



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**SUBJECT:** ELECTRIC VEHICLE FAST  
CHARGING HUB PILOT

**FROM:** Lori Mitchell

**DATE:** November 4, 2022

Approved

Date

11/4/22

## RECOMMENDATION

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute tolling agreement(s) with vendor(s) to deploy a public electric vehicle direct current fast-charging hubs pilot program beginning in Fiscal Year 2023-2024 or Fiscal Year 2024-2025, at either privately owned locations or City-owned locations in low-income and disadvantaged communities, with tolling payments based on performance and subject to San José Clean Energy's control of variable retail pricing.

## OUTCOME

Approval of the recommendation would enable the Community Energy Department (CED) to implement the electric vehicle (EV) direct current fast charging hub pilot program for San José Clean Energy (SJCE) to increase access to affordable and reliable EV charging in low-income and disadvantaged communities.

## EXECUTIVE SUMMARY

Through the EV direct current fast charging hub pilot program, the City would enter into pay-for-performance tolling agreement(s) in Fiscal Year 2022-2023 with one or more vendors for the development of one to three fast-charging hubs at private or City-owned locations. Each fast-charging hub would contain parking spaces and chargers to accommodate at least 10 EVs and would be operational for up to 10 years.

The vendor would own the fast-charging infrastructure and would be responsible for siting, financing, design, engineering, procurement, permitting, construction, installation, interconnection, operation, maintenance, the load management system, and back-office services (e.g., communications, user account management, billing, reporting, and utility interface applications) at each site. SJCE would pay fixed monthly tolling payments based on the vendor's performance on hardware and software uptime. SJCE would provide energy and set retail pricing for the chargers to encourage mid-day charging to reduce greenhouse gas emissions.

SJCE's Request for Offers closed in September 2022. Equity and access are key parts of the offer scoring criteria, with a preference for sites that score an eight or higher in the City of San José's Equity Atlas,<sup>1</sup> which indicates a higher concentration of people of color and low-income households and for sites located in charging "deserts" to improve geospatial availability of charging. Typically, low-income and disadvantaged communities have little to no existing public charging infrastructure and lower EV adoption. The pilot would help signal to residents in surrounding neighborhoods that EV charging is available to them. SJCE would use the pilot to market test novel retail pricing structures to benefit low-income EV drivers, such as unlimited charging subscriptions or discounts based on income.

CED staff are evaluating vendor bids based on the above site criteria, price, and vendor development experience. CED staff will recommend one to three site offer(s) from one or more vendors. For City-owned sites such as parks, community centers, and libraries, CED staff will refer the vendor(s) to City staff in the department responsible for the administration of the specific site for final site selection and legal site review. The use of City-owned sites is subject to separate and independent selection processes that will be managed by the City department responsible for the administration of the specific site. The winning bidder(s) in the pilot program for SJCE will not receive any advantage in the City's selection of a vendor to use a City-owned site.

Once the sites are cleared for vendor use, SJCE would conduct multilingual outreach to engage with the surrounding neighborhoods and inform them of the hub(s) at community meetings and events. To create retail pricing structures that bring value to residents, SJCE would also conduct market research surveys to understand their driving habits. The completion date of the hubs will depend on Pacific Gas and Electric service upgrade planning for the selected sites and EV charging equipment supply chains but is expected to be late 2023. Once the hubs are operational, SJCE would hire community-based organizations to educate residents of the surrounding neighborhoods about the benefits of EVs. SJCE and community-based partners would conduct multi-lingual education and outreach campaigns that include ride and drives and one on one assistance navigating and applying for rebates and incentives.

## **BACKGROUND**

On November 7, 2017, City Council approved an ordinance to add Title 26 to the San José Municipal Code that provides procedures for the operation and management of SJCE. Under Title 26, SJCE may provide any rate designs or energy efficiency, rate assistance, and other energy programs as approved by the City Council.

In February 2018, the City of San José was one of the first U.S. cities to adopt a Paris Agreement-aligned climate action plan, named Climate Smart San José (Climate Smart). This is a data-driven plan with goals and actions focused on three components: energy, mobility, and water. It details not only ways to reduce the City's carbon footprint but also to improve the quality of life for those who live and work in San José.

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<sup>1</sup> [City of San José Equity Atlas](#). Scoring methodology for Equity Atlas is found at the link.

On March 5, 2021, the City Council accepted SJCE's Programs Roadmap, which details near-term and future programs SJCE could develop in accordance with program guiding principles and program areas developed with City Council, the Community Advisory Commission, customers, and other stakeholders.

On November 5, 2021, the City Council voted to adopt a carbon neutral by 2030 goal, making San José the largest U.S. city to adopt such a goal.

On April 26, 2022, the City Council approved a memorandum from Mayor Sam Liccardo, Councilmember Sergio Jimenez, and Councilmember Raul Peralez that directed the Administration to return to City Council with a feasibility analysis of deploying pilot public fast-charging hubs for EVs in Fiscal Year 2022-2023 located at City-owned parking lots, wherein SJCE will control variable retail pricing to encourage mid-day charging. Siting decisions for any project(s) must include community engagement and consultation.

On June 14, 2022, the City Council accepted a strategy for the acceleration of work in Climate Smart San José needed to put the City firmly on a path to achieve its carbon-neutral goal by 2030, including significantly accelerating the pace of EV adoption and corresponding EV charging infrastructure.

## **ANALYSIS**

### **EV Adoption Momentum**

EV adoption continues to grow at a rapid pace in San José. According to the California Energy Commission, roughly 30% of new cars registered in San José from April to June 2022 were fully electric or plug-in hybrid.<sup>2</sup> With high-adoption cities like San José, California leads the nation in EV registrations and recently became the first state to ban the sale of gas-powered cars and trucks. On August 25, 2022, the California Air Resources Board voted to require **100% of new car and light truck sales to be electric by 2035** to combat climate change.<sup>3</sup> The California Air Resources Board rule includes intermediate requirements that automakers deliver an increasing number of zero-emission vehicles each year beginning with 35% in 2026.

