

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: February 21, 2019

Approved

D. D. S. L.

Date

2/21/19

REPLACEMENT

**SUBJECT: AGREEMENT WITH THE SANTA CLARA VALLEY WATER DISTRICT
FOR ENCAMPMENT ABATEMENT AND REVISED ENCAMPMENT
ABATEMENT PROCEDURES**

REASON FOR REPLACEMENT

This memorandum corrects the attachment order and index listing on p. 11 and an error on p. 8 regarding weather suspensions.

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute a Memorandum of Agreement with the Santa Clara Valley Water District for Homeless Encampment Abatement within City boundaries; and
- (b) Accept the revised Homeless Encampment Abatement Procedures.

OUTCOME

Approval of the Memorandum of Agreement continues the coordinated efforts between the City and the Santa Clara Valley Water District (Water District) on homeless encampment abatements through June 2024. Acceptance of the revised Encampment Abatement Procedures will enable the City to address recommended changes identified in audits, respond to stakeholder concerns, and provide clarification of the procedures for the City, Water District, and stakeholders.

BACKGROUND

During the 2017 homeless census, 4,350 people were found to be homeless within the City's boundaries (a total of 7,394 were counted throughout Santa Clara County). Of the 4,350 included in San José's point-in-time count, 74% were unsheltered (living on the streets, in parks or in homeless encampments).

While the number of people living in encampments fell by 48% between 2013 and 2017, individuals identified in encampments still represented 15% of the overall population experiencing homelessness. There were 643 individuals counted in homeless encampments in San José in January 2017. Most of these encampments are in the riparian areas along the City's creeks.

Need to Address Homeless Encampments in the City's Waterways

Creekside homeless encampments create a number of environmental and health concerns. The primary issues include: 1) unhealthy and dangerous conditions for homeless people; 2) negative impact on the quality of life in neighborhoods; and 3) damage to the natural environment. Encampments can create serious health and safety problems for the people living there, including spread of communicable disease due to poor hygiene and unsanitary conditions, discarded drug paraphernalia and interpersonal violence. They also create quality of life issues in neighborhoods such as the build-up of trash and debris and damage to open space and recreational areas. Finally, the impacts of homeless encampments on the sensitive riparian environment are severe. They include trash and debris accumulation, soil excavation, vegetation removal, erosion, fire, hazardous materials and bio-waste. Fish and wildlife populations are depleted through poaching and habitat destruction. There is a clear need to address the generation of trash and other pollutants in waterways, which potentially degrade water quality and the health of the watershed. In addition, the City has a regulatory obligation to reduce the discharge of pollutants to waterways.

History of the Abatement Program

Since the early 1990s, the City has periodically worked to remove homeless encampments along its waterways. These efforts include partnering with the Water District to jointly remove structures, debris, and other items from encampments on City and Water District land within San José. A formal Memorandum of Agreement (MOA) with the Water District was established in 2013. The agreement establishes the roles and responsibilities of both the City and the Water District in abating encampments. The MOA includes procedures that provide clarity to staff on the specific roles. The MOA extension is set to expire on March 31, 2019.

The Environmental Services Department was previously the City's lead agency for encampment abatements. However, the Housing Department took over as the lead Department in 2013 to enhance the City's ability to address the needs of homeless residents living in the encampments. The Housing Department recognized that outreach teams are critical in proactively assisting the homeless persons living in the encampments, as well as in responding to the needs of the broader community.

In 2013-14, the Housing Department and the Parks, Recreation and Neighborhood Services (PRNS) Department partnered to establish a Homeless Response Team to address community concerns about the growth of homeless encampments with three primary goals:

- 1) Significantly reduce and limit the current levels of entrenchment at large encampments;
- 2) Maintain an active presence to deter re-encampment at cleaned sites and prevent new encampments from reforming; and

- 3) Create a sustained outreach plan to provide homeless encampment residents suitable housing alternatives.

In FY 2013-14, the City's budget for this purpose was increased by \$1,500,000 from the General Fund. This was matched with \$175,000 from the Water District to fund two Park Rangers to serve on what is referred to as the Watershed Protection Team (WPT). This team was tasked with patrolling and providing enforcement of homeless encampments along waterways to prevent re-encampment. The City and the Water District established performance measures for the WPT that addressed the cleanup of litter and removal of encampments along the waterways in San José. The FY 2013-14 budget included funding for a contracted encampment abatement crew to sort and store personal property. It also provided additional resources for the City's outreach staff. Since 2013, the outreach teams from Bill Wilson Center and HomeFirst (formerly EHC LifeBuilders) have engaged and provided services, emergency shelter, and ultimately permanent housing to unsheltered persons living in encampments.

Responding to Regulatory Requirements

In September 2014, the City received a letter from the Regional Water Quality Control Board (Water Board) requesting the City submit information on its plans to "eliminate the discharge of human waste to Coyote Creek from property owned by the City". In order to comply with the request, and avoid fines of up to \$5,000 to \$25,000 per day, the City submitted a report to the Water Board and implemented strategies to control the discharge of human waste to Coyote Creek. Subsequently, the City conducted its largest encampment abatement effort to date along Coyote Creek near Story Road, also known as the "Jungle." During a two-week period in December 2014, City and Water District crews removed over 600 tons of trash and debris and over 2,000 gallons of human waste from the site. Following the Story Road encampment abatement, the Watershed Protection Team began conducting patrols at the site on a weekly basis to ensure that it remained clear of encampments. The site was later identified as "Project Area 1" in the City's Direct Discharge Trash Control Program, described below.

In 2015, the San Francisco Baykeeper filed a lawsuit against the City of San José on alleged Clean Water Act violations. The parties settled, and the Baykeeper Consent Decree was approved in August 2016. The Consent Decree does not direct the City to abate encampments, rather it obligates the City to comply with trash provisions in the Municipal Regional Stormwater Permit (MRP). Abatements help the City meet trash load reduction requirements in the MRP under its Direct Discharge Trash Control Program.

Regulatory Background

The City of San José and the Water District are co-permittees under the MRP, which is issued by the Water Board to reduce the discharge of pollutants into creeks and the Bay. The MRP requires the City to reduce trash loads discharged into the municipal separate storm sewer system by 80 percent by July 1, 2019, and by 100 percent by July 1, 2022.

Through the implementation of its Long-Term Trash Load Reduction Plan, the City exceeded the 2017 70 percent target, and as of July 1, 2018, it has achieved 88.3 percent trash load reduction.

To achieve this reduction, the City employed strategies such as installation of 21 large trash capture devices in the storm sewer system, creek cleanup efforts, ordinances that regulate polystyrene food containers and single use carry out plastic bags, and implementation of a Direct Discharge Trash Control Program.

The Direct Discharge Trash Control Program, approved by the Water Board in August 2016, addresses trash along and in its major waterways resulting from homeless encampments. The Program coordinates efforts with multiple City departments and external partner organizations to conduct outreach to homeless individuals, dismantle encampment structures, remove residual trash, and patrol creeks to prevent establishment of encampments. Homeless encampment abatements are prioritized along Direct Discharge project areas.

The Direct Discharge Plan sets out a four-phase process for reducing trash from homeless encampments, as follows:

- Phase 1 Outreach: City contractors such as HomeFirst and PATH provide outreach and social service referrals to encampment residents. They work to engage individuals and offer services and individual assessments into the Continuum of Care's coordinated entry system for housing.
- Phase 2 Noticing and Abatement: The Encampment Abatement Program (which includes staff from the City, Water District and contractors) post sites for cleanup, dismantle encampments and remove large structures and debris.
- Phase 3 Smaller Trash Pick Up: Volunteer organizations and Downtown Streets Team coordinate the removal of residual trash from dismantled encampments.
- Phase 4 Minimize Re-Encampment: Park Rangers and San José Police Officers patrol creeks for illegal activity and work to minimize re-encampment.

The City receives 15 percent trash load reduction credit through its Direct Discharge Trash Control Program.

Audit of the City's Homeless Programs

On November 27, 2018, the City Council accepted findings and recommendations contained in the City Auditor's Audit of Homeless Programs. The Auditor recommended that the Department:

- Finalize the abatement policies;
- Clarify the prioritization for abatements and noticing requirements;
- Require outreach providers to better document services provided to encampment residents; and
- Consider increasing the number of emergency or interim housing options.

The City Council also directed the administration to:

- Determine whether the abatement program should be an interdepartmental responsibility and to identify the department best suited to manage the program;

- Ensure the MOA and guidelines comply with legal requirements and demonstrate coordination between departments;
- Clarify the legal requirements of State regulatory agencies and Baykeeper and the appropriate agency responsible for the mandate to fund compliance; and
- Include in the outreach report when and why homeless residents decline referrals, including specifically why the residents decline shelter.

This memorandum seeks authorization to allow the City Manager to complete the new MOA with the Water District and provides an overview of the changes made to the Homeless Encampment Abatement Procedures (Procedures). A number of the specific recommendations from the City Auditor and the City Council are addressed in the revised Procedures.

ANALYSIS

This section of the memorandum summarizes the proposed MOA and changes made to the new Homeless Encampment Abatement Procedures.

Memorandum of Agreement

As mentioned, the City's current MOA with the Water District expires on March 31, 2019. Below is a summary of the proposed abatement responsibilities in the MOA with a term of March 1, 2019 through June 30, 2024. There are no changes to the roles and responsibilities from the current agreement. The draft MOA can be found in **Attachment A**.

