

**Memorandum of Understanding Between the
City of San José
and
Santa Clara Valley Open Space Authority**

This Memorandum of Understanding ("MOU") is made and entered into by and between the SANTA CLARA OPEN SPACE AUTHORITY, a California special district ("AUTHORITY"), and the CITY OF SAN JOSE, a municipal corporation ("CITY"), concerning CLIMATE SMART SAN JOSE (PHASE 2). AUTHORITY and CITY may be referred to hereafter as "Party" individually or "Parties" collectively. This MOU shall become effective on the date it is signed by both Parties ("Effective Date").

RECITALS

- A. WHEREAS, the CITY recognizes that further data and analysis are needed to understand the net carbon emissions associated with changes in land use, specifically those in planned growth areas in the CITY's Envision 2040 General Plan through Climate Smart San José (Phase 2) ("Project").
- B. WHEREAS, the AUTHORITY's mission is to preserve and protect open space, including open space of outstanding scenic, recreational, and agricultural importance and recognizes that data and analysis indicating the net carbon emissions associated with changes in land use is instructive for the AUTHORITY's mission.
- C. WHEREAS, the AUTHORITY desires to work together with the CITY on the Project and this MOU provides a framework for partnership for this Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the Parties agree as follows:

1. MOU Purpose and Goal

The purpose of this MOU is to establish a mutually beneficial arrangement in which the AUTHORITY and CITY may share costs and coordinate efforts to complete the Project as follows:

- a. To implement a mutually agreed-upon Scope of Work to be included in Project consultant agreement(s), a draft of which is attached hereto as Exhibit A and incorporated herein and associated estimated budget and timeline for completing the Project.
- b. To set forth each Party's contribution of funds towards the Project.

2. Partnership Objectives

In accomplishing the MOU purpose specified in Section 1 of this MOU, the Parties may seek to:

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- a. Improve communication and coordination
- b. Establish a Work Plan to accomplish the Project
- c. Explore and secure outside funding sources
- d. Track and report on accomplishments and performance of the partnership.

3. Contribution of Funds

The total amount payable by the AUTHORITY under this MOU for the Project will not exceed eighty thousand dollars (\$80,000.00) contingent upon (1) approval by the AUTHORITY in the form of a resolution adopted by the AUTHORITY's Board of Directors authorizing AUTHORITY's contribution of eighty thousand dollars (\$80,000.00) towards the Project and the CITY's written acknowledgement that such funding will be appropriated to the Project pursuant to the terms of this MOU; (2) approval by the CITY in the form of a resolution adopted by the City Council of the City of San José authorizing CITY's contribution of one hundred thousand dollars (\$100,000.00) towards the Project, of which eighty thousand (\$80,000) will be contributed to the selected Consultant and twenty thousand (\$20,000) will be contributed to staff time. All partnership activities and opportunities for the Parties to work together to fulfill the purpose and objectives described in Section 1 that are mutually beneficial and appropriate and that require funding by either Party shall only be pursued after the Parties execute this MOU with the attached mutually agreed-upon draft Scope of Work. The CITY may request Contribution of Funds authorized pursuant to this Section 3 for costs it has actually incurred for the Project from the AUTHORITY by delivering a reimbursement request to the AUTHORITY according to the notice provision in Section 17. Nothing in this MOU shall be construed as obligating the AUTHORITY to contribute funds in excess of eighty thousand dollars (\$80,000.00).

4. Designated Authorized Representative

For the AUTHORITY:

Andrea Mackenzie
General Manager
Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San José, CA 95119
amackenzie@openspaceauthority.org

For the CITY:

Julie Benabente
Environmental Services Program Manager
Environmental Services Department
City of San José
200 E. Santa Clara St., 10th Floor
San José, CA 95113-1905
Julie.benabente@sanjoseca.gov

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5. Term and Termination

This MOU commences on the Effective Date and shall continue 24 months thereafter. Either Party shall have the right to terminate this MOU if the other Party fails to comply with any material term, condition, or obligation of the MOU and fails to cure such failure within thirty (30) days of receipt of written notice specifying the failure. Either Party may terminate this MOU for convenience by providing the other Party with at least ninety (90) days prior written notice. In the event that the Project is completed prior to the expiration of this MOU, the CITY may terminate this MOU by providing at least thirty (30) days' written notice to AUTHORITY.

6. Indemnification

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, CITY and AUTHORITY agree that pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Party, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability 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 or arising out of the indemnifying Party's performance under this MOU. No Party, nor any officer, board member, 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, board members, employees, or agents, under or in connection with or arising out of any work delegated to such other Party under this MOU. The obligations set forth in this paragraph will survive termination and expiration of this MOU.

7. Limitation of Liability

Neither Party shall be liable to the other Party for any act or omission to the extent not attributable to its personnel. Except for each Party's indemnification obligations set forth in Section 6 of this MOU, in no event shall the cumulative liability for damages of either Party to the other Party, whether in contract or in tort, exceed the amount of fifty thousand dollars (\$50,000.00).

8. Insurance

AUTHORITY and CITY shall, prior to carrying out any task under the Scope of Work as described in Exhibit A, comply with the insurance requirements set forth in the attached Exhibit B, titled "Insurance Requirements." CITY is self-insured with respect to claims for which it bears responsibility pursuant to this MOU, as authorized under California Government Code Section 990.4 (claims other than workers' compensation) and California Labor Code Section 3700 (workers' compensation claims). CITY appropriates funds for such self-insurance on an annual basis. Information concerning these appropriations is publicly available. CITY agrees to provide to AUTHORITY a letter of self-insurance signed by a duly authorized representative evidencing CITY's self-insurance program is in full force and effect and in compliance with and subject to all of the terms, agreements, covenants, conditions and provisions of this MOU.

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9. Non-Discrimination

During and in relation to the performance of this MOU, the Parties agree as follows. The Parties shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status of any person, or any other non-merit factor unrelated to job duties and protected by law. The Parties shall not discriminate on the basis of the above characteristics against any employee or applicant for employment who has, perceives he or she has, or is associated with a person who has, or is perceived to