### **EV Charging Strategy for Power Supply**

With EV adoption set to grow even more quickly over the next decade, SJCE and other utilities will need to manage the additional electric demand from charging to reduce greenhouse gas emissions and improve resiliency. Recently signed California Senate Bill 1020 (Laird) requires utilities to provide 90% renewable energy by 2035 and 100% by 2045. As California invests in renewable energy (particularly solar) and storage to meet these goals, electricity sources are not uniform throughout the day. There is a large amount of solar on the California grid from sunrise to sunset (Figure 1); however, starting at 4 p.m., energy demand increases as solar energy availability decreases. Natural gas is often used to meet the 4 p.m. to 9 p.m. demand peak when

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<sup>2</sup> [Zero Emission Vehicle and Infrastructure Statistics](#)

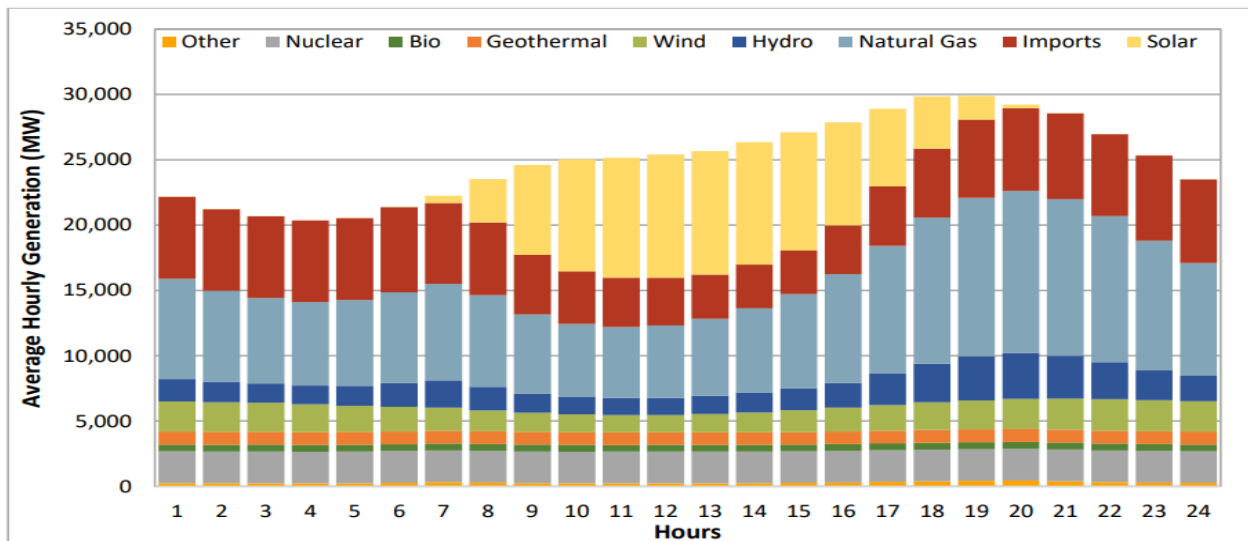
<sup>3</sup> [California Air Resources Board press release August 25, 2022](#)

energy prices are also typically the most expensive. While more wind is typically available overnight, natural gas and imports are also used to meet overnight demand. Offshore wind is a promising technology for meeting overnight demand but will take several years to be deployed at scale for the California power market.

A recent Stanford University study<sup>4</sup> found that most EV drivers should shift charging from peak periods and overnight to daytime charging at work or public charging stations. If EV drivers continue to charge at night, as EV adoption grows the authors project that 5.4 gigawatts<sup>5</sup> of energy storage would be needed just to meet charging demand in the Western U.S. with 50% EV adoption. Shifting charging to the middle of the day would reduce the strain on the grid and lower grid costs.

In the short term, *SJCE aims to shift more EV charging to the middle of the day to reduce greenhouse gas emissions as well as SJCE's energy procurement costs and customer rates.* As San José's electricity provider, SJCE can set time-of-use pricing incentives, invest in public charging infrastructure, and educate customers to shift charging to the cleanest times.

Figure 1. California Independent System Operator Average Hourly Power Production by Resource Type – 2020



## Equity Issues in EV Charging Infrastructure

### *Affordability of EVs*

Federal and state programs and market forces are making EVs more affordable and accessible for low-income consumers. Consumers can stack federal, state, and local rebates and incentives for

<sup>4</sup> Powell, S., Cezar, G. V., Min, L. et al. [Charging infrastructure access and operation to reduce the grid impacts of deep electric vehicle adoption](#). Nat Energy (2022).

<sup>5</sup> According to the California Independent System Operator, as of June 1, 2022 California has deployed nearly 3.2 gigawatts of utility-scale battery storage.

more than \$10,000 off the purchase price of a used or new EV.<sup>6</sup> The recently passed federal Inflation Reduction Act includes a federal tax credit of up to \$4,000 for used EVs for income-qualified households starting in 2023. Low-income consumers living in certain zip codes in San José impacted by higher levels of pollution can also receive \$9,500 towards a used or new EV if they turn in a car from 2004 or older through the Bay Area Air Quality Management District's Clean Cars for All program.<sup>7</sup> Manufacturers are also lowering the prices of new EVs. Chevrolet and Nissan have introduced EVs priced in the mid-\$20,000 range;<sup>8</sup> incentives and rebates bring the purchase price below \$20,000. While supply chain issues have recently reduced supply and driven up used and new EV prices, industry experts believe the market will return to normal in early 2023 and that supply in the used EV market will greatly increase in 2024 and 2025. EV drivers also benefit from lower lifetime fueling and maintenance costs compared with gas-powered vehicles. Electricity costs less than \$2 for the equivalent gallon of gasoline,<sup>9</sup> and studies have found 30% lower maintenance costs for EVs at the three-year mark.<sup>10</sup>

### *Issues with Charging Infrastructure Access*

Roughly 83% of California EV drivers reside in single-family homes and charge primarily at home using Level 1 and Level 2 chargers (Table 1).<sup>11</sup> Low-income residents face barriers to charging and EV adoption. Low-income single-family homeowners and renters may lack the financial resources needed to purchase and install chargers at home. Residents of multi-family housing often do not have control over the upgrades and improvements to the property needed to install chargers. Space and electrical capacity constraints and higher costs may limit the number of chargers that property managers are willing to install in multi-family housing.

