustible Refuse Abatement Order
Prepared by: Bonnie Terra, Division Chief

EXECUTIVE SUMMARY:

The City Council will conduct the public hearing in accordance with Resolution 06-22 (adopted February 1, 2022) declaring that there is a public nuisance created by weeds and combustible debris growing and accumulating upon the streets, sidewalks, and property in the City of Dublin. Notice of this declaration was posted and letters sent to those property owners with violations.

STAFF RECOMMENDATION:

Conduct the public hearing, deliberate, and by motion, direct Staff to continue the weed abatement process.

FINANCIAL IMPACT:

Initial cost of abatement and administration fee will be billed to the property owners if they fail to abate the problem. There will be no net cost to the City.

DESCRIPTION:

In accordance with Resolution No. 06-22 (Attachment 1), the City Council declared that there is a public nuisance created by weeds and combustible debris growing, accumulating upon the streets, sidewalks, and property with the City of Dublin. With this declaration, the Fire Chief or his designee shall notify property owners of violations and order abatement without delay. If the abatement is not completed, the City of Dublin shall, at the expense of the owners, have the weeds or refuse removed.

The declaration of a hazard was approved by the City Council on February 1, 2022. Following that approval, a Notice to Destroy or Remove Weeds and Refuse was posted (Attachment 2). This year, 184 inspections were conducted during the week of March 7, 2022 and 57 First Notice letters

(Attachment 3) were sent to property owners during the week of March 14, 2022 advising them to abate the hazard.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

In accordance with State law, a public notice was published in the *East Bay Times* and posted in several locations throughout the City. The Staff Report and attachments were made available for public review 10 days prior to the public hearing. The City Council Agenda was posted.

ATTACHMENTS:

- 1) Resolution 06-22 Declaring Weeds and Combustible Refuse a Public Nuisance and Ordering the Abatement Thereof
- 2) Notice to Destroy or Remove Weeds and Refuse 2022
- 3) First Notice Letter

RESOLUTION NO. 06 - 22**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****DECLARING WEEDS AND COMBUSTIBLE REFUSE A PUBLIC NUISANCE AND
ORDERING THE ABATEMENT THEREOF**

WHEREAS, Government Code Section 39502 et. Seq. authorizes the legislative body of a city to adopt an Ordinance to provide for the abatement of weeds and combustible refuse; and

WHEREAS, the Alameda County Fire Department is under contract to provide services and exercise the powers common to the City of Dublin; and

WHEREAS, The City of Dublin did adopt Ordinance No. 13-97, adding Chapter 5.70 of the Dublin Municipal Code [Weeds and Refuse] providing for the abatement of weeds and refuse.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dublin Pursuant to section 5.70.030 of the Dublin Municipal Code, the Alameda County Fire Department and the City of Dublin hereby declare as public nuisances all weeds and refuse growing or accumulating upon the streets, sidewalks, and property as defined in section 5.70.030, in the City of Dublin.

BE IT FURTHER RESOLVED that the fire Chief, or his designee, shall cause notice to be given to the public in the form and manner provided in sections 5.70.030 and 5.70.040 of the Dublin Municipal Code, notifying said public of the passage of this Resolution and further that on April 5, 2022 at 7:00 p.m., the City Council of the City of Dublin will conduct a public hearing to hear and consider objections to this abatement order.

PASSED, APPROVED AND ADOPTED this 1st day of February 2022, by the following vote:

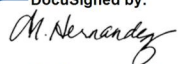
AYES: Councilmembers Hu, Josey, Kumagai, McCorriston and Mayor Hernandez

NOES:

ABSENT:

ABSTAIN:

ATTEST:

DocuSigned by:

 97C94F7A46A8401...

 Mayor

DocuSigned by:

 9BD70815D22F40A...

 City Clerk

**CITY OF DUBLIN
and
ALAMEDA COUNTY FIRE DEPARTMENT**

NOTICE TO DESTROY OR REMOVE WEEDS AND REFUSE

NOTICE IS HEREBY GIVEN that on February 1, 2022, pursuant to the provisions of Section 5.70.030 of Chapter 5.70 of the Municipal Code of the City of Dublin, the City Council of the City of Dublin adopted a resolution declaring that all weeds and/or refuse growing or accumulating upon any private property or in a public street or alley, constitutes a public nuisance, and such nuisance must be abated by the destruction or removal thereof.

NOTICE IS FURTHER GIVEN that the property owners shall, without delay, remove or cause to be removed all such weeds and refuse from their property and from the abutting half of the street in front of alleys, if any, behind such property, and between the lot lines thereof extended, or such weeds will be destroyed and removed and such refuse will be removed and such nuisance or nuisances created thereby abated by the City of Dublin, in which case the costs will constitute a lien upon such lots or lands until paid and will be collected upon the next tax roll upon which general municipal taxes are collected. All property owners having any objections to the proposed destruction or removal of such weeds and/or refuse are hereby notified to attend a meeting of the City Council of the City of Dublin to be held at the Dublin Civic Center on April 5, 2022, at 7:00 p.m., when their objections will be heard and given due consideration.