City Responsibilities	District Responsibilities
<ul style="list-style-type: none">• Coordinate homeless outreach and support services in advance of encampment abatements.• Execute encampment notification and posting.• Provide personnel for sorting storable personal property from trash.• Provide personnel for storable personal property documentation, bagging, transportation and storage.• Provide security during the abatement.• Provide waste disposal authorizations allowing the Water District or its contractor to dispose of trash from the abatement.	<ul style="list-style-type: none">• Provide crews and supervision sufficient to conduct the abatement.• Transport the trash collected at the abatement to appropriate disposal sites.• Provide abatement supplies, including personal protective gear and portable sanitary facilities.• Provide equipment such as compactors, and other heavy machinery as needed.• Ensure permit coverage for abatements, which includes obtaining appropriate permits for performing maintenance work in and around waterways.

Shared Responsibilities

- Follow the Encampment Abatement Procedures.
- Coordinate and identify the encampment sites and dates for abatement using agreed upon prioritized criteria.
- Consider joint, co-funded deterrent opportunities, such as site modification and security options.

Approval of the MOA is needed to continue the partnership with the Water District. This will ensure the effective abatement of encampments and provision of services to the homeless population.

Homeless Encampment Abatement Procedures

The Encampment Abatement Program has evolved significantly over the past five years. The expiration of the previous MOA provided the Housing Department with an opportunity to revise abatement procedures, incorporating the following: results of an internal monitoring action, a cross department review of the abatement process, feedback from the community, and recent recommendations from the City Auditor. The revised Encampment Abatement Procedures can be found in **Attachment B**.

Housing Department Internal Monitoring Recommends Changes

During September and October 2017, the Housing Department's Grants Management Team conducted a programmatic monitoring of the Encampment Abatement Program. The purpose was to assess the Homeless Response Team and contractor management of the Encampment Abatement Program and evaluate compliance with policies and procedures. The monitoring resulted in one finding and eight concerns. The monitoring also identified that access to the storage facility was causing challenges for homeless residents to collect their belongings. Revisions to the Procedures address concerns identified in the monitoring. These changes included:

- Clarified the posting procedure to post and photograph each tent or structure to be abated and specify that Abatement Manager will visit each site prior to the abatement;
- Shortened the dates that the abatement could occur down to a two-day range; and
- Revised posting notification to provide clearer instructions on storage procedures.

Detailed information on the finding and each concern and the staff response can be found in **Attachment C**.

Inter-Department Coordination Clarifies Roles and Responsibilities

The Direct Discharge Trash Control Program requires coordination across several City departments, specifically, Parks, Recreation and Neighborhood Services, Police, Housing and

Environmental Services. Between August and November 2018, the City Manager's Office convened a series of meetings to review the program with these departments. The group reviewed and modified the Abatement Procedures to clarify responsibilities and roles related to: creek patrols, homeless response, and clean waterway activities.

As a result, PRNS and the Police Department recently established joint patrols with one Park Ranger and two Police Officers, in order to continue compliance with the Direct Discharge Program. With the joint patrol, Park Rangers provide working knowledge of the geographical areas around the creeks and proactively attempt to mitigate re-encampment through procedures established with the Housing Department. The procedures between the Housing Department and Parks, Recreation and Neighborhood Services are included as **Attachment D**.

Homeless Advocates Request Modifications

The Housing Department began meeting with homeless advocates to discuss updates to the Encampment Abatement Procedures in October 2017. Staff facilitated additional meetings in December 2017, March 2018, June 2018, and January 2019 to receive and discuss feedback. The concerns identified by the homeless advocates were consistent with the concerns identified in the internal monitoring. Additionally, on November 7, 2018 the City received a letter from the Law Foundation of Silicon Valley, in collaboration with homeless advocates, requesting that the Housing Department revise the MOA and Encampment Abatement Procedures. The letter is provided as **Attachment E**.

In addition to the changes already identified by the Housing Department's internal monitoring, the homeless advocates recommended the following changes that have been incorporated in the revised Procedures:

- Suspension of abatements during certain weather conditions, including rain or extreme cold or heat;
- Suspension of abatements when outreach was not conducted;
- Provide 15 minutes prior to the start of the abatement for a homeless person to pack, sort, or remove his or her belongings as a pilot;
- Clarify the Guidelines for Storable Personal Property, specifically that tents should not be routinely cut open and destroyed unless there is no other option for accessing the inside;
- Clarify definition of soiled; and
- Add multiple language capacity in abatement noticing and for outreach services

A complete list of all their recommendations can be found in **Attachment F**.

There are several issues that the Housing Department could not reach total alignment with the advocates requests. They are summarized as follows:

Housing Guarantee: Every encampment resident is guaranteed housing, shelter or other opportunity for a minimum of 60 days or the abatement is postponed. The Housing Department

offers shelter as an option prior to every abatement, however, the length of stay cannot be guaranteed.

Weather Suspensions: *Suspend abatements for three weather scenarios; 1) 40 degrees or colder, 2) 50% or greater chance of rain and 3) 85 degrees or warmer.* The Housing Department recommends maintaining consistency with the Overnight Warming Location weather activation, which is 40 degrees or colder plus 50% or more chance of rain. Also, this is consistent with the activation for inclement weather shelters Countywide. Finally, for suspension for warm weather the Department recommends keeping the suspension at 96 degrees or higher using National Weather Service standards. The 96 degrees also aligns with current PRNS activation of cooling centers.

Abatement Head Start: *Before starting an abatement, provide encampment residents a 30-minute allowance to pack belongings and remove items.* The Department recommends piloting this procedure with a 15-minute allowance for a period of four months, through the remainder of this fiscal year to evaluate staffing and costs. Since more than one abatement are scheduled in a day, this new procedure will require additional Secondary Employment Officers to arrive at sites early. Piloting will allow the Housing Department to test staffing models and find the most cost effective way to implement this procedure. If additional funding is needed, the Department will request funds through the FY19-20 budget process.

Oversight Procedures: *Allow legal observers at abatements and develop an oversight committee with external stakeholders to review abatements and assess complaints related to abatements. Finally, use the Independent Police Auditor or create a similar advisory system for abatements.* The Housing Department allows observers for abatements on public property, which is existing law. The Housing Department does not have the capacity to create or coordinate an oversight committee or advisory structure.

Storage of Personal Belongings: *Storage facilities should be in close proximity to the abatement locations and should have accessible hours of operation for homeless to retrieve belongings.* The Housing Department agrees with this recommendation. Unfortunately, the Department does not have access to adequate storage facilities nor the capacity to staff such facilities. In 2018, the site at which personal belongings were being stored became unavailable. Housing Department coordinated with other City Departments to locate an alternative site that would address the concerns identified by the advocates. In June 2018 the Housing Department met with representatives from PRNS, OED, ESD, PW and DOT to discuss which City sites could be used for storage. Unfortunately, no suitable site was identified. The Housing Department then reached out to the Water District to identify a site. The Water District provided a site, at no cost to the City, with a large conex box and shed to store belongings. However, the site is only accessible to staff from the City, Water District and City's contractor. Property retrieval is still a multi-step process for residents trying to retrieve their property. The Department is exploring working with an advocacy group or nonprofit in the future for help with a new storage and retrieval process.

Prioritization of Abatements: *The top priority for abatement should be sites that present serious health and/or safety hazards and environmental impacts.* While the Department agrees this is an important indicator. However, in order to meet the regulatory and legal requirements for the

City's Storm Water Permit, the Department and the Water District recommend the prioritization listed in the MOA and Procedures. The priority being the Direct Discharge Trash Control Program project areas.

City Auditor Recommendations

In November 2018, the City Auditor released the audit of the City's Homeless Assistance Programs, entitled "Audit of the City's Homeless Assistance Programs: More Coordination and Better Monitoring Can Help Improve the Effectiveness of Programs." There were three recommendations that applied to the Abatement Program:

Recommendation #4: Finalize encampment abatement policies and clarify provisions regarding which encampments will be prioritized for abatement, and noticing requirements (pre and post abatement).

Status: The update to the Homeless Encampment Abatement Procedures has been completed and they were reviewed by the City Attorney's Office to ensure consistency with the law. The updated Procedures include prioritization order for abatements. Abatements are prioritized by location – i.e. those within the Direct Discharge Project Areas.

Recommendation #5: The Housing Department should require outreach grantees to report on a) outreach conducted at encampments; b) encampment residents referred to shelters/services; c) number of residents who accepted referrals and the types of referrals accepted; and d) number of assessments completed. Additionally, the Mayor and the City Council requested that outreach teams should also track reasons why a person declines services and shelter.

Status: The contract with HomeFirst was updated to require tracking and reporting of services and housing offered, denied, and accepted before and after each encampment abatement. This report will be entered directly into the Salesforce database by outreach teams as they complete an outreach visit. The Department will review the information quarterly to better understand the service needs of our homeless residents. The requirement to document outreach efforts has been incorporated in the revised Homeless Encampment Abatement Procedures.

Recommendation #6: The City should use the upcoming funding cycle to assess emergency shelter or other interim solutions, and determine whether San Jose can do more to ensure residents have access to immediate, emergency housing solutions – particularly when they are the subject of an abatement action.

Status: The Housing Department has the opportunity to create more temporary housing opportunities through a one-time grant award from the State Homeless Emergency Aid Program (HEAP). The Housing Department will create approximately 500 temporary or interim additional housing opportunities each night, prevent approximately 400 individuals or households from entering homelessness, and expand essential services for approximately 2,000 individuals. Strategies include creating a hotel/motel program, expanding safe parking, operating Overnight Warming Locations nightly and adding capacity for essential services such as showers and laundry.

The Housing Department continues to work with the Auditor's office on implementation of all of the recommendations in the audit. A status update was submitted to the Auditor's Office in January. The Auditor is currently reviewing and verifying the status of all open audit recommendations citywide and will bring forward a report to the City Council in March.