Table 1. Types of EV Chargers

	<b>Level 1</b>	<b>Level 2</b>	<b>Direct Current Fast Charging</b>
Charge Time	3-5 miles per hour	10-40 miles per hour	80% charge in 20-30 minutes
Installation	None required; use a standard, properly grounded 3-prong outlet	Hire an electrician to install and get a permit; same type of plug that dryers use	Found in public places; professionally installed
Voltage	120 Volt	208 Volt or 240 Volt	208 Volt or 480 Volt

Public EV charging infrastructure – both Level 2 and fast charging – is currently distributed unevenly and inequitably in San José (Figure 2). The private sector has largely invested in charging infrastructure in high-income areas where EV adoption is highest, creating a feedback loop that exacerbates the charging gap and leaves low-income and communities of color behind. SJCE's \$14 million investment with the California Energy Commission in the California Electric

<sup>6</sup> Incentives are outlined at [SanJoseCleanEnergy.org/ev](https://www.sanjosecleanenergy.org/ev)

<sup>7</sup> [Clean Cars for All](#)

<sup>8</sup> [2023 Chevrolet Bolt](#), [2023 Nissan Leaf](#)

<sup>9</sup> [EV electricity rates](#)

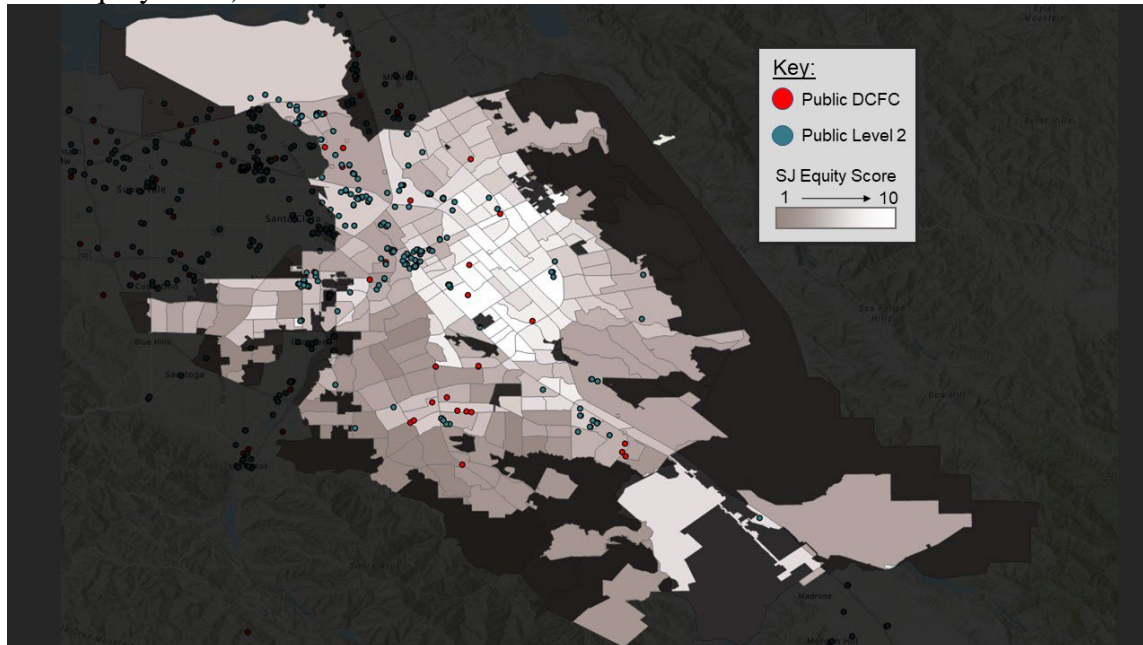
<sup>10</sup> [CleanTechnica article on maintenance costs](#)

<sup>11</sup> Nicholas et al. (2019). Quantifying the Electric Vehicle Charging Infrastructure Gap Across U. S. Markets. The International Council on Clean Transportation.



Vehicle Infrastructure Program is increasing the prevalence of charging infrastructure in low-income and communities of color,<sup>12</sup> but *more public investment is needed to close the access gap, drive EV adoption, and meet charging needs.*

Figure 2. Existing EV charging infrastructure (Data Sources: U.S. Department of Energy, San José Equity Atlas)



### Fast Charging Hub Pilot

Staff recommends developing one to three fast charging hubs as one way to quickly improve access to reliable EV charging for low-income and communities of color in San José. Each fast-charging hub would contain parking spaces and chargers to accommodate at least 10 EVs and would be operational for up to 10 years. The chargers could be available to the public 24/7 and located in high-traffic, well-lit areas to promote access and safety. SJCE would set retail pricing and provide energy to the chargers, which would be branded with SJCE and the City's logos.

### Contract Model

Staff recommends contracting with a single vendor to develop each fast-charging hub through a pay-for-performance tolling agreement. The vendor would own the fast-charging infrastructure and would be responsible for siting, financing, design, engineering, procurement, permitting, construction, installation, interconnection, operation, maintenance, the load management system, and back-office services (e.g., communications, user account management, billing, reporting, utility interface applications) at each hub. Selected sites that may require electric service upgrades to increase electrical capacity onsite, on the customer side of the meter, will also be

<sup>12</sup> [Memorandum to the City Council, October 22, 2019](#); [Project page](#). San José funding for the California Electric Vehicle Infrastructure Program launched in December 2020. As of March 2022, 52 Level 2 and 11 Direct Current Fast Chargers are operational. Chargers will continue to be installed through 2024. About 40% of chargers will be installed in low-income and disadvantaged communities.

managed and financed by the vendor. SJCE would pay fixed monthly tolling payments based on the vendor's performance on hardware and software uptime. For example, SJCE would be entitled to liquidated damages if hardware or software issues reduce charger availability to less than 98% of the time.

A tolling agreement has many advantages:

- SJCE would not need to pay the capital costs upfront. Monthly tolling fees smooth out the capital costs and cash flows.
- The pay-for-performance structure incentivizes the vendor to adhere to strict maintenance schedules and resolve issues in a timely fashion.
- The vendor assumes all risks associated with ownership, operation, and maintenance.
- There are options at the end of the initial contract term. The City could have the option to extend the contract term by an additional five years, buy the infrastructure outright, or have the vendor remove it at no cost.
- Proven utility contracting structure that has been used to develop other types of utility generation such as solar and storage.