Dated: This 1st day of February, 2022

Marsha Moore, City Clerk
City of Dublin

PUBLICATION INSTRUCTIONS:

- 1) Saturday – March 19, 2022

(Must appear at least 10 days before the hearing. [sec. 6062(a) CGC].)



Alameda County Fire Department
FIRE PREVENTION
www.acgov.org/fire

WILLIAM L. McDONALD
 Fire Chief

March 14, 2022

**COUNTY
 FIRE PREVENTION**
 6363 Clark Street
 Dublin, CA 94568
 Tel (510) 632-3473
 Fax (925) 875-9387

**DUBLIN
 FIRE PREVENTION**
 100 Civic Plaza
 Dublin, CA 94568
 Tel (925) 833-6606
 Fax (925) 829-9248

**EMERYVILLE
 FIRE PREVENTION**
 1333 Park Avenue
 Emeryville, CA 94608
 Tel (510) 596-3759
 Fax (510) 450-7812

**NEWARK
 FIRE PREVENTION**
 37101 Newark Blvd.
 Newark, CA 94560
 Tel (510) 578-4218
 Fax (510) 578-4281

**SAN LEANDRO
 FIRE PREVENTION**
 835 E. 14th Street
 San Leandro, CA 94577
 Tel (510) 577-3317
 Fax (510) 618-3445

**UNION CITY
 FIRE PREVENTION**
 34009 Alvarado-Niles Road
 Union City, CA 94587
 Tel (510) 675-5470
 Fax (510) 487-2117

«Property_Owner»
 «Mail_to_COMPANY»
 «Mail_to_ADDRESS»
 «Mail_to_CITY_STATE_ZIP»

SUBJECT PROPERTY
 «Parcel_No»
 «Street_» «Street_Name»

The above subject property was inspected the week of March 7, 2022 and determined to be in violation of Section 5.70.020 of the Municipal Code of the City of Dublin. The Weed, Rubbish and Litter Ordinance 13-97 designed to minimize or eliminate weeds, or other nuisances, before they become a hazard. The Ordinance applies to violations anywhere on the property, whether in an open field, front yard, enclosed side yard, or rear yard. A copy of the removal requirements is enclosed for your reference.

By checking your property now and eliminating any hazards, you can avoid possible enforcement action and any related fees. Abatement shall be in accordance with the enclosed removal requirements.

The City Council of the City of Dublin will conduct a Public Hearing on Tuesday, April 5, 2022, to hear and consider objections to this abatement order.

The Fire Prevention division will re-inspect your property on or after April 11, 2022, to verify compliance. If there are no violations noted, there will be no further notices or inspections required.

Failure to abate your property may ultimately result in a City of Dublin contractor abating your property and an additional administrative fee being added to the contractor's cost. If it becomes necessary to place a levy on your property to recover unpaid fees, there may also be an additional charge.

Remember, to avoid any charges or a citation, all weeds and debris must be removed by the above listed date and maintained throughout the year.

Your cooperation is appreciated, and we thank you for your efforts in maintaining a fire safe community.

If you have any questions regarding this notice, please contact the Alameda County Fire Department, Dublin Fire Prevention Division at (925) 833-6606.

Enclosure



STAFF REPORT

CITY COUNCIL

DATE: April 5, 2022

TO: Honorable Mayor and City Councilmembers

FROM: Linda Smith, City Manager

SUBJECT: First Reading of Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 and Providing for an Increase for in Salary for Members of the City Council and the Mayor
Prepared by: Linda Smith, City Manager and Marsha Moore, MMC, City Clerk

EXECUTIVE SUMMARY:

The City Council will introduce an ordinance revising the Dublin Municipal Code to provide for a salary adjustment for City Councilmembers and the Mayor following certification of the November 2022 General Municipal Election.

STAFF RECOMMENDATION:

Waive the reading and INTRODUCE the Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 Providing for an Increase in the Salary for Members of the City Council and Mayor.

FINANCIAL IMPACT:

Sufficient funds are included in the Fiscal Year 2022-23 and 2023-24 budgets to cover the increase.

DESCRIPTION:

Chapter 2.08.020 of the Dublin Municipal Code establishes the salaries for City Councilmembers. The City Council last adjusted salaries for City Councilmembers in December 2020, which was effective after the November 2020 election. City Councilmembers currently receive \$1,285.10 per month as compensation. Dublin Municipal Code Chapter 2.08.040 provides an additional \$100 per month to the Mayor in addition to the salary received as a Councilmember. The Mayor's currently salary is \$1,385.10.

