

**CONTINUATION AND SECOND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND
THE CITY OF SAN JOSE**

This CONTINUATION AND SECOND AMENDMENT is entered into this ____ day of _____, 2021, by the NATURAL RESOURCES DEFENSE COUNCIL, INC., a New York non-profit corporation authorized to do business in California (“NRDC”), and the CITY OF SAN JOSE (“CITY”), a municipal corporation.

RECITALS

WHEREAS, on May 8, 2019, CITY and NRDC entered into an agreement entitled “MEMORANDUM OF UNDERSTANDING BETWEEN THE NATURAL RESOURCES DEFENSE COUNCIL, INC. AND THE CITY OF SAN JOSE” (“MOU”); and

WHEREAS, on February 19, 2021, CITY and NRDC entered into an amendment to the MOU, extending the term from December 31, 2020 to June 30, 2021, revising the assigned Climate Advisor, and adding Exhibit E, “San Jose Requested Assistance and ACCC Support Package”, which describes the services to be provided during the period of January 1, 2021 through June 30, 2021; and

WHEREAS, the term of the amended MOU has expired, and CITY and NRDC desire to extend the term through June 30, 2022, add Exhibit F which describes the services to be provided during the period of July 1, 2021 through June 30, 2022, and revise the commitments by NRDC;

NOW, THEREFORE, the parties agree to continue and further amend the amended MOU as follows:

SECTION 1. The term of the MOU, originally January 1, 2019 to December 31, 2020 and extended through June 30, 2021, is continued and retroactive for the period of July 1, 2021 through June 30, 2022.

SECTION 2. SECTION IV, "COMMITMENTS BY NRDC" is amended to read as follows:

"NRDC, for the duration of the City's participation in the ACCC and at no expense to the City, will use commercially reasonable efforts to provide the support, resources and opportunities to assist the City in achieving the goals contained in its City Strategy Overview as described in the Support Package (as defined in Section V) including the following undertakings:

1. Provide, at no expense to the City, one NRDC employee reporting to the ACCC City Lead (as defined in Section V), who shall be available at all times for input and general direction on work schedule, tasks and assignments for the purpose of advancing the Priority Actions defined in Exhibit F (such NRDC employee, the "Climate Advisor"). For the avoidance of doubt, the parties agree that the Climate Advisor shall not be an employee of the City. The parties agree that the Climate Advisor shall be considered an employee of NRDC, and NRDC shall be considered a City contractor.
The Parties agree that Elena Olmedo shall serve as the Climate Advisor. In the event Elena Olmedo leaves NRDC's employment prior to the termination of this MOU, NRDC shall not be obligated to fill the position for the remaining duration of the MOU.
2. Share best practices and expertise on all aspects of initiative design and implementation including regular access to staff at NRDC and Third Parties (as defined below) as appropriate;
3. As determined by NRDC in its sole discretion, provide additional discretionary resources to support local organization involvement in the ACCC, stakeholder engagement, compliance with programs, and enhanced technical, analytical, and communications capabilities of the City, where applicable;
4. As needed, and as determined by NRDC in its sole discretion, identify and assist the City in securing additional resources to achieve the goals in its City Strategy Overview and its resource commitment requirements;

5. Assist the City in peer-to-peer networking with other cities, including hosting in-person forums involving other cities and partners participating in the ACCC;
6. Reimburse the City for a computer, monitor, and mouse to be utilized by the Climate Advisor, which shall become property of the City upon the end of the term of this MOU; and
7. Designate an NRDC employee, other than the Climate Advisor, to direct NRDC's work with the City on the Challenge and to serve as the City's primary NRDC contact (the "NRDC City Strategist"). NRDC shall designate an additional employee ("NRDC Director of Strategy and City Engagement") to manage the NRDC City Strategist.

NRDC reserves the right to direct its affiliate NRDC Action Fund Inc. to provide the support, resources and opportunities listed in this Section IV.

NRDC also reserves the right to direct independent contractors retained by NRDC or an affiliate to provide the support, resources and opportunities listed in this Section IV.

"Third Parties" refers to parties not affiliated with, or under contract with, NRDC and are referenced in this Section IV and in Section V below. Such Third Parties are associated with the ACCC and will provide support, resources and opportunities to Cities other than those listed in this Section IV. NRDC is not responsible for Third Parties' ultimate delivery of support, resources and opportunities to Cities, and Third Parties' failure to provide the resources listed in the Support Package (as further described in Section V) shall not be a basis to terminate this MOU under the provisions of Section XV.3."