Importantly, SJCE would have the ability to set retail pricing. The pilot would provide an opportunity for SJCE to test unique pricing structures that improve charging affordability for neighboring communities while incentivizing midday charging. Potential pricing structures and strategies include providing discounts for low-income customers enrolled in state bill assistance programs to make fast charging cost the same as or less than off-peak home charging and offering unlimited charging subscriptions for middle-of-the-day charging for nearby residents. The unlimited charging option could provide the additional benefit of allowing low-income households more certainty as they budget their monthly transportation costs, especially compared to fluctuation of gas prices. Staff would also reach out to rideshare companies and delivery fleets to explore partnerships.

### *Site Selection*

Staff recommends that the fast-charging hubs pilot consists of one to three hubs that would be located at City-owned sites such as community centers, libraries, and parks to serve as amenities for Parks, Recreation, and Neighborhood Services and Library customers and/or privately owned sites. Through the Request for Offers process to select the vendor(s) to implement the pilot, bidders have proposed sites, provided pricing, and begun to edit proposed agreement terms (summarized in the Attachment). CED staff is evaluating offers according to these site selection criteria:

- Preference for sites that score an eight or higher in the City of San José's Equity Atlas, which indicates a higher concentration of people of color and low-income households.
- Preference for sites located in current charging "deserts" to improve geospatial coverage of charging across San José.

Examples of City-owned sites that fit these criteria include Seven Trees Community Center and Library, Edenvale Library, Emma Prusch Farm Park, Evergreen Library, and Rancho del Pueblo Golf Course.

Staff is also considering other criteria in their offer evaluation:

- Pricing;
- Vendor's development experience, including with interconnection, permitting, and securing financing; and,
- Vendor's initial edits to proposed agreement terms.

Based on the above sets of criteria, CED staff will recommend one to three site offer(s) from one or more vendors. For City-owned sites, CED staff will refer the vendor(s) to City staff in the department responsible for the administration of the specific site for final site selection and legal site review. The use of City-owned sites is subject to separate and independent selection processes that will be managed by the City department responsible for the administration of the specific site. The winning bidder(s) in the pilot program for SJCE will not receive any advantage in the City's selection of a vendor to use a City-owned site. The final site selection will also be contingent on a legal site review performed by City departments, including but not limited to Finance, the City Attorney's Office, and the Office of Economic Development and Cultural Affairs' Real Estate unit, to verify the site's funding sources and resulting allowable site uses. Once the final site selection and legal site review are completed by the departments and the vendor is clear to use the City-owned site, CED staff will update the City Council via an information memorandum.

### *Financial Modeling*

Over 10 years, staff expects the cost of charger operations and maintenance to be somewhat offset by the revenue earned from the sale of electricity and the sale of Low Carbon Fuel Standard (LCFS) credits. (Note that the market price of LCFS credits is very volatile and has dropped by more than 50% in a year.) Conservative modeling results indicate a net loss of \$1.0 million to \$1.5 million over 10 years per fast charging hub (Scenarios 1-3 in Table 2). Profitability is affected by charger utilization, grants, and other public funding issued to suppliers; the quantity and price of LCFS credits sold; and any discounts offered to low-income customers. Sales of EVs are expected to substantially increase over 10 years. It is possible for the fast-charging hub revenue to completely offset costs if utilization grew to 19% over 10 years (Scenario 4 in Table 2). If the operations operate as a loss, SJCE would be able to absorb the impact of this incremental cost, and the pilot would serve as a low-cost program to accelerate EV charging. The total estimated net loss of \$1.0 million to \$1.5 million per hub would be spread across 10 years due to the nature of the tolling payment agreement. Figure 3 outlines the cash flows in the tolling agreement between various parties.

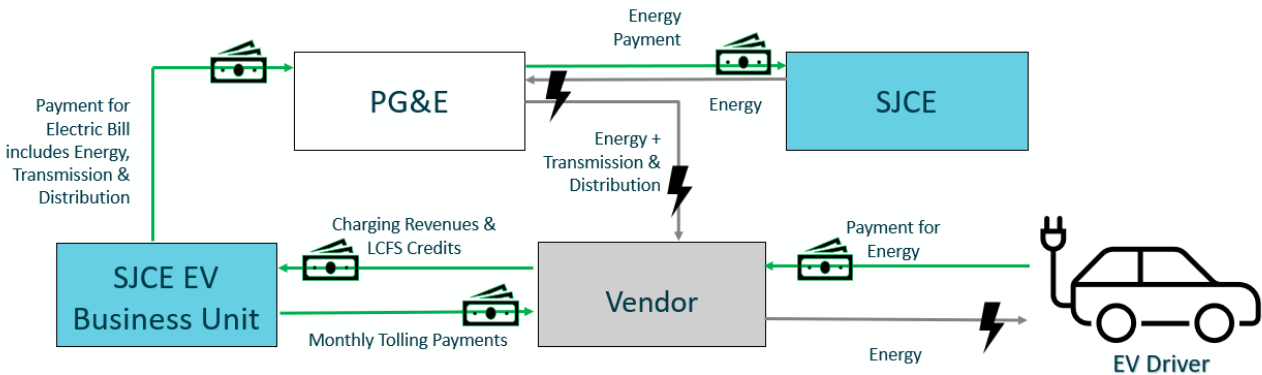
Table 2. Financial scenarios and net income (one hub)

Scenarios	Utilization Start	Utilization End	Utilization Growth	Grant Funding	10 Year Revenue	10 Year Cost	10 Year Net Loss*
1	1%	2%	9%	\$0	\$1,004,000	\$2,454,000	(\$1,450,000)
2	1%	4%	<b>14%</b>	\$0	<b>\$1,208,000</b>	<b>\$2,578,000</b>	(\$1,370,000)
3	1%	4%	14%	<b>\$400,000</b>	\$1,208,000	<b>\$2,178,000</b>	(\$970,000)
4	<b>5%</b>	<b>19%</b>	14%	\$400,000	<b>\$3,873,000</b>	<b>\$3,862,000</b>	\$11,000

\* Parentheses indicate net loss.