At the March 1, 2022 meeting, the City Council agreed to a salary increase for City

Councilmembers equal to 5% per year since its last increase in December 2020, as allowed by Government Code Section 36516(a)(4). With the increase, City Councilmembers will receive \$1,416.82 per month. The City Council also agreed to a salary increase for the Mayor. During the meeting, the City Council discussed the Mayor's differential be increased by \$50, to \$150 per month, with the caveat that the Staff will review and return with comparison of differentials for mayors locally.

In accordance with Dublin Municipal Code Section 2.08.020B and State Law, the increase would not become effective until newly elected Councilmembers are sworn into office following certification of the November 2022 election.

Government Code Section 36516.1 provides for an elected mayor to be provided with compensation in addition to that which is received as a councilmember. It does not state that the additional compensation for an elected mayor must be delayed until after a new mayor's term starts. The City Council could allow the additional salary received for being mayor become effective immediately.

Comparison of Mayor Salaries

At the March meeting, the City Council asked Staff to look at the differentials in the mayor salaries at surrounding jurisdictions. Staff collected data from all Alameda County cities, excluding Oakland and Berkeley due to their salary and staffing structures. Alameda County cities were selected as these communities are part of the same jurisdiction/boundary and work closely with one another on items of mutual interest.

In summary, the Dublin mayor has the second lowest differential along with the City of Pleasanton at \$100. On average with cities that have directly elected mayors, the salary differential is approximately \$1,000. Staff also looked at general law cities versus charter cities. General law cities pay, on average, \$760 more to their mayors, whereas charter cities pay, on average, \$1,250 more in differential pay.

City	CC Members	Mayor	Differential
Alameda	\$50.00	\$50.00	\$ -
<i>Albany</i>	<i>\$300.00</i>	<i>n/a</i>	<i>n/a</i>
<i>Emeryville</i>	<i>\$1,157.00</i>	<i>n/a</i>	<i>n/a</i>
Fremont	\$2,119.00	\$3,764.52	\$1,645.52
Hayward	\$2,081.25	\$3,330.00	\$1,248.75
Livermore	\$1,070.00	\$1,490.00	\$420.00
Newark	\$1,247.00	\$2,727.00	\$1,480.00
Pleasanton	\$1,201.00	\$1,301.00	\$100.00
San Leandro	\$1,272.75	\$3,780.00	\$2,507.25
Union City	\$1,625.00	\$2,437.00	\$812.00
Dublin	\$1,285.00	\$1,385.00	\$100.00

Average Salary with Directly Elected Mayors:	\$1,370.75	\$2,397.44	\$1,026.69
Average Salary (General Law)	\$1,424.50	\$2,184.09	\$759.59
Average Salary (Charter)	\$1,134.67	\$2,386.67	\$1,252.00

Should the City Council wish to make any adjustments to the mayor pay differential as a result of this research, the changes could be incorporated into tonight's introduction of the ordinance.

STRATEGIC PLAN INITIATIVE:

None.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

The City Council Agenda was posted.

ATTACHMENTS:

- 1) Ordinance Amending Dublin Municipal Code Sections 2.08.020 and 2.08.040 and Providing for an Increase in the Salary for Members of the City Council and the Mayor
- 2) Dublin Municipal Code Chapter 2.08

ORDINANCE NO. xx – 22**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DUBLIN****AMENDING DUBLIN MUNICIPAL CODE SECTIONS 2.08.020 AND 2.08.040
AND PROVIDING FOR AN INCREASE IN THE SALARY
FOR MEMBERS OF THE CITY COUNCIL AND THE MAYOR**

WHEREAS, Ordinance No. 6-82 established salaries for members of the City Council, as amended by Ordinances No. 22-85, 8-87, 4-88, 3-89, 1-90, 6-91, 23-99, 7-02, 7-04, 3-06, 5-08, 2-12, 10-16, 07-18, and 10-20; and

WHEREAS, Government Code Section 36516(a) allows a general law city to provide a salary to City Councilmembers. The salary increase shall become effective when new Councilmembers are sworn into office following the certification of the November 2022 General Municipal Election and is payable at the same time and in the same manner as the salary paid to the officers and employees of the City; and

WHEREAS, the increase in the salary from \$1,285.10 a month to \$1,416.82 a month amounts to an increase equal to 5% for each calendar year from December 2020 as authorized by Section 36516; and

WHEREAS, Ordinance No. 13-92 established a salary for the Elected Office of Mayor; and

WHEREAS, Government Code Section 36516.1 provides that a directly elected Mayor may be compensated in addition to that compensation received as a Councilmember.