Additional Changes to the Abatement Program

Since the initial MOA with the Water District was approved in 2013, two other changes regarding abatements have occurred. The City released Requests for Proposals (RFP) to enter into new contracts for both outreach and the encampment abatement operators.

Five proposals were received for the outreach RFP. An evaluation panel consisting of Housing Department and Santa Clara County Office of Supportive Housing staff reviewed and scored the proposals. HomeFirst and PATH scored the highest and were selected. Five proposals were also received for encampment abatement operator. An evaluation panel consisting of Housing Department and Santa Clara Valley Water District staff reviewed and scored the proposals. Tucker Construction scored the highest and was selected.

EVALUATION AND FOLLOW-UP

The City Manager's Office is finalizing assessment of the location of the abatement program and exploring the relationship to BeautifySJ and other interdepartmental efforts.

Annual updates on the Encampment Abatement Program will be taken to the City's Neighborhood Services and Education Committee.

PUBLIC OUTREACH/INTEREST

Over the past two years, Housing Department staff worked in coordination with homeless advocates to revise the Encampment Abatement Procedures.

This memorandum, the procedures and the MOA will be posted on the City's website for the February 26, 2019 City Council meeting.

COORDINATION

This recommendation, the Abatement Procedures, and the MOA have been coordinated with the Office of the City Attorney. This Memorandum was coordinated with the Environmental Services Department and Parks, Recreation, and Neighborhood Services.

COMMISSION RECOMMENDATION/INPUT

No Commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

While a number of the abatement procedures are not anticipated to have a fiscal impact, some revisions, such as noticing and tracking of personal items, may increase abatement costs. As the new procedures are fully implemented, staff will continue to monitor and evaluate the costs of individual abatements and overall management of the Homeless Response Team. If necessary, any funding adjustments would be considered as part of a future budget process.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JACKY MORALES-FERRAND
Director of Housing

For questions contact Ragan Henninger, Deputy Director, at 408-535-3854.

Attachment Index:

Attachment A – Draft Memorandum of Agreement

Attachment B - Encampment Abatement Procedures

Attachment C – Housing Department Internal Monitoring Results

Attachment D – Housing Department and PRNS Standard Operating Procedures

Attachment E – Law Foundation Letter November 2018

Attachment F – Summary of Homeless Advocate Recommendations

Attachment A

1. MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY WATER DISTRICT FOR ENCAMPMENT ABATEMENT, TRASH REMOVAL AND PREVENTION

This Memorandum of Agreement (“MOA”) is entered into effective this day of _____, 2019 by and between the City of San Jose, a municipal corporation of the State of California (the “City”), and the Santa Clara Valley Water District, a special district of the State of California (the “District”), each an “agency” under this MOA.

RECITALS

WHEREAS, trash in and along creeks and waterways is detrimental to the community and to the environment; and

WHEREAS, the City and the District both currently implement programs that have as at least part of their purpose the removal of trash along creeks and waterways; and

WHEREAS, the City and District have identified a need for a collaborative effort in the collection and disposal of trash from homeless encampments located in and around creeks in the City of San Jose; and

WHEREAS, the City and District have received community feedback that encampments are a significant source of trash affecting local creeks; and

WHEREAS, the cleanup of encampments requires significant coordination across a variety of agency services to ensure that encampment users are offered appropriate assistance; that possessions are properly managed; and that operations conducted are effective and efficient; and

WHEREAS, the City and District have previously entered into prior Memorandums of Agreement for partnering on trash prevention and removal activities, including the cleanup of trash from creeks in the City of San Jose, which were approved in 2004, 2008 and 2013; and

WHEREAS, the City and District desire to continue to work together regarding removal and prevention activities to clean encampments along creeks in the City of San Jose;

NOW, THEREFORE, THE CITY AND THE DISTRICT AGREE AS FOLLOWS:

AGREEMENT

ARTICLE 1 - TERMS AND CONDITIONS

A. Term of MOA

The term of this MOA shall be from the date first set forth above to June 30, 2024. This MOA may be terminated pursuant to Section 1.F.

B. Authorizations

The City Manager is authorized to approve extensions to the term of this MOA, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the City, provided that any approval requiring payment of funds in excess of appropriated funds, shall require City Council approval of the appropriation of those funds and a written amendment signed by the City and District.

The District's Chief Operating Officer is authorized to approve the extension of the term of this MOA, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the District, provided that any approval requiring payment of funds in excess of appropriated funds, requires District Board approval of the appropriation of those funds and a written amendment signed by the City and District.

C. Indemnification

Pursuant to Government Code Section 895.4, each party agrees to fully indemnify and hold the other party (including its appointed and elected officials, officers, employees and agents) harmless from any damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this MOA. No party, nor any appointed or elected official, officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other party under this MOA.

D. Notices

Any and all notices required to be given to a party hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the following address or such other address as is provided by either party in writing:

To City:

City of San Jose
Housing Department
200 East Santa Clara Street
San José, CA 95113
Attention: Manager, Homelessness
Response Team

To District:

Santa Clara Valley Water District
Watersheds Operations
5750 Almaden Expressway
San José, California 95118
Attention: Deputy Operating Officer
Watersheds Operations and
Maintenance

E. Debt Limitation

City and District are both subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOA shall constitute an obligation of future legislative bodies of the City or the District to appropriate funds for purposes of this MOA.

F. Termination

Either party may terminate this MOA by providing the other party with written notice of termination, no less than 30 days prior to the effective date of termination.

G. Conflict of Interest

The City and the District shall each avoid all conflict of interest in the performance of this MOA. They shall immediately notify the other should a conflict of interest arise that would prohibit or impair the party's ability to perform under this MOA.

H. Non Discrimination

Neither the City nor the District will discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identification, disability, ethnicity, or national origin, in connection with or related to the performance of this MOA.

I. Limitations

Sites that may be cleaned up under the terms of this MOA must be both: (i) within the limits of the City of San José and in or immediately adjacent to a creek or waterway, and (ii) subject to a City and/or District right of way. Other sites not meeting the requirements of both (i) and (ii) of this subsection are not covered under this MOA.

J. Disputes

The City and District agree that all disputes or disagreements arising under this MOA which are not resolved at the staff level by the parties shall be referred to the District's Chief Operating Officer and the City's Director of Housing. If a dispute cannot be resolved by the Chief Operating Officer and the Director, such dispute shall be referred to the District's Chief Executive Officer ("CEO") and City Manager for resolution. If a resolution cannot be reached by the District's CEO and the City Manager each party

may seek any remedy available at law or in equity.

ARTICLE 2 - DEFINITIONS

- A.** Active Encampment – An encampment that appears to have been recently occupied or otherwise used as an encampment site as evidenced by (i) the presence of persons at or around the encampment, or (ii) the organized, systematic and methodical appearance of the encampment where it would be reasonable to assume that it is currently being used as an encampment.
- B.** City Waste - All wastes generated by or collected by the City of San José in the performance of all municipal services, and including but not limited to debris from street and sewer repairs and construction, debris from public and private lot cleanup operations, tires from municipal vehicles, debris from street sweepings, grass clippings, leaves and tree trimmings from maintenance of City parks, streets, median strips, and property, rock and concrete not exceeding a non-diagonal dimension of four feet, asphalt pavement as found in streets, tree stumps and branches no more than eight feet long and no more than two feet in diameter, bulky wastes such as large appliances and furniture found in cleanup operations of real property, parks or other public or private lands, and other similar wastes generated by or collected by the City of San Jose. Except as provided in this Section, City Wastes shall not include Residential Garbage and Rubbish, or Commercial Garbage and Rubbish, that is generated by private individuals or private businesses and is regularly collected by City from private property and Great, Grit and Screening, or Biosolids from the Water Pollution Control Plant. (Source: Current Agreement between the City of San Jose and International Disposal Corporation for Disposal of Municipal Solid Wastes).
- C.** Hazardous Waste - A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may--(i) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- D.** Encampment – A camp located along a creek or other waterway located in the City of San José that is has not been permitted by the City, District, and/or other agencies with jurisdiction to regulate that occupation/camping activity.
- E.** Inactive Encampment – An encampment that does not appear to have recently been occupied or otherwise used as an encampment as evidenced by: (i) the lack of persons at or around the encampment, and (ii) the unorganized, unmethodical, unsystematic, haphazard appearance of the encampment where it would be reasonable to assume that it was abandoned.
- F.** Right-of-Way - Recorded deed for property, either in form of fee title ownership or easement.

- G.** Trash - All improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waterways within the City of San José. For the purposes of this MOA, trash does not include sediment or vegetation; except for yard waste that is illegally disposed of in or along San José waterways, and any vegetation that has been cleared by the District's contractor in connection with a cleanup.
- H.** Universal Waste - any of the following hazardous wastes that are subject to the universal waste requirements of 40 CFR part 273 or CCR Title 22, Chapter 23, including: (1) Batteries as described in §273.2; (2) Pesticides as described in §273.3; (3) Mercury-containing equipment as described in §273.4; and (4) Lamps as described in §273.5. (source: 40 CFR §273.9).

ARTICLE 3 – SCOPE

A. MOA Administration

1. Abatement Team:

The City and District shall jointly implement this MOA. The City and District shall each designate lead staff from their respective organizations to participate in the Abatement Team (the "Team"). The Team's activities shall be coordinated by the City with participation from the District, The Team's members shall implement this MOA within their respective organizations.

The principal responsibilities of the Team will be to:

- a. Implement and manage the Encampment Abatement Program, as described in Article 3, Section B.
- b. Report on status, as described in Article 3, Section A.4 of this MOA.