Figure 3. EV Charger Tolling Agreement Cash Flow



The pilot program would serve as an opportunity to gain exposure to the EV charging business, test retail pricing structures, and help spur EV adoption among low-adoption communities. Should the pilot prove successful, SJCE could recommend expanding the network of fast charging hubs. Bay Area Community Choice Aggregators could also collaborate to develop a network of fast charging hubs throughout the Bay Area and the State of California to provide customers with consistent pricing and charging experience.

### Current Status and Next Steps

SJCE's Request for Offers closed in late September 2022. Staff is evaluating vendor offers based on price, the site selection criteria described above, and vendor development experience. For offers that propose siting the hub(s) at City-owned sites such as parks, community centers, or libraries, the selected vendors would go through the standard City procurement process for site selection and legal site review. Selection of the vendor for the tolling agreement would not guarantee site selection for City property, and the selected vendor would need to compete with other entities seeking to use the City property for other uses. Should City Council approve the pilot, CED staff would select vendor offer(s) in November or December and negotiate the tolling agreement by the end of 2022. CED and City Attorney's Office staff would negotiate the tolling agreement for City-owned sites in parallel as the other City departments finalize site selection and conduct legal site review. Should a site become unviable through the site selection and legal site review processes, CED and City Attorney's Office staff would pivot negotiations to other sites and refer the vendors to City staff in the department responsible for the administration of the specific site to restart site selection and legal site review.

For hubs sited on City-owned property, the successful vendor would coordinate with Public Works on permitting and engineering assessments and reimburse the City of San José for staff time. The completion of the hubs will depend on site selection, the timeline for Pacific Gas and Electric electrical updates,<sup>13</sup> and lead times for manufacturing EV charging equipment. Construction could be completed in late 2023.

<sup>13</sup> All work and associated costs for utility-side electrical infrastructure to operate charging stations are the responsibility of Pacific Gas and Electric under [California Public Utilities Commission Electric Rule 29](#).

### *Community Engagement, Outreach, and Education*

Staff will work with community-based organizations and neighborhood groups to engage residents of surrounding neighborhoods about the proposed fast charging hubs at community meetings and events. To create retail pricing structures that bring value to residents, SJCE would conduct market research surveys to understand driving habits. The pilot could help signal to residents in surrounding neighborhoods that EV charging is available to them.

Once the hubs are operational, staff would conduct extensive multi-lingual outreach and education activities in the surrounding communities to inform residents of the financial, health, and environmental benefits of switching to an EV. This would include providing one-on-one counseling to help residents understand which rebates and incentives they qualify for and how to apply to them. Staff would also hold workshops and targeted EV test drive events. SJCE plans to hire community-based organizations to assist with this work. Staff also plan to engage nearby residents to understand their experiences with the EV chargers and pricing structures.

### *Budget and Accounting*

Revenue from the electricity sold to retail customers at the fast-charging hub charging stations and LCFS credits would be tracked separately in a newly created revenue account. Costs and other expenses associated with the fast-charging hub charging stations would also be tracked separately in a newly created appropriation. If costs are greater than revenue for this community-based program, SJCE has adequate reserves to cover the loss. Higher utilization, grant funding, and other factors will influence profitability.

### *Strategic Planning for EV Charging Infrastructure*

Multiple City departments are installing and incentivizing the deployment of EV charging infrastructure for the municipal, residential, and commercial sectors. In Fiscal Year 2022-2023, the City will hire a FUSE fellow to coordinate the development of a strategic plan and implementation framework with departments. The fellow will conduct market research to understand the role of the City versus the private sector in the deployment of EV charging infrastructure, evaluate the impact of technological advances, and propose a framework for unifying the connected network of charging equipment.

## **CONCLUSION**

Staff recommends developing a pilot of one to three fast charging hubs to help improve access to reliable EV charging for low-income and communities of color in San José. Hubs would be sited at City-owned sites like community centers and libraries and potentially at private sites that meet SJCE's equity and access criteria. The hubs would be sited in areas with low EV adoption; therefore, the fast-charging hubs may not generate positive net income over the 10-year tolling agreement term. The pilot may provide a cost-effective program to accelerate EV charging. The pilot is also a valuable opportunity for SJCE and the City of San José to gain first-hand experience with EV charging as a business opportunity, test retail pricing structures that

incentivize charging sourced by renewable power, and help spur EV adoption among low-adoption communities.

## **EVALUATION AND FOLLOW-UP**

Upon final vendor and site selection, staff will provide an update to the City Council via an information memorandum. Staff will also provide a status update and lessons learned to the Transportation and Environment Committee approximately one year after the hubs begin operation.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum positively impacts one or more Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

**Alternative 1: Own and operate charging infrastructure and set up a maintenance contract with an EV equipment vendor.**

**Pros:**

- More common than tolling agreement; more options on the market
- Ability to set retail pricing

**Cons:**

- Requires large upfront investment by SJCE
- SJCE takes on the risk associated with ownership, operation, and maintenance
- May result in lower reliability<sup>14</sup>

**Reason for not recommending:** Requires a large upfront investment and more staffing resources to oversee maintenance contracts and resolve issues. It will also be harder to scale the pilot due to the upfront investment. Chargers may be less reliable.

**Alternative 2: Invest the same amount of funding in a rebate program.**

**Pros:**

- The California Electric Vehicle Infrastructure Program offers incentives for the purchase and installation of electric vehicle charging infrastructure at publicly accessible sites throughout California. SJCE's targeted outreach to property managers in low-income and disadvantaged communities resulted in nearly 40% of California Electric Vehicle Infrastructure Program funding being invested in these communities in San José.

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<sup>14</sup> Rempel, Cullen, Bryan, and Cezar (2022). [Reliability of Open Public Electric Vehicle Direct Current Fast Chargers](#). Berkeley professors tested all public EV chargers in the Bay Area and found 72.5% to be functional.

**Cons:**

- More staff time to organize
- No uptime guarantees
- Not sited at City sites
- No guarantee that they would be sited in charging “deserts”

**Reason for not recommending:** Property owners are responsible for maintaining the chargers, which could lead to lower reliability. Requires staff time to conduct outreach to ensure chargers are sited in low-income and communities of color.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s website for the November 15, 2022, City Council meeting.

**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office, City Manager’s Budget Office, Finance Department, City Manager’s Office of Racial Equity, Department of Parks, Recreation, and Neighborhood Services, Public Works Department, Library Department, and Department of Transportation.