NOW, THEREFORE, the City Council of the City of Dublin does ordain as follows:

Section 1. Chapter 2.08.020, Subsection A of the Dublin Municipal Code is hereby amended to read as follows: Pursuant to Section 36516 of the Government Code which provides that a City Council may enact an ordinance providing that each member of the City Council shall receive a salary which shall be determined by a schedule of population for cities, the members of the City Council shall receive a salary of one thousand four hundred sixteen dollars and eighty-two cents (\$1,416.82) per month.

Section 2. Chapter 2.08.040 of the Dublin Municipal Code is hereby amended to read as follows: The Mayor shall receive a monthly salary of one hundred fifty dollars (\$150), in addition to that which he/she receives as a Councilmember.

Section 3. Effective Date. These salary increases shall become effective when new Councilmembers and Mayor are sworn into office following the certification of the November 2022 General Municipal Election.

Section 4: Effective Date and Posting of Ordinance. This Ordinance shall take effect and be in force thirty (30) days from and after the date of the passage. The City Clerk of the City of Dublin shall cause this Ordinance to be posted in at least three (3) public places in the City of Dublin in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mayor

City Clerk

Chapter 2.08 CITY COUNCIL

Sections:

[2.08.010 Meeting place designated.](#)

[2.08.020 Salary for members established.](#)

[2.08.030 Election of Mayor and Councilmembers—Term of office.](#)

[2.08.040 Mayor's salary.](#)

[2.08.050 Term limits.](#)

2.08.010 Meeting place designated.

A. The City Council will hold all regular meetings in the Council Chambers at the Dublin Civic Center, located at 100 Civic Plaza, in the city.

B. If the regular meeting place is unable to accommodate the number of persons in attendance, the City Council may recess the meeting to another place. If the City Council anticipates that the regular meeting place will be inadequate, the City Council, or Mayor in the event of an emergency, may order that the meeting be held in another place. (Ord. 17-09 § 1 (part); Ord. 14-89 §§ 1, 2)

2.08.020 Salary for members established.

A. Pursuant to Section 36516 of the Government Code which provides that a City Council may enact an ordinance providing that each member of the City Council shall receive a salary which shall be determined by a schedule of population for cities, the members of the City Council shall receive a salary of one thousand two hundred eighty-five dollars and ten cents (\$1,285.10) per month.

B. No Councilmember shall be eligible to receive the increase provided herein until one (1) or more Councilmembers begin a new term of office. (Ord. 10-20 § 2; Ord. 7-18 § 2; Ord. 10-16 § 2; Ord. 2-12 § 2; Ord. 17-09 § 1 (part); Ord. 5-08 § 2; Ord. 3-06 § 2; Ord. 7-04 § 2; Ord. 7-02 § 2; Ord. 23-99 § 2; Ord. 6-91 § 2; Ord. 1-90 § 2; Ord. 3-89 §§ 2, 3; Ord. 4-88 §§ 2, 3; Ord. 8-87 §§ 3, 4; Ord. 22-85 § 3; Ord. 6, 1982)

2.08.030 Election of Mayor and Councilmembers—Term of office.

A. The electors shall hereafter elect a Mayor and four (4) City Councilmembers.

B. The term of office of the Mayor shall be two (2) years. (Ord. 17-09 § 1 (part); Ord. 11-92 §§ 1, 2)

2.08.040 Mayor's salary.

The Mayor shall receive a monthly salary of one hundred dollars (\$100), in addition to that which he/she receives

as a Councilmember. (Ord. 17-09 § 1 (part): Ord. 13-92 § 2)

2.08.050 Term limits.

No person shall serve as Councilmember for more than two (2) consecutive terms, nor shall any person serve as Mayor for more than four (4) consecutive terms. In addition: (A) no person who has served as a Councilmember for one (1) term shall serve more than two (2) terms as Mayor if the terms as Councilmember and Mayor are consecutive; (B) no person who has served as Councilmember for two (2) consecutive terms shall serve a consecutive term as Mayor; (C) no person who has served as Mayor for three (3) or four (4) consecutive terms shall serve a consecutive term as a Councilmember; (D) no person who has served as Mayor for two (2) consecutive terms shall serve more than one (1) succeeding consecutive term as Councilmember; (E) no person who has served consecutive terms as Mayor and Councilmember shall serve more than one (1) more consecutive term as Mayor; and (F) no person who has served consecutive terms as Mayor and Councilmember shall serve another consecutive term as Councilmember. As used herein, a person shall be considered to have served a term of office as a Councilmember if such person has served as a Councilmember for two (2) years plus one (1) day and a person shall be considered to have served a term of office as Mayor if such person has served as Mayor for one (1) year plus one (1) day. (Ord. 17-09 § 1 (part): Ord. 18-96 § 1)