SECTION 3. SECTION V, "COMMITMENTS BY THE CITY" is amended to read as follows:

"For the period of the Continuation Second Amendment, the City commits to pursue, to the best of its ability and in a manner that complies with applicable laws, ordinances, rules and policies, subject to future approval and appropriation by the City Council, in a manner that facilitates collaboration among the City and its major stakeholders, the implementation of the following initiatives, by June 30, 2022, to reduce net emissions of the City:

1. Energy reduction programs and policies for commercial buildings
2. Electric vehicles, solar readiness and reach code

3. Roadmap for building decarbonization through demonstration and programs
4. High priority segments in the walking and bicycling network
5. Parking management and pricing
6. Encourage new mobility options
7. Market Transformation for electric vehicles
8. Shared electric vehicle strategy Market transformation programs to significantly accelerate community-scale transition to EVs

In support of the implementation of these initiatives, the City commits to pursue and explore the following actions:

1. Develop a multi-year plan (the "City Strategy Overview"), the initial version of which is attached as Exhibit C, describing the City's goals and the initiatives and key actions the City intends to undertake to achieve such goals. The City Strategy Overview was jointly developed by the City, NRDC and Third Parties and shall be updated by the City and NRDC no less frequently than every six months after the initial City Strategy Overview to reflect any changes. The City Strategy Overview shall include, but need not be limited to, the following items:
 - a. Emissions reductions targets for the City's initiatives;
 - b. Descriptions of the key elements of each initiative and the actions undertaken to achieve those initiatives;
 - c. Year 2020 goals of key actions and key indicators that will be used to measure progress toward those goals;
 - d. City-based and non-City based resources and support needed by the City to achieve each action;
 - e. Estimated amount of time that key staff employed by the City can commit to the design, adoption and implementation of the actions; and
 - f. An employee of the City designated to serve as the ACCC lead (the "City ACCC Lead") and who shall bear overall responsibility for the City's execution of its City Strategy Overview.
2. Work with NRDC and Third Parties to develop a support package that will outline resources that will come from NRDC and Third Parties (the "Support Package", attached as Exhibit D). NRDC may, in its sole discretion, modify the Support Package in Exhibit D upon written notice to the City, provided that no resources made available to the City are decreased as compared to those listed on the Support Package as of the date this MOU was first executed (such modified Support Package, the "Amended Support Package"). The Amended Support Package shall become effective upon delivery to the City and the City's acknowledgment of its receipt.

3. Review and provide input to NRDC and Third Parties on the detailed activities and deliverables for the milestones that will occur during the project (the "Delivery Plan"). The Delivery Plan shall be updated by the City, NRDC and Third Parties no less frequently than every three months after the initial Delivery Plan to reflect any changes.
4. Provide NRDC and Third Parties with all information allowed by City laws, ordinances, rules, and policies to enable them to successfully assist the City as set forth in this MOU, including information related to emission metrics.
5. Participate in the ACCC network of peer cities to share best practices with NRDC and other cities participating in the ACCC, including work products and materials, programmatic concepts and successful processes.
6. Make the City ACCC Lead available to meet with designees of NRDC at least once every three months (at a time and place to be mutually agreed by the parties acting reasonably) for the duration of the City's involvement with the ACCC.
7. Provide the Climate Advisor, at the City's expense to the extent consistent with the state, local, or City's protocols related to the COVID-19 or other pandemic:
 - a. A climate-controlled work space, including use of a desk, chair, and file cabinet, with the exact location of the work space to be determined by the City; the work space may only be used for general office purposes and accessed during normal business hours, unless the Climate Advisor receives permission to access the work space outside normal business hours;
 - b. A telephone and internet access;
 - c. Access to and use of a printer, copier, scanner and fax machine;
 - d. Cleaning, recycling and maintenance of the work space; and
 - e. Access to City information and materials as necessary for the Climate Advisor to perform his or her duties, as allowed by City laws, ordinances, rules, and policies.
8. Make reasonable use of the City Mayor or NRDC-approved designee (Kerrie Romanow, Director of Environmental Services), participating in no less than three meetings per year with senior officials of the Challenge team to discuss the City's progress on the initiatives described in its City Strategy Overview.
9. Use reasonable best efforts to prioritize staffing ACCC work.
10. Use reasonable best efforts to take all necessary and appropriate actions to complete the work stated in City Strategy Overview in accordance with the timeline and other provisions set forth therein.
11. Use reasonable best efforts to coordinate with NRDC and its partners and other funders, whether or not they are parties to this Agreement.

12. Use reasonable best efforts to provide information that will facilitate coordination between NRDC and Third Parties and other entities also involved in the Challenge, including cooperating with and supporting NRDC's compliance with all requirements of funding provided to NRDC for use on ACCC expenses by adhering to the requirements set forth in Exhibit A hereto (the "Funding Requirements").
13. Cause the City ACCC Lead and other relevant City staff to be available for one-hour conference calls with representatives of NRDC and Third Parties (at a time to be mutually agreed by the parties acting reasonably, and occurring no less frequently than on a quarterly basis) to discuss the status of the ACCC work."

SECTION 4. Exhibit F, "San Jose Requested Assistance and ACCC Support Package: July 1, 2021-June 30, 2022", attached and incorporated into this CONTINUATION AND SECOND AMENDMENT, is hereby appended to the MOU.