**COMMISSION RECOMMENDATION/INPUT**

These recommendations were not considered by the Clean Energy Community Advisory Commission.

**COST SUMMARY/IMPLICATIONS**

The financial scenarios in Table 2 above range from a 10-year loss of \$1.45 million or a small net gain of \$11,000 per charging hub. The estimated maximum exposure to the City if three hubs were to go forward is \$4.35 million over 10 years, or an average annual net cost of \$435,000. At a level of 0.1% of budgeted revenue from energy sales, staff views this as an acceptable loss given the potential community benefit and learning anticipated from implementing the pilot program.

It is important to note that more significant renewable energy and energy efficiency programming by SJCE is limited until SJCE can pay off the \$60 million of Commercial Paper Notes – currently anticipated to be paid off before the end of calendar year 2023 – and build fund balance within the SJCE Fund. In 2020-2021, the SJCE unrestricted ending fund balance was \$8.1 million, grew to \$80.6 million in 2021-2022, and the 2022-2023 Modified Budget projects a balance of \$171.0 million. Should this positive trend continue through 2023-2024, SJCE will

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have resources to engage in other programming efforts to increase adoption of clean energy technologies and lower carbon emissions.

### **CEQA**

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment; and File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

LORI MITCHELL

Director, Community Energy

For questions, please contact Lori Mitchell, Director, Community Energy, at (408) 535-4880.

Attachment - Summary of Material Terms in Proposed Commercial Term Sheet

## **Attachment - Summary of Material Terms in Proposed Commercial Term Sheet**

### **Parties**

- **Customer:** Party paying the tolling agreement and receiving the services described below. The City of San José, as administrator of San José Clean Energy (SJCE), would be the customer. The Customer would provide the power to the chargers, set retail pricing, and collect revenue and environmental attributes from the chargers.
- **Provider:** Party providing the services described below. The Provider will likely be a financial institution bringing together other partners that include an electric vehicle supply equipment provider, a construction company, and an engineering firm.

### **Project**

- Summary of services the Provider will provide for the Customer, including providing the chargers and the supporting infrastructure to operate the chargers; installing, owning, and maintaining the chargers on behalf of the customer; and providing and licensing software as a service.
- Specifies the number of chargers to serve 10 vehicles simultaneously, whether they are dual or single port, and their capacity in kilowatts (kW).
- Defines the project, EV Charging Station, as including the charger hardware and software.

### **Sites and Site Owner**

Lists hub locations and owner for each location. The use of City-owned sites is subject to separate and independent selection processes that will be managed by the City Department responsible for the administration of the specific site. The winning bidder(s) in the pilot program for SJCE will not receive any advantage in the City's selection of a vendor to use a City-owned site.

### **Site License Agreements**

Requires Provider to enter into site license agreement(s) with the site owner(s) to grant rights to install and operate the chargers at the site(s). For privately-owned sites, Customer bears no risk of site disruption during the installation, operations, and maintenance of the chargers.

### **End-Users**

Defines the general public as the end-users receiving electric vehicle charging services from the charging stations defined under the project.



### **Scope of Work**

Provides more detail on the services the Provider will provide to the Customer in the project, including providing all engineering, procurement, construction, operation, and maintenance services necessary for the Customer's and end-users' utilization of the chargers throughout the Term; obtaining permits; handling all interconnection matters, installing all interconnect equipment and meters, and conducting testing; and paying all capital, operations, and maintenance costs, among others, on an ongoing basis in order to provide reliable operations for the charging station end users.

### **Branding**

The EV Charging Station will offer charging services to End-Users under a white-label structure. The EV Charging Station will bear the marks and signage indicating to End-Users that the Vehicle Charging Services are provided by SJCE. The terms of the Agreement will cover provisions related to branding and use of trademarks, which shall be consistent with all applicable laws, including but not limited to SJCE's and City's policies.

### **Term**

The term of the agreement is ten years with an option to renew it for one or more additional terms of five years, upon notice to the Provider for at least six months prior to the end of the term. Defines the agreement effective date, length of the agreement, and contract renewal options.

### **Pricing**

- Specifies monthly tolling payment fee that the Customer will pay the Provider in dollars per kW (capacity of the charging unit) (\$/kW-month). SJCE is negotiating the price with potential Providers. The price is market sensitive information and must remain confidential.
- Specifies that Customer has sole and full discretion to set retail charging rates at all times.

### **Limited Notice to Proceed Risk; Notice to Proceed Prerequisites**

- Specifies that Customer will issue a Limited Notice to Proceed at a certain point to allow the Provider to commence development, and that work undertaken between Limited Notice to Proceed and Commercial Operation is performed at the Provider's sole cost.
- Lists conditions required before achieving Notice to Proceed, including legal site review clearance, obtaining site license, final engineering design, and developing a schedule and executing agreements for interconnection.

### **Commercial Operation Date; Delay Damages**

- Lists conditions required before achieving Commercial Operation, including obtaining permits, finishing interconnection, installing the chargers, and testing the software. The proposed commercial operation date will be between May of 2023 and December of 2024. SJCE is negotiating the Commercial Operation date with Providers.
- SJCE's proposed liquidated delay damages of \$900/day for the first two months of delay, \$1250/day for the next two months, and \$2000/day for the following two months for unexcused delays in achieving Commercial Operation. SJCE may negotiate the proposed liquidated delay damages with Providers based on the entire agreement and value of the commercial package offered by Providers.
- Allows Customer to terminate the agreement after six months of delay. SJCE may negotiate the proposed delay time to terminate with Providers based on the entire agreement and value of the commercial package offered by Providers.

### **Invoices; Payment**

The Agreement will provide standard invoicing and payment provisions requiring SJCE to pay on a net 30-day basis.