2. Executive Committee - Oversight:

The existing City-District Executive Committee will provide oversight to the Abatement Team and its work efforts. The Executive Committee shall:

- a. Convene for special meetings as mutually agreed upon to address outstanding issues or matters of special concern; and
- b. Promptly review barriers to implementing this MOA and negotiate in good faith to resolve such issues.

3. Annual Work Plan

- a. The Team shall prepare a Work Plan for the activities under this MOA annually by August 1. The Work Plan will include:

- 1) Review of the existing coordination efforts, identification of target or focus areas and proposed work efforts with budgeted funding and identification of improvements or new initiatives.
 - 2) Provide staff list. The list shall include by name, title, and agency, the staff involved in the Team and Executive Committee.
- b. The Team shall conduct a mid-year review by November 30 of each year of this MOA to evaluate potential resource needs for the purposes of budget development for the following fiscal year.

4. Reporting

- a. The District, in coordination with the City, shall prepare an Annual Summary by August 31 of each year of this MOA.
- 1) The Summary must include the following:
 - Accomplishments of Work Plan activities including the number of encampment sites, locations, and amount of material collected under the encampment clean-up program;
 - Expenditures;
 - the Team shall specify tasks and program elements needed to maintain or improve coordination and effectiveness.
- b. The Annual Summary shall be submitted to the Executive Committee after it's prepared each year.

B. Encampment Abatement Program

The encampment abatement program focuses on the cleanup of active homeless encampment sites within the City of San José. Activities are typically conducted Monday through Friday during business hours.

1. City Responsibilities

The City shall:

- a. Provide personnel and supervision to accomplish the following key activities:
- 1) Encampment abatement notification and posting
 - 2) Sorting of personal property from trash and other materials consistent with the current version of the City's Guidelines for Property Identification
 - 3) Personal property documentation, bagging, transportation, and storage;
 - 4) Security during the abatement;

- b. Coordinate homeless outreach and support services in advance of encampment abatements;
- c. Provide City Waste Disposal Authorizations allowing the District and/or its contractor to dispose of trash and other material from the cleanup at City's cost at Newby Island Landfill ("Landfill") provided the following conditions are met:
 - 1) The trash meets the definition of Trash and/or City Waste; provided it does not include sediment or vegetation (other than that produced by trimming in connection with the abatement), Hazardous Waste (such as containers of fuel, paint, or chemicals) or Universal Waste (such as batteries, lamps, televisions, or other electronic waste), or other materials banned from landfill disposal (such as tires, appliances, motor vehicles, and other large metallic discards), Medical Waste, or materials banned from landfill disposal.
 - 2) No trash from other sources is commingled with the trash collected at an abatement pursuant to this MOA; and
 - 3) Any vehicle or roll-off box used for disposal of trash must be empty at the start of the abatement and must be dumped at the end of the abatement without being used for any other purpose; and such container must be secured to prevent unauthorized deposition of trash in the container; and
 - 4) Delivery of trash to the Landfill is accompanied by a properly completed City Waste Disposal Authorization; and
 - 5) All regulations at the Landfill are observed by District's drivers;
- d. Provide a contractor (City's Contractor") to collect and transport for appropriate disposal, in accordance with safety rules, protocols, and licensing requirements mandated by the State of California, all Medical Wastes (including sharps), Hazardous Wastes, Universal Wastes and other materials banned from landfill disposal collected during abatements.
- e. Manage personal possessions collected during abatements consistent with the City's current property identification and encampment abatement procedures, which includes the receipt, transport, storage, and management by the City of all such items.

2. **District Responsibilities**

The District shall:

- a. Provide abatement crews and supervision, which includes providing sufficient personnel and supervision to conduct the abatement. The District may provide abatement crews and supervision through its contract with a selected service provider. Alternately, the District may use its

personnel for this purpose or may contract with another entity to provide crews and supervision.

- b. Provide transport of trash collected by the District's abatement crews, which includes providing bags for trash and transportation to appropriate disposal sites consistent with the requirements of Article 3, Section B.1.d;
- c. Provide abatement supplies, which includes reasonably requested personal protective gear for District's abatement crews and portable sanitary facilities;
- d. Provide equipment, such as compactors, bobcats, and other machinery as is needed for encampment abatement activities;
- e. Ensure U.S. Fish and Wildlife Service permits, and any other required permits are obtained for each abatement, which includes obtaining appropriate permits for performing maintenance work in and around watercourses

3. Shared Responsibilities:

Both parties agree:

- a. To coordinate and identify the encampment sites and dates for abatement using the following prioritized criteria:
 - 1) Site falls within one of the Direct Discharge Project Areas, which are in three sections of Coyote Creek as shown on the map in Attachment A.
 - 2) Site has received complaints from the Hotline or AVW reports.
 - Site is on public property or a watercourse flowing within the boundaries of San José, where the District or the City of San José has ownership or easement.
 - 3) Site is blocking the public right of way:
 - Site is in an area that is highly visible and/or frequented by the public.
 - 4) Site presents serious health and/or safety hazards and environmental impacts to the site are occurring.
 - 5) Site has significant accumulation of debris.
 - 6) Site provides opportunity for proactive intervention.
- b. To perform all abatement activities in accordance with the City's Encampment Abatement Procedures.
- c. To consider joint, co-funded deterrent opportunities to prevent re-occupation of cleaned encampments including site modification and security options where their ownership is collective.

- d. To allow that the City's Encampment Abatement Procedures may be amended from time to time by the mutual agreement of the District's Chief Operating Officer and the City's Director of Housing, after review by the City Attorney.

4. Costs:

- a. Each agency shall bear its own costs for the performance of its responsibilities and its part of the shared responsibilities, except to the extent a specific cost sharing obligation is shown in this MOA.

C. Trash Cleanup Projects

The Trash Cleanup Projects program helps to address the cleanup of trash accumulations that fall outside the scope of the above encampment abatement program. It is coordinated by City and District staff through the Team.

1. Site identification:

- a. Under the Trash Cleanup Projects program, the City and the District may collaborate on up to five (5) partnered Trash Cleanups per year.
- b. City and District staff will identify the project sites, using the criteria provided in paragraph 3a above.

2. Project Implementation

City and District staff will coordinate logistics and responsibilities for these projects on an annual basis.

D. Other Trash Prevention and Removal Activities

1. Program List:

The Team shall develop, maintain, and distribute to appropriate City and District personnel, a list of trash prevention and removal programs and their associated staff contacts. This list is intended to improve coordination and make communications with residents more seamless.

2. Housing, Enforcement, and Education:

The Team shall, as part of its annual work planning, consider opportunities for improved use and coordination of housing, enforcement and education by the City and District.

3. Coordinating Operations:

The Team shall, as part of its annual work planning, consider opportunities to manage and schedule routine cleanup activities performed by both parties with the intent of providing equitable exchange of services.

Signatures appear on the following page.

WITNESS THE EXECUTION HEREOF on the dates set forth below each signature.

CITY OF SAN JOSE, a municipal
corporation

SANTA CLARA VALLEY WATER
DISTRICT,
a local public agency of the State of
California

By: _____
Jacky Morales-Ferrand
Director of Housing

By: _____
NORMA CAMACHO
Chief Executive Officer

Date: _____

Date: _____

ATTEST:

Clerk/Board of Directors

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

S. Shasta Greene
Sr. Deputy City Attorney

District Counsel

Attachment B

ENCAMPMENT ABATEMENT PROCEDURES

A homeless encampment is a camp located along a sidewalk, other public right of ways, creek or other waterway located in San José that is has not been permitted by the City of San José, Santa Clara Valley Water District, and/or other agencies with jurisdiction to regulate that occupation/camping activity.

1. Program Goals

- 1.1. Homeless Persons: Offer services, including housing assessment (to qualify for a permanent housing solution), encourage homeless persons to remove their belongings before the site is abated, and offer an immediate housing opportunity so as have an interim place to stay.
- 1.2. Environmental: Reduce the amount of trash in the waterways with a focus on the Direct Discharge Project Areas (Attachment A).
- 1.3. Community response: provide a coordinated and centralized response to address community concerns regarding safety, sanitary conditions, blight, and public nuisance.

2. Program Partners

- 2.1. City of San José (City) Departments
 - The Department of Housing (Housing) implements and manages the Encampment Abatement Program.
 - Environmental Services Department (ESD) manages the Direct Discharge Program goals in the project areas identified in Attachment A, as well as the management of the weight tags used for disposal of garbage from the abatement.
 - The Department of Parks, Recreation, and Neighborhood Services (PRNS) oversees the Ranger re-encampment prevention activities.
 - San José Police Department (Police) provides security and safety at postings and abatements through their Secondary Employment Unit (SEU).
 - Department of Transportation (DOT) provides enforcement of vehicles illegally parked on City streets through the Vehicle Abatement Program.
- 2.2. Santa Clara Valley Water District (Water District) provides equipment, such as compactors, skid steer loaders and other machinery as is needed for encampment abatement activities and additional staff during abatements. The Water District is also responsible for appropriate disposal of industrial hazardous waste. (This does not include human waste or biomedical hazardous waste.)
- 2.3. The City's Contractor is hired to post notices, document and photograph the site, and sort out personal items, as well as remove the structures during the abatements.

The following procedures outline the steps to be taken prior to and on the day(s) of the encampment abatement. These procedures do not replace or preclude the investigation and prosecution of suspected criminal or actual criminal activity. Such activity at encampments shall follow the standard enforcement procedures. All emergencies shall be reported to the San José Police Department at 911/311.