SECTION 5. For all work and activities occurring on or after July 1, 2021, all references in the amended MOU to "Exhibit C" and/or "Exhibit D" shall be deemed as references to "Exhibit F".

SECTION 6. This CONTINUATION AND SECOND AMENDMENT shall be contingent upon NRDC finalizing a one-year extension of its grant agreements with Bloomberg Philanthropies (the "Extension") that fund the American Cities Climate Challenge project. This CONTINUATION AND SECOND AMENDMENT shall become effective only upon the occurrence of both of the following: (1) signature by both parties and (2) NRDC finalizing the Extension.

SECTION 7. All of the terms and conditions of the amended MOU not specifically modified by this CONTINUATION AND SECOND AMENDMENT shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

COLLEEN WINCHESTER
Sr. Deputy City Attorney

By _____
TONI J. TABER, CMC City Clerk

“NRDC”

NATURAL RESOURCES DEFENSE
COUNCIL, INC., a New York non-profit
corporation authorized to do business in
California

By _____
DOUG SIMS
Senior Director, Resilient Communities

EXHIBIT F

SAN JOSE REQUESTED ASSISTANCE AND ACCC SUPPORT PACKAGE: July 1, 2021 – June 30, 2022

The American Cities Climate Challenge (ACCC) is a Bloomberg Philanthropies initiative that aims to accelerate and deepen U.S. cities' efforts to create the greatest climate impact through June 2022 and showcase the benefits – good jobs, cleaner air, and cost savings – that climate solutions bring.

To support the city in meeting its Paris Climate commitments and the specific actions outlined in the MOU, the ACCC team will be providing a multi-faceted support package. ***The ACCC was founded on the premise that the most valuable resource to cities is more capacity to reach their climate goals.*** The resources of the Challenge are designed to address that need by bringing increased city and partner support to drive ambitious actions in the next two and a half years.

Over the past two and a half years, the ACCC has mobilized a team of over 100 staff across all project partners and the 25 participating cities to provide deep technical expertise on policy, advocacy campaigns, stakeholder engagement, delivery planning, implementation, behavior change, communications, and other key areas necessary to accelerate climate actions. The project also strategically deployed other discretionary resources to support consultants, analysis, events, and other activities to benefit cohorts of cities and individual leading cities on specific actions.

To complete work on the actions described in this Exhibit ("Actions") and effectively transition project management and support, the City requests, and NRDC agrees to provide, the support outlined below ("NRDC Support") for the period beginning July 1, 2021, ending no later than June 30, 2022. NRDC reserves the right to vary or reduce, at its sole discretion, the level of support provided as specific Activities progress or are completed. NRDC also reserves the right to provide additional resources to the City as they become available, and will actively work with the City to continually identify additional opportunities to support the City's actions.

Actions

1. Building Decarbonization Roadmap
2. Parking Reform
3. Biking and Walking Network
4. Climate Mobility Campaign

NRDC Support

The City requests NRDC's assistance in accomplishing the Actions described above. Upon the request of City staff, the NRDC shall provide the below forms of assistance:

1. Preparing draft policy recommendations and supporting materials for City staff review;
2. Educating City staff about Actions and supporting policy, including researching, preparing materials and reports, and briefing city staff on City staff's priorities and recommendations;
3. Drafting ordinances in support of the Actions to be submitted to and reviewed by city staff; and
4. Conducting community research and outreach regarding the Actions and related policies, including consulting with and educating stakeholders and community members and leaders regarding proposed policies, soliciting feedback, and reporting the results to City staff.

All of the items described above shall be subject to significant substantive review by City staff. In addition, in order to provide the assistance described above, NRDC agrees to provide or facilitate the following support to the City:

1. Dedicated Delivery Team composed of:
 - Elena Olmedo (1.0 FTE), to work exclusively on ACCC initiatives;
 - In the event Elena Olmedo leaves NRDC employment prior to the termination of this Agreement, NRDC shall not be obligated to fill the position for the remaining duration of the Agreement.
 - Regular engagement from an NRDC City Strategist to advise on stakeholder engagement, outreach, and advocacy, provide strategic thought partnership on programs and policies, provide assistance with advocacy subject to the City's significant substantive review including written and verbal testimony on policies at hearings/proceedings, and coordinate deployment of additional ACCC partner resources; and
 - Regular engagement from NRDC Technical Strategists to advise on program and policy development, provide technical assistance and strategic thought partnership, provide assistance with advocacy subject to the City's significant substantive review including written and verbal testimony on policies at hearings/proceedings, and coordinate technical assistance from national partners. Including, but not limited to, the

following subject areas: renewable energy, energy efficiency and decarbonization, and transportation electrification.

2. A digital library of resources covering policies and programs included in the ACCC;
3. Access to cohorts of peer cities working toward similar climate action;
4. At NRDC's sole discretion, facilitate additional support from ACCC partner organizations as it becomes available; and
5. Regular updates on the status of relevant federal activities.