### **Hardware and O&M and Software Uptime Availability Commitments**

- Requires Provider to ensure that the hardware and O&M for all chargers at each site are available at least in aggregate 98% of the time on an aggregate monthly basis at each site throughout the term. Providers counteroffered the proposed O&M availability commitment. SJCE is actively negotiating this term and may consider lower O&M availability commitment or structures based on the entire agreement and value of the commercial package offered by Providers.
- Requires Provider to also ensure that the software for all chargers at each site are available at least in aggregate 99% of the time on an aggregate monthly basis at each site throughout the term. Providers counteroffered the proposed software uptime availability commitment. SJCE is actively negotiating this term and may consider lower software uptime availability commitment or structures based on the entire agreement and value of the commercial package offered by Providers.
- Defines performance liquidated damages as a percent reduction of the monthly tolling payment for varying availability for the hardware and software individually, ending in a 100% reduction in the monthly tolling payment if availability falls at or below 75%. Providers counteroffered the proposed software uptime availability commitment. SJCE may negotiate the performance liquidated damages based on the entire agreement and value of the commercial package offered by Providers.
- Requires Provider to give Customer full visibility into hardware or software downtime, including error codes and resolution processes.

### **Vehicle Charging Service Errors and Response Times**

Defines tiers of charging service errors and required response times in minutes, hours, or days. SJCE may accept lower service errors and response times with Providers based on the entire agreement and value of the commercial package offered by Providers.

### **Performance Security**

Defines the cash amount or letter of credit amount on a per-site basis for Customer to draw upon. This term depends on the final pricing. As mentioned, SJCE is negotiating the price with potential Providers. Since the price is market sensitive information, the performance security must also remain confidential.

### **Warranty Obligations**

- Requires chargers to be covered by warranties from the original equipment manufacturer and Customer approval of the warranty prior to the agreement effective date.
- Requires Provider to comply with all laws, contractual obligations, etc. concerning the personally identifiable information of end users.

### **Termination Rights**

If the Provider fails to meet the O&M or Software availability commitment, SJCE will have the following rights:

- Terminate the Agreement in the calendar month following a six-month period upon written notice to Provider.
- Work with Provider to develop a corrective course of action while collecting performance damages
- Terminating the Agreement at any time.

### **Purchase Option**

- Specifies price at which Customer can purchase the charging stations at the end of the contract term. SJCE may negotiate the purchase price with Providers based on the entire agreement and value of the commercial package offered by Providers. The purchase price is market sensitive information.
- Specifies infrastructure removal responsibility if Customer declines to purchase the chargers.

### **Government Authorizations**

Specifies that Provider will be responsible for procuring all governmental authorizations necessary for the project. The use of City-owned sites is subject to separate and independent selection processes that will be managed by the City Department responsible for the administration of the specific site. The winning bidder(s) in the pilot program for SJCE will not receive any advantage in the City's selection of a vendor to use a City-owned site.

### **Schedule**

Standard provisions related to events outside of Provider's commercially reasonable control that entitle Provider to changes in schedule or equitable or day-for-day extensions of up to 90 days.

### **Environmental Attributes**

Specifies that Customer will have all right, title, interest in, and receive the benefits of environmental attributes, such as Low Carbon Fuel Standard credits, including future environmental attributes.

### **Events of Default**

Usual and customary Provider and SJCE events of default, with customary cure periods, will be provided under the terms of the Agreement. Standard force majeure provisions will be included.

### **Title, Risk of Loss, and Maintenance**

- Specifies that the Provider shall bear the risk of loss for the chargers prior to delivery to each site and thereafter remain liable for any loss or damage in the course of installation.
- Requires Provider to maintain the chargers consistent with the warranty requirements and make repairs for ordinary wear and tear and any damages.

### **Insurance**

Requires Provider to comply with City standard insurance requirements identified by the City's Risk Manager.

### **Assignment**

Grants Customer the right to assign the agreement to Customer's affiliates or third parties with equal or higher creditworthiness to perform obligations under the agreement.

Specifies that Provider may not assign the agreement, including a change in control of Provider, without Customer's prior written consent.

## **City of San José Standard Terms and Agreements**

Full list of current standard terms and agreements:

### **Designated Fund**

(a) Designated Fund. City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) City of San José has created and set aside a designated fund (the “Designated Fund”) for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, City of San José agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of City of San José’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. City of San José shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

(b) Limited Obligations. City of San José’s payment obligations under the Agreement are special limited obligations of City of San José payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### **Indemnification**

Obligation: The Provider shall defend, indemnify, and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Provider’s negligent performance of all or any part of the services required by this agreement and any Additional Services; or
- Any negligent act or omission, recklessness, or willful misconduct of the Provider, any of its Subcontractors, anyone directly or indirectly employed by either the Provider or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City’s use of any services, deliverables or other items provided by the Provider pursuant to the requirements of this Agreement; or
- Any violation of Provider’s confidentiality obligations or Provider’s use of confidential data for Provider’s personal gain; or
- Any breach of this Agreement.

Limitation on Obligation: The obligation above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.

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**Duty to Defend:** The Provider's obligation above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Provider, at its own expense, shall defend any suit or action that is subject to the obligation above.

**Insurance:** The City's acceptance of any insurance does not relieve the Provider from its obligations above. The Provider's obligations apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

**Survival:** The Provider's obligations survive the expiration or earlier termination of the Agreement.

### **Use of Confidential Information and Confidentiality**

**Confidential Information:** All customer information and SJCE proprietary or operational information, including without limitation, names, addresses, payment information, station usage information, phone numbers, SJCE data, and Provider proprietary information is "Confidential Information" and must be kept confidential and handled in accordance with this Agreement.

Provider recognizes and understands that the City operates in an open and transparent manner under the California Public Records Act. Provider must clearly identify in writing on the document or material it believes to be proprietary information and state the specific provision in the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption.

**Nondisclosure and Nonuse of Confidential Information:** The Parties agree to protect Confidential Information, using at least the same degree of care that each Party uses to protect its own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. Provider agrees to use Confidential Information obtained in performing the work under this Agreement for the sole purpose of providing services to the City, SJCE, and SJCE customers to the extent necessary to perform under this Agreement. Provider shall not disclose, publish or disseminate Confidential Information to anyone other than the City and those of its employees and City's authorized contractors who have a need to know in order to perform the Scope of Services in this Agreement and who are bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information. Provider will be responsible for any violation of the terms of this Agreement by its employees and Subcontractors. Provider agrees not to use Confidential Information for any other purpose or for its own or any third party's benefit without the prior written consent of the Director and the customer providing the information in each instance. Provider may disclose Confidential Information to the extent required by law, provided Provider gives City and customer notice of such requirement prior to any disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information, unless such notice is otherwise prohibited by law. With respect to information that Provider has identified as proprietary information above, and although the California Public Records Act recognizes that certain confidential information may be protected from disclosure (e.g., trade secret information), the City may not be in a position to establish that the information that Provider submits is a trade secret or otherwise may be excluded from release under the Public Records Act. Prior to any disclosure to a third party of information identified in writing as "Confidential", "Trade Secret" or "Proprietary", the City will provide Provider notice of the proposed disclosure with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Notice under this Section may be given via electronic mail without the requirement for a written notice of receipt. If Provider



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does not seek protection from the court, the Parties agree that the City in its independent discretion may release the document(s) in which case, no liability will attach to the City under this Agreement and the City will not be deemed in default of the mutual confidentiality obligations.