3. Reporting a Homeless Concern

- 3.1. All inquiries to the City regarding encampments or homeless concerns within San José should be routed to the Homeless Concerns Hotline (Hotline) at (408) 975-1440 or homelessconcerns@sanjoseca.gov.
- 3.2. Examples of homeless concerns reported to the City's Hotline include:
 - Homeless encampment
 - Inhabited vehicle (Recreation Vehicle/Car/Trailer)
 - An individual person living in a place not meant for habitation
 - Trash that appeared to be associated with a homeless encampment
 - Loitering
- 3.3. The Hotline will document the calls and emails from the public and enter the following information into the Homeless Concerns database:
 - Date of call or email
 - Location of the encampment/concern
 - Size of the encampment per the reporting party
 - The concern and other pertinent information regarding the encampment
 - Name and contact information
- 3.4. Santa Clara Valley Water District (Water District) will forward or refer Access Valley Water (AVW) reports of encampments that are reported within San José limits to the Homeless Concerns Hotline as frequently as reports are received.

4. Outreach: First Contact

- 4.1. The City will dispatch the City's Homeless Outreach and Engagement Contractor (Outreach) to each location reported to the Hotline. Outreach will conduct a site visit and attempt to make contact in a compassionate and considerate manner
 - 4.1.1. If contact is made:
 - Outreach will conduct assessments (Vulnerability Index - Service Prioritization Decision Assistance Tool surveys) to determine housing options and evaluate immediate needs.
 - Outreach will be conducted in English, Spanish, Vietnamese and other languages as deemed necessary.
 - Outreach will inform occupants about community and environmental concerns.
 - Separate bags will be provided for garbage and storable personal property.
 - Outreach will provide notification of the impending abatement and encourage people to remove their property.

- Outreach will explain the process of how to retrieve personal belongings by providing the Outreach flyer highlighting the Homeless Helpline phone number.
- Outreach will offer services, shelter and housing options.
- 4.1.2. If no contact is made, Outreach will leave a Homeless Helpline flyer and Homeless Services Pocket Guide.
- 4.1.3. Outreach will revisit encampments two additional times, at different times during the day, to make contact.
 - 4.1.3.1. If additional site visits are needed, they will be conducted two weeks prior to an abatement.
- 4.1.4. After each site visit, Outreach documents their efforts in the Homeless Concerns database with the following information:
 - Encampment identification information
 - Date of the visit
 - Number of tents/structures/other evidence of encampment
 - Number of people at the encampment
 - Number of contacts made
 - Number of people at the encampment who were referred to shelter and/or services
 - Number of people who accepted shelter
 - Number of people who accepted services
 - Reason services is declined
 - Identify shelter options and if declined, reason why it was declined
 - Number of assessments completed
 - Notes about the encampment and surrounding area

5. Assessment: Second Contact

5.1 City's Encampment Abatement Manager will visit each encampment site to:

- Communicate concerns and provide notification that an abatement may be scheduled.
- Garbage bags will be provided.
- Determine jurisdiction.
- Determine if it is an active or inactive encampment.
- Feasibility, such as access to the encampment and how abatement crews and equipment will enter the camp.
- Address any challenges that may occur during the abatement.

Note: Sites reported via District AVW reports will not receive "second contact" as jurisdiction and feasibility have been determined by District staff.

6. Prioritizing Encampments for Removal

6.1 The City and Water District will decide on date and locations for encampment abatements using the following criteria. Sites are prioritized in the following order:

- 6.1..1 Site falls within one of the Direct Discharge Project Areas, which are in three sections of Coyote Creek as shown on the map in Attachment A.
- 6.1..2 Site has received complaints from the Hotline or AVW reports.

- 6.1..2.1 Site is on public property or a watercourse flowing within the boundaries of San José, where the District or the City of San José has ownership or easement.
- 6.1..3 Site is blocking the public right of way:
 - 6.1..3.1 Site is in an area that is highly visible and/or frequented by the public.
- 6.1..4 Site presents serious health and/or safety hazards and environmental impacts to the site are occurring.
- 6.1..5 Site has significant accumulation of debris.
- 6.1..6 Site provides opportunity for proactive intervention.
- 6.1..7 Site provides opportunity for proactive intervention.
- 6.2 The prioritization may be revised at any time as a result of new encampments being identified or inspected, or as new information about an encampment condition becomes available.
- 6.3 Once the sites have been prioritized, the City will confirm Outreach has visited the site prior to the planned abatement. If Outreach has not visited the site, the site will be prioritized for a future abatement.
- 6.4 Suspension due to weather: a. Encampment abatements will be suspended if a there is forecast 48-72 hours in advance of the abatement by the National Weather Service of the following conditions:
 - 40 degrees or lower with a 50% or less probability of rain
 - 45 degrees or lower with a 50% or more probability of rainOr one of the following conditions present
 - persistent rainfall for 2 or more days prior to the abatement date
 - temperatures meet or exceed 96 degrees on the abatement date.
 - Outreach will notify the encampment occupants of the abatement suspension, unless abatement activity has already started.
- 6.5 The City and District have final discretion to modify the abatement timeline (but not to provide less than 72 hours notice) because of unforeseen emergency conditions related to public health and/or safety concerns.

7. Coordination Before the Abatement

- 7.1. The City will coordinate with the City's Contractor for posting, property sorting, storage of personal items, and transportation of storable personal property for all encampment abatements.
- 7.2. The City will send a request form to the San Jose Police Department's Secondary Employment Unit (SEU).
 - 7.2..1 SEU posts assignment and schedules officers:
 - 2 officers for 8 hours to conduct posting of notices.

- 2-10 officers for 8 hours to support Abatement crew.

8. Abatement Notification Posting: Third Contact

8.1 SEU officers meet with District staff, Encampment Abatement Manager, and City's Contractor to post the approximate exterior of abatement sites, and tents, structures and other evidence of encampment, a minimum of 72 hours in advance of abatement with maximum of a three - five day advance notice. SEU officers will lead the process to ensure safety. The Abatement Notification Posting (Attachment B) will specify a maximum of two dates in which the location will be abated. If an action to remove an encampment is not taken within the removal date, the City shall re-post the notice.

- 8.1.1 Abatement Notification Posting will define the posted area for abatement using perimeter postings. Notices will include translation in Spanish and Vietnamese that the City of San Jose will be conducting a cleanup of illegal encampments.
- 8.1.2 Postings will be placed on tents, structures, and other evidence of encampment in the abatement area. These are courtesy postings to provide additional information to encampment occupants.
- 8.1.3 City's Contractor will photograph posted notices to document time and location of posting. Photos are stored through Cloud storage managed by the City's Contractor and shared with the City.
- 8.1.4 If individuals are present at the encampment, oral notice shall, if reasonably possible, be given to the occupants that the encampment will be removed as indicated in the posting. Occupants are provided an Outreach flyer, highlighting the Homeless Helpline, an explanation on property retrieval, garbage and storage bags.

9. Final Site Visit: Fourth Contact

- 9.1. City's Encampment Abatement Manager or Outreach will conduct a site visit to each posted site one or two days before the scheduled abatement. City's Encampment Abatement Manager or Outreach reminds individuals that an abatement is scheduled for the current week. City's Encampment Abatement Manager or Outreach offers referrals to services and provides bags for garbage and personal belongings.
- 9.2. The City will email the list of all sites to be abated to interested parties on the City's encampment list serve managed by the City's Encampment Abatement Manager on the day before the abatement.

10. Abatement

- 10.1. The morning of the abatement, the City's Encampment Abatement Manager, SEU Officers, District staff and City and District contractors meet at Remillard Court at 7:00 a.m. (meeting site and time can vary depending on sunrise and locations of sites).

- 10.2. The City's Encampment Abatement Manager and District lead determine which sites on the list will be abated for the day (determination depends on site locations and size of encampment).
- 10.3. All personnel shall be present at the start of an encampment removal. The City's Encampment Abatement Manager and/or City's Contractor, and SEU officers, will give individuals who are still at the site 15 minutes to disassemble, bag, and pack up their belongings. Accommodations will be made for people with disabilities. The City will pilot this procedure for 30 days from the first abatement after MOA approval to see if it is effective in reducing the number of items stored. If it is deemed ineffective, or logistically difficult to implement, this step will be suspended.
- 10.4. The Encampment Abatement Manager or designee will request the name of any individual, remaining in the area, claiming storable personal property. Any item immediately returned will be noted on the photo inventory list with the name of the individual who collected it.
- 10.5. SEU Officers will conduct a site check to make sure that no individuals remain on site.
- 10.6. City's Contractor will photograph each posted site tent, structure or other evidence of an encampment, and surrounding area as identified by City's Encampment Abatement Manager.
- 10.7. The Abatement Log (Attachment C) will be completed by City's Abatement Manager or by City Contractor for each site abated.
- 10.8. Tents, structures, and other evidence of encampment in the abatement area will be dismantled and removed for storage unless they pose a threat to public health or safety.
 - 10.8.1. Dismantle structures and open tents for sorting; avoid cutting tents when possible; and if a tent can be opened by zipper, use zipper.
- 10.9. After City's Contractor completes documentation of the site, the City and District's Contractor will begin abatement of the site.
- 10.10. City's Contractor will sort items using tools, including trash grabbers, rakes, shovels, or poles.
- 10.11. Transport bags remaining at an encampment will be searched by City's Contractor and items deemed a potential health or safety hazard will be discarded before the bag is stored.
- 10.12. City's Encampment Abatement Manager or designee will watch the sorting done by the Contractor to ensure they are consistent with the Guidelines for Storable Personal Property (Attachment D); City's Encampment Abatement Manager will provide guidance and make final decisions on whether or not an item is trash or storable personal property.
 - 10.12.1. The City's Contractor will make every effort to prevent damage to storable property.
 - 10.12.2. All storable property will be placed in a separate location. Contractor will provide an opportunity to reclaim storable personal property before it is removed from the abatement site for storage.
 - 10.12.3. All trash will be bagged and placed in a garbage compactor.

- 10.13. When sorting, City's Encampment Abatement Manager ensures that the City's Contractor will:
 - 10.13.1. Open any tent, bag, purse, backpack, or suitcase to verify the contents and check for personal items, but will not sort each item inside.
- 10.14. Once sorted, the Contractor will photograph the property to document what is being placed in storage.
 - 10.14.1. A sign or board indicating the date and location of the containers will be placed in the photograph with the property.
- 10.15. All property will then be placed into clear plastic tubs or bags.
 - 10.15.1. The tub or bag will be marked with the date and location of the abatement.
- 10.16. The Contractor will load the storable personal property into a truck to be transported to the storage facility.
 - 10.16.1. All trash to be taken to the landfill by District staff.
 - 10.16.2. District forwards weight tags to the City.
 - 10.16.3. City's Contractor will download all photo documentation and label it with the date and submit detailed storage log at the end of each abatement day.

11. Return of Storable Personal Property

- 11.1. The person whose belongings were stored must contact Outreach to describe the personal property they wish to retrieve.
- 11.2. Outreach will call or email the Contractor to provide the following information received from encampment occupant:
 - Date and location of abatement
 - Description of items
 - Name of person requesting storable personal property
- 11.3. If the item requested is stored after an abatement, City's Contractor will retrieve the item from storage.
- 11.4. Contractor will drop off the item(s) at the location identified by the City for collection by the caller.
- 11.5. After 90 days, all unclaimed personal property will be disposed.

Attachment B (a): Direct Discharge Project Areas Map

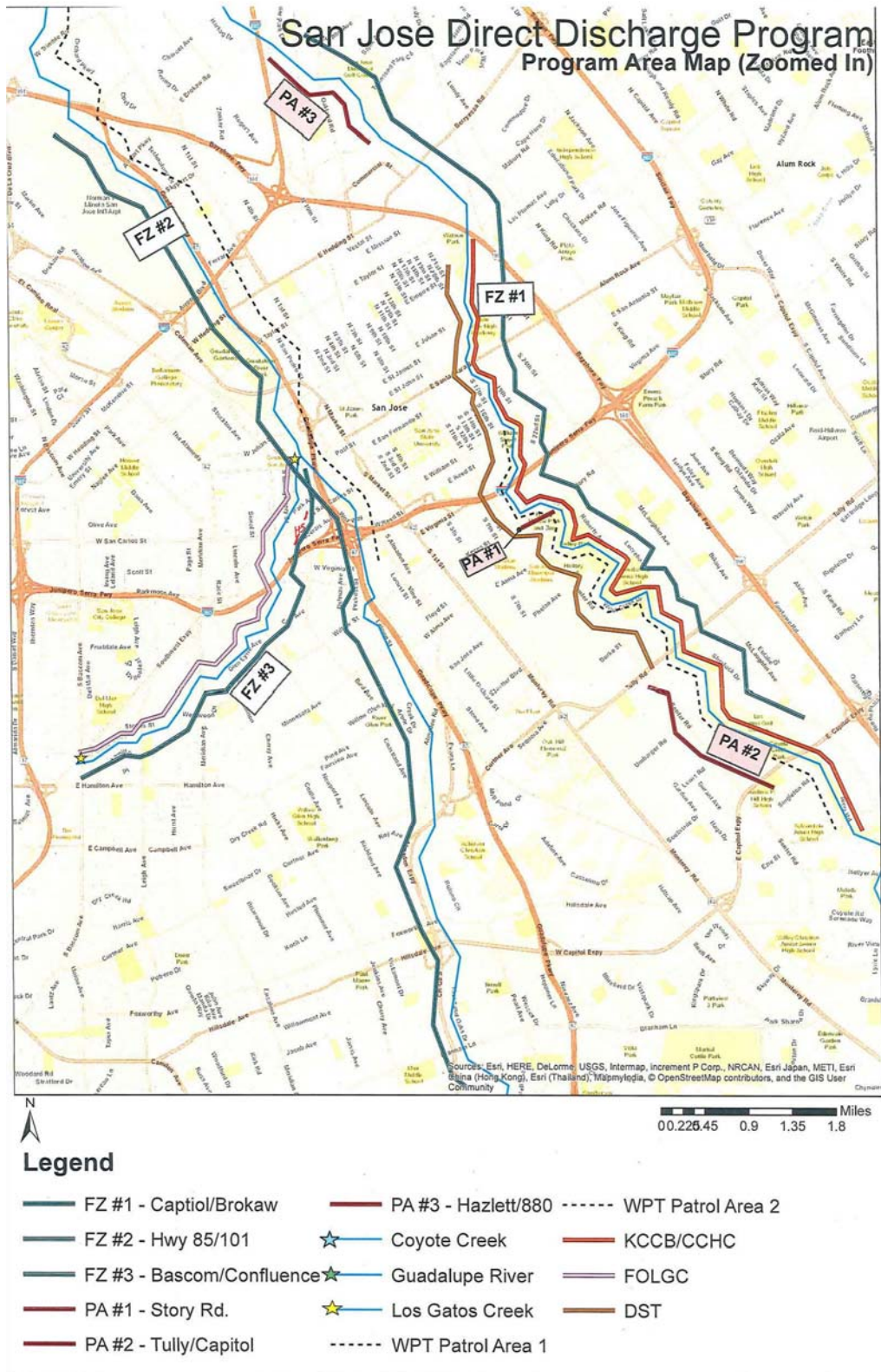
Attachment B (b): Abatement Notification Posting (Sample)

Attachment B (c): Abatement Log

Attachment B (d): Guidelines for Storable Personal Property

ATTACHMENT B (a)

Direct Discharge Project Area Map



ATTACHMENT B (b)

ATTACHMENT B ABATEMENT NOTIFICATION POSTING

ATTENTION!!!

The City of San José will be conducting a cleanup of illegal encampments in this area on the following date(s):

**Tuesday, July 31st, 2018 to
Wednesday, August 1st, 2018**

**You are TRESPASSING and will be
subject to CRIMINAL PROSECUTION if
you remain. You must remove all of your
property from this location by
7:00 a.m. on July 31st, 2018**

During the cleanup, the City of San José will remove all items and materials remaining in the area, including items left within sight of the current encampment area and/or waterway. Personal property collected will be stored at a City facility for 90 days unless it is perishable, dirty or soiled, contaminated, hazardous or explosive, disassembled or broken items, weapons, obvious trash, or items that presents a potential health or safety hazard.

TO PICK UP YOUR PROPERTY

CALL (408) 510-7600, Monday–Friday, 9:00 a.m. to 5:00 p.m.

EMAIL: outreach@homefirstscc.org

VISIT: **Boccardo Regional Reception Center**
2011 Little Orchard Street, San Jose CA 95125

Property is not stored on-site at the Boccardo Regional Reception Center. To claim property, you will be required to provide a description of the items and the date and location of the cleanup and schedule a date to return to collect your items.

ALL UNCLAIMED PROPERTY WILL BE DISPOSED OF AFTER 11/2/18

If you need help with housing or want to learn about resources available to you, contact the Homeless Helpline at (408) 510-7600.



Posting date: 7/26/18

ATTACHMENT B (c)

Abatement Log



Department of Housing

Encampment Abatement Log

To be filled out by the Encampment Abatement Manager or their designee for each site on the day of the homeless encampment abatement before cleanup activity begins. The Encampment Abatement Log and photos should be saved in their respective cloud storage folders (*contact Encampment Abatement Manager for photos*).

Site/Encamp #: _____

Log completed by: _____

Checklist:

- ☐ Date of abatement notification posting: _____
- ☐ Date(s) of abatement: _____
- ☐ Date/s Outreach made contact prior to abatement: _____
- ☐ City's Contractor is onsite and ready to identify and collect belongings: _____
- ☐ Santa Clara Valley Water District is onsite with equipment: _____
- ☐ SJPd SEU Officers are present to support the abatement activities: _____

SITE OCCUPANCY

# of Tents	# of Structures	# of other evidence of encampment	# of Vehicles	# of Adults	# of Minors	Other

SITE CHARACTERISTICS & HEALTH CONDITIONS

Park		Disorganized		Criminal Activity	
Sidewalk		Organized		Weapons	
Waterway		Garbage/Bagged		Alcohol	
Roadway		Garbage/Loose		Sharps	
Heavy Traffic		Garbage/Bulky Items		Drugs	
Industrial Zone		Garbage/Metal		Animal's	

Slope/Uneven terrain		Embankment alterations		Vegetation mitigation	
CSJ Property		Rats/Mice		Property Damage	
SCVWD Property		Hazardous Materials		Fires	
Other:		Falling Tree/Limbs			
Other:		Chemical Waste			
Other:		Bio-waste			

STORAGE SUMMARY (*contact Encampment Abatement Manager for detailed storage log*)

Task	Numbers	Task	Numbers
# of owners present who removed their belongings		TOTAL # of abandoned tents/structures	
# of owners present to accept storage		# of abandoned tents/structures with storable contents	
# of owners present to remove vehicle		# of abandoned tents/structures without storable contents	
Other:		Other:	

FOLLOW UP

Task	Status
Bio-waste removal required	
Litter removal required	
Vegetation must be pruned	
Additional illegal dumping removal required	

Initial: _____ Date: _____

ATTACHMENT B (d)

ATTACHMENT D GUIDELINES FOR STORABLE PERSONAL PROPERTY

Unless an item is trash or poses an immediate threat to public health or safety it should be retained for storage as potential personal property.

Items that are arranged in a manner that suggests ownership (e.g.: items that are neatly folded or stacked, stored off the ground, hung or clearly on display or packed in bag or box) should be retained for storage.

If there is any uncertainty regarding whether an item should be thrown away or stored, it should be stored.

Examples of items to take to storage: *The following are examples of items that could be considered personal property and will be stored:*

- ID/Social Security cards
- Medications¹
- Photos/Photo Albums
- Tax/medical records
- Jewelry
- Eyeglasses
- Books
- Bicycles –with all parts attached
- Purses/backpacks/briefcase
- Tents – unless they are soiled or contaminated or contain items that are trash posing a threat to the public or safety (excluding obvious trash as described below) Pots & Pans
- Radios & Electronics
- Tools
- Stoves & Generators
- Durable medical equipment

Examples of items that are trash or pose a threat to public health or safety and will not be stored: *The following are examples of conditions that will cause an item (including those examples listed above) to be immediately disposed of:*

- **Dirty or Soiled:** items that smell of bodily waste or other contaminants or other hazardous materials, are stained with urine or other bodily waste, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or that present a risk of biohazard (i.e. used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storage (i.e. car batteries, gasoline cans, and propane tanks)
- **Broken or Disassembled:** items that are broken, damaged, or stripped of parts (i.e. electronics stripped for copper, bike parts, flat tires, torn up clothes)
- **Weapons:** weapons will be turned over to the SJPd
- **Obvious Trash:** Food/beverage wrappers, tissue/paper napkins, open household product container

¹ All medications and controlled substances will be turned over to the SJPd for storage

ATTACHMENT C

HOUSING DEPARTMENT INTERNAL MONITORING RESULTS

Finding/Concern		Result
Finding	Staff need to be trained to handle hazardous materials before an encampment cleanup	Included required training in new contract with abatement contractor.
Concern #1	Delay in outreach response times due to the increased amount of abatement locations.	Restructured outreach contracts and revised procedures to ensure the outreach team has visited a site intended to be abated.
Concern #2	Unclear process of having police officers approach encampments before posting notices.	Revised Procedures to require that Police make first contact before City's contractor posts notices on and around the site.
Concern #3	Uncertainty of which structures are to be abated after a posting.	Revised Procedures to require the City's contractor to photograph every structure or tent posted intended for abatement and bring photographs on the day of the abatement.
Concern #4	Clarification of encampment geographical locations identified for posting.	Revised procedures to clarify that the Abatement Manager visit all sites intended for abatement and posting teams are present during the abatement.
Concern #5	The range of days in which an abatement would occur is too long causing confusion and may encourage encampment occupants to remain at the location.	Revised procedures to include a shortened date range of two days in which an abatement would occur.
Concern #6	Lack of clear instructions to remove "personal items" at the time of cleanup for individuals still present at the encampment.	Revised posting notification to have storage guidelines on both sides, and revised procedures to include a brief time in which the Abatement Manager will allow for people to remove their belongings prior to an abatement.
Concern #7	Lack of direct access to City storage facility delays property retrieval.	Ideally, a storage site is accessible to all partners and those retrieving their belongings; this concern is pending resolution.
Concern #8	Increase partnerships with jurisdictions to assist or coordinate encampment abatements.	The City Administration has made efforts to enhance relationships with other jurisdictions, including Union Pacific and Caltrans. The City has conducted joint abatements with Caltrans for efficiency

		when appropriate. This resolution is ongoing.
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ATTACHMENT D

STANDARD OPERATING PROCEDURES FOR THE HOUSING DEPARTMENT AND PARKS, RECREATION AND NEIGHBORHOOD SERVICES

1. Housing responsibilities
 - a. Housing Department staff will monitor, post notices, and abate encampments at the Corie Court Project Area, Coyote Meadows Project Area, and the Coyote Creek from Tully Road to Capital Project Area.
2. PRNS responsibilities:
 - a. PRNS, in conjunction with the Police Department, will be responsible for monitoring, advising Housing Department of encampment locations, and posting 72 hour notices, in coordination with Housing Department, at encampments at the Corie Court Project Area, Coyote Meadows Project Area, and the Coyote Creek from Tully to Capital Project Area
3. On a weekly or as needed basis, PRNS will consult with Housing Department on the Homeless Response Team (HRT) availability for encampment abatement, and PRNS will advise Housing Department of observed encampment locations.
 - a. Park Rangers and HRT will contact each other on Mondays to discuss and affirm abatement and patrol schedules for the current week.
 - b. Housing will email the planned encampment abatement schedule one week in advance of the scheduled work.
4. PRNS confirms with Housing Department on HRT availability for abatement activity and locations
 - a. If Housing Department confirms that HRT is available for abatement activity, then PRNS will post 72 hour notices at agreed encampment locations
 - i. PRNS will patrol to take note of encampment locations
 - ii. PRNS will post 72 hour notices at encampment locations
 - iii. PRNS will advise Housing of posting locations
 - iv. HRT will provide outreach and supportive services as needed prior to abatements
 - v. HRT will abate encampments in posted locations following 72 hour notices
 - b. If Housing advises that HRT is not available for abatement, PRNS will not post 72 hour notices at encampments
 - i. PRNS will patrol to take note of encampment locations
 - ii. PRNS will provide Housing with locations of encampments observed by PRNS
 - iii. HRT will provide outreach and supportive services at reported encampments
5. PRNS may receive comments about encampment activity from the public. PRNS will notify Housing Department of encampment activity from the public. Based on this information, PRNS will monitor and post as described in #3 and #4 above.

6. Housing Department may receive comments about encampment activity from the public.
 - a. Housing Department will notify PRNS of encampments in the Project Areas
 - i. Based on this information, PRNS will monitor and post as described in #3 and #4 above.
 - b. Housing Department will address encampments comments for Corie Court Project Area.
7. Non Project Areas in Creeks
 - a. Housing Department and PRNS will coordinate monitoring and posting of 72 notices as needed
 - b. Housing Department will provide outreach and supportive services, and abate encampments
8. Encampments on parkland that is not in Project Areas
 - a. Housing Department and PRNS will coordinate monitoring and posting of 72 notices as needed
 - b. Housing Department will provide outreach and supportive services, and abate encampments
 - c. In limited instances PRNS will conduct an abatement located in a park or trail if they have the resources and Housing Department is not available to perform the abatement activity. PRNS will evaluate whether to abate based on encampment size, hazard materials, and urgency. PRNS will coordinate with Housing Department to provide outreach and services prior to the abatement activity.
9. Housing Department and PRNS will meet on a quarterly basis to
 - a. Review previous quarter abatement activity
 - b. Adjust/amend SOP's as needed

ATTACHMENT E



LAW FOUNDATION of Silicon Valley

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By Email

November 7, 2018

Honorable Mayor, Vice Mayor, and City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

Re: Request to Direct Housing Department to Amend Its Memorandum of Agreement with Santa Clara Valley Water District and Homeless Encampment Sweep Procedures to Protect Residents of Encampments

Dear Honorable Mayor, Vice Mayor and City Council:

All people must have access to the means to provide for their own basic needs, including shelter. The unhoused members of our community are particularly harmed when their personal property is taken during encampment sweeps because they lose whatever practical tools they had for survival or to transition out of homelessness and are deprived of due process.

For these reasons, we, individuals and organizations who are part of and/or support the unhoused community in San Jose, request that City Council direct the Housing Department to amend and improve its Memorandum of Agreement with the Santa Clara Valley Water District for Encampment Cleanup to comply with legal requirements. This Memorandum of Agreement is just one of many executed between the City and other entities related to encampment sweeps, and the concerns enumerated related to this Memorandum apply to the others as well. Approval of the Memorandum of Agreement should be placed on the Council's agenda for public comment given its importance.

While we and other advocates have requested that the Housing Department make changes to the Memorandum of Agreement, not all of the changes have been included. We recognize consideration of the new Memorandum of Agreement as a unique opportunity for both entities to improve their practices, and we ask that Council direct the Housing Department to implement the below described changes to the processes. We additionally encourage the City to adopt corrective measures to bring its practices into conformity with fundamental constitutional standards.

Factual Background

It has been the regular practice of the City of San José and the Water District to conduct sweeps of homeless encampments, and these sweeps have moved forward at an alarming rate—

over a dozen within the city limits every week. The people who live in these encampments represented one-third of San José's homeless population in 2017,¹ many of whom simply cannot afford to live in San José's red-hot housing market. Advocates and unhoused residents recognize regular deficiencies in the process for these sweeps.

Before any sweep is to be conducted, a homeless outreach team is supposed to make contact with residents of an encampment to offer support services. Ideally, the outreach team makes contact with residents more than once in order to build rapport and trust before the sweep is conducted. These outreaches are not actually being completed before most sweeps. Where the outreaches are completed, they have not been very thorough—it is frequently the case that this outreach consists of passing out contact cards for encampment residents to call service providers when they want to engage in services. This is problematic for a number of reasons, including (1) most recipients do not have regular telephone access, and (2) residents are not being offered meaningful, long-term housing solutions, only a short-term bed in already over-filled, and oftentimes, unavailable shelters.

The notices posted prior to any encampment sweep are 72-hour notices, which are practically insufficient time for most individuals, but generally viewed to satisfy legal-minimum notice requirements. However, the notices state a range of up to five days during which encampments may be swept. This range of dates creates ambiguity to the point that the notice is ineffective—people are unsure of when encampments may be swept and are thus less able to protect their property.

The notices are also ambiguously posted. A nearby tree or structure may be posted without actually posting the notice on all the tents or living spaces, which results in residents being unsure of what area will be swept in the course of the sweeps. Without having a specific area of what will be swept, residents are unable to ensure that their most important belongings are kept in a safe space.

While there is a process for the City to hold non-trash, personal property items in storage following encampment sweeps, in our experience, the City's policies about property preservation are routinely ignored in the course of sweeps. Residents of encampments regularly lose important personal property in the course of sweeps, including items identified on the City's list of belongings not to be destroyed, such as medications, identification, and bicycles. Even where things should be preserved as property, they are regularly rendered trash in the course of the sweeps. For instance, even where tents constitute a resident's valuable personal property (their very shelter), they are regularly cut open in the course of sweeps, rendered destroyed, and subsequently trashed. This is akin to having one's home bulldozed, and one's personal items discarded.

After the sweeps, unhoused residents are often left with nothing but the belongings in their arms. They have to re-start their efforts to collect vital documents, life-preserving medications, and tools for survival because of the difficulties in regaining their belongings from

¹ Applied Survey Research, "City of San José Homeless Census and Survey: Comprehensive Report." 2017. Available at: <https://www.sanjoseca.gov/DocumentCenter/View/70076>.

the City's storage space. Because of these significant deficiencies in the process, changes to the encampment sweep process are necessary.

1. The City Must Ensure Personal Property is Not Improperly Seized or Destroyed.

First, the City must ensure that personal property is not improperly seized and destroyed in the course of the encampment sweeps, and must include such direction in its Memorandum of Understanding with the Water District. Both the Fourth Amendment to the U.S. Constitution and Article I, Section 13 of the California Constitution prohibit the government from unreasonable seizure by summarily taking and destroying homeless individuals' property.² The victims of these encampment sweeps consistently report that their personal belongings, including basic necessities such as medications and IDs, are thrown out in the course of sweeps. While we recognize that the City has created a list of items that are not trash, this list is not consistently consulted or followed in the course of the sweeps. This list of items should be included in the Memorandum of Understanding with the Water District as well as any agreements with contractors. The City and the Water District must also end the practice of cutting open tents to determine their contents. This is unsafe for the people that may be inside, and it violates the Fourth Amendment by unnecessarily destroying belongings—the practice transforms someone's personal property into trash when use of a zipper could achieve the same goal.

2. The City Must Provide Meaningful and Adequate Notice and Procedures before dismantling encampments and seizing property is seized and destroyed

Second, both the Due Process Clause of the Fourteenth Amendment and Article I, Section 7 of the California Constitution are violated by the seizure and destruction of a homeless person's property without an effective and adequate pre- and post- seizure process, including clear notice and a meaningful opportunity to reclaim property. As the Ninth Circuit has repeatedly made clear, "[t]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking." [citation] This simple rule holds regardless of whether the property in question is an Escalade or an EDAR, a Cadillac or a cart.³ The people living unhoused in San José have a protected property interest in their personal property, and both the City and the Water District violate procedural due process when they provide vague notice, no means to safeguard retrieved property, and/or insufficient opportunity to retrieve seized property.⁴

While the City's practices in providing notice have improved, the notices they currently provide are still vague and ineffective where they provide a range of five days during which an encampment may be swept. This range of dates should be eliminated entirely in favor of providing residents one particular date and time during which they can more certainly expect a sweep to be conducted. Every structure should be posted with notice in any encampment

² Lavan v. City of Los Angeles, 693 F.3d 1022, 1030 (9th Cir. 2012) (City violated Fourth Amendment rights of homeless persons when it seized and destroyed their legal papers, shelters, and personal effects); Sanchez v. City of Fresno, 914 F. Supp. 2d 1079, 1115-16 (E.D. Cal. 2012) (injunctive relief available under California constitution in action alleging City wrongfully seized and destroyed homeless individuals' shelter and property).

³ Lavan, 693 F.3d at 1032 (citing Clement v. City of Glendale, 518 F.3d 1090, 1093 (9th Cir. 2008)).

⁴ See Sanchez, 914 F. Supp. 2d at 1093, 1103.

scheduled to be cleared. Moreover, the City's Property Supervisor should arrive at least a half-hour before any sweep begins to allow encampment residents an opportunity to remove their property before police are permitted to clear them from the area. The City should consistently provide bags that people can use to move and store belongings that should not be thrown away in the course of the sweeps. These actions would help to mitigate the loss of personal property, the work required of City employees and contractors, and the need for people to go through the post-seizure ordeal of collecting their belongings from the City's storage facility. Council should direct the Housing Department to include all of these procedures in the Memorandum of Understanding with the Water District.

3. The City Must Not Conduct Encampment Sweeps Without Providing a Safe, Alternative Location for Families to go

Further, the City must end the practice of forcing people to leave publicly-owned land without first offering people another place to live. When the City has conducted encampment sweeps, there is minimal outreach offered, if any. Importantly, when services are provided through outreach, shelter is rarely offered. Even if shelter was offered, it is ineffective given the lack of shelter beds available even on a short-term basis. By sweeping encampments with the threat of police force and failing to provide some alternative location for unhoused people to go, the City is effectively criminalizing involuntary homelessness in violation of the Eighth Amendment's protections from cruel and unusual punishment.⁵ We ask that the City therefore act to ensure that sweeps of homeless encampments are not conducted unless and until residents are at least offered an authentic, alternative shelter.

In sum, the sweeps of homeless encampments by the City and the Water District are being conducted in ways that fail to respect the constitutional and human rights of homeless individuals. We recognize consideration of the new Memorandum of Agreement as a unique opportunity for both entities to improve their practices, and we encourage you to implement the following changes in the document:

- Sweeps of homeless encampments should not be conducted unless and until residents are at least offered an authentic, alternative shelter;
- The list of items that may not be designated as trash should be included within the Memorandum of Agreement with the Water District as well as any agreements with contractors, and require that the list's protections are consistently enforced;
- All parties should end the practice of cutting open tents to determine their contents;
- Notices should specify one date on which an area is to be swept instead of a range of dates that leaves residents uninformed;
- Every structure should be posted with notice in any encampment scheduled to be cleared;

⁵ See *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018); see also *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2009) (vacated pursuant to settlement).

- The City's Property Supervisor should arrive at least a half-hour before any sweep begins to allow encampment residents an opportunity to remove their property before police are permitted to clear them from the area.
- Bags that people can use to move and store belongings that should not be thrown away should consistently be provided prior to and immediately before sweeps.

While we disagree that any of these encampment sweeps should be permitted at all, we believe these changes to this Memorandum of Agreement and others related to encampment sweeps can help to make the process more humane. We urge you to adopt these changes in the interest of respecting our neighbors' most fundamental legal rights and allowing them to better care for themselves. Thank you for your time and attention to this matter.

Sincerely,

/s/

Matthew Warren and Nadia Aziz, Law Foundation of Silicon Valley

Elaine Talerico, Vice President, Thompson Creek Neighborhood Association

Gail Osmer, Homeless Advocate

Robert Aguirre, H.O.M.E.L.E.S.S.

Sandy Perry, President, Affordable Housing Network of Santa Clara County

Peter Miron-Conk, Andrew Lanier, Casa de Clara Catholic Worker

cc:

Jacky Morales-Ferraud, Director of Housing

ATTACHMENT F

RECOMMENDATIONS FROM HOMELESS ADVOCATES

Recommendation	Status
Develop a flyer describing property storage process	Complete
Abatement site list and process to be posted on the Housing Department website	Complete
Abatement Notification Posting should be in Spanish and Vietnamese. Outreach staff should have language capacity.	Complete
Include a boundary description of the area subject to abatement on the notice.	Notices will be a perimeter posting, which will define area for abatement.
Suspend abatements during certain weather conditions, including rain or extreme cold or heat	Incorporated in revised procedures
Suspend abatements where outreach do not conduct site visits and/or provide bags for property and trash	Incorporated in revised procedures
Ensure that all filled clear bags will be stored	Incorporated in revised procedures
Guarantee the presence of at least one female officer during abatements	Unable to fulfill the request
Guarantee the Abatement Manager is present during abatements to ensure homeless persons may retrieve their property before it is stored	The manager will be onsite 15 minutes prior to abatement action to encourage people to pack up; incorporated in revised procedures
Storage site shall be public and staffed for people to drop in and claim their property	Unable to fulfill the request currently due to lack of staff capacity and no sufficient location. The Department will explore working with nonprofit for assistance on retrieval of unclaimed belongings.
Clarify that tents are not to be routinely cut open and destroyed unless there is no other option for accessing the inside	Incorporated in revised procedures
Clarify that tents and sleeping bags are not to be considered trash simply because they are touching the ground	Incorporated in revised procedures
Every structure should be posted with notice in any encampment scheduled to be cleared	Incorporated in revised procedures
Develop a policy on what to do with unclaimed property; preferably there is more than one retrieval center that is close to the abatement sites	Unable to fulfill the request currently due to lack of staff capacity. The Department will explore working with nonprofit for assistance on retrieval of unclaimed belongings.
Abatement log should include dates that outreach teams made contact prior to an abatement.	Incorporated in revised log
Notices should specify one date on which an area is to be swept instead of a range of dates that leaves residents uninformed	The range will be shortened from five to two days; incorporated in revised procedures
Suspend encampment abatements unless alternative housing can be found	Outreach teams offers shelter and service referrals prior to every abatement. However, permanent housing cannot be guaranteed.