Notwithstanding any limitations in the indemnification section, above, in the event of a legal challenge relating to the City's withholding of Provider Confidential Information from release under the Public Records Act, Provider Agrees to indemnify, defend, protect, and hold the City harmless, with counsel reasonably acceptable to the City, from and against any and all expenses, claims, costs, attorneys' fees, damages, and penalties.

License to Confidential Information: Except as expressly set forth in this Agreement, no license or other rights to Confidential Information are granted or implied and City retains all of its rights therein.

No Warranty: All information is provided "AS IS," and without any warranty, whether express or implied, as to its accuracy or completeness.

Chain of Custody: Provider will document the electronic receipt of all tangible Confidential Information that is specifically identified or marked as such whether received from the City or PG&E. City acknowledges that all City employees granted logins to the Customer Information System or any other database created or utilized by Provider have access to a log of all Confidential Information received throughout the term of this Agreement. City further acknowledges that all City employees granted logins to the Customer Information System have access to a log of all users with access to Confidential Information. This log will include name of user, and time and date of logins during which time a user may have accessed Confidential Information.

Disposition of Confidential Information Upon Termination of Agreement: Upon expiration or termination of this Agreement, Provider will give City a description of all Confidential Information it has in its possession. City, in its sole discretion will direct Provider to return or delete, in whole or in part, all Confidential Information under the control of Provider, without retaining any electronic or tangible copies thereof.

Equitable Relief: Provider agrees that City will have the right to seek and obtain immediate injunctive relief to enforce confidentiality obligations under this Agreement in addition to any other rights and remedies it may have.

No Export: Provider agrees that no Confidential Information, or any portion thereof, will be exported to any country in violation of the United States Export Administration Act and regulations thereunder, or any other applicable export control laws or regulations.

Exceptions: The obligations imposed herein do not apply, or will cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information: was known to Provider prior to the receipt of the Confidential Information; or was, or becomes through no breach of Provider's obligations hereunder, known to the public; or becomes known to Provider from sources other than the City under circumstances not involving any breach of any confidentiality obligation; or is independently developed by Provider, as evidenced by the written records thereof. In the event of dispute regarding the use of Confidential Information, Provider will have the obligation to establish that any of the above exceptions apply.

Survival of this Provision: The confidentiality obligations, including the indemnity obligations, will survive the expiration or early termination of this Agreement.

Equitable Relief: Provider agrees that City will have the right to seek and obtain immediate injunctive relief to enforce confidentiality obligations under this Agreement in addition to any other rights and remedies it may have.

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**No Export:** Provider agrees that no Confidential Information, or any portion thereof, will be exported to any country in violation of the United States Export Administration Act and regulations thereunder, or any other applicable export control laws or regulations.

**Exceptions:** The obligations imposed herein do not apply, or will cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information: was known to Provider prior to the receipt of the Confidential Information; or was, or becomes through no breach of Provider's obligations hereunder, known to the public; or becomes known to Provider from sources other than the City under circumstances not involving any breach of any confidentiality obligation; or is independently developed by Provider, as evidenced by the written records thereof. In the event of dispute regarding the use of Confidential Information, Provider will have the obligation to establish that any of the above exceptions apply.

**Survival of this Provision:** The confidentiality obligations, including the indemnity obligations, will survive the expiration or early termination of this Agreement.

### **Non-discrimination/Non-preference**

**Prohibition:** The Provider shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

### **Conflict of Interest**

**General:** The Provider represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Provider certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Provider shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Provider has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

**Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Provider shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

**Future Services:** The Provider acknowledges each of the following with regard to performing future services for the City:

- The Provider's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Provider

performing or participating in the performance of some related future services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;

- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Provider from performing or participating in the performance of such future services; and
- The Provider is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

### **Environmentally Preferable Procurement Policy**

General: The Provider shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled “Prohibition of City Funding for Purchase of Single Serving Bottled Water,” and City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy.”

Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City’s policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City’s website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Provider’s work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

### **Independent Contractor**

General: The Provider has complete control over its operations and employees, and is an independent contractor. The Provider is not an agent or employee of the City, and shall not represent or act as the City’s agent or employee. The Provider does not have any rights to

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retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

**Subcontractors:** As an independent contractor, the Provider has complete control over its subcontractors, suppliers, agents and any other person or entity with whom the Provider contracts in furtherance of this Agreement (collectively “Subcontractors”). Subject to the requirements of Section 7 of this Agreement, the Provider is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

**Indemnity:** The Provider shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in the Indemnification Section Above.

### **Standard of Performance**

The Provider represents that it possesses all necessary training, licenses and permits needed to perform the services required by this agreement. The Provider represents that its performance of the services required by this agreement will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

### **Audit/Inspection of Records**

**Retention Period:** The Provider shall retain the following records (collectively “Records”) for a minimum of 3 years from the date of the City’s final payment to the Provider under this Agreement or for any longer period required by law:

All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Provider’s charges for performing services, or to the Provider’s expenditures and disbursements charged to the City; and

All Work Product and other records evidencing Provider’s performance.

**Producing Records:** At any time during the Agreement term or during the period of time that the Provider is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Provider shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Provider shall produce the requested Records at no cost to the City.

**State Auditor:** In accordance with Government Code Section 8546.7, the Provider may be subject to audit by the California State Auditor with regard to the Provider’s performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

### **Disqualification of Former Employees**

The Provider represents that it is familiar with Chapter 12.10 of the City’s Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Provider shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Provider’s violation of this section is a material breach.

### **Other Terms**

The Agreement will contain such additional terms as are typical of agreements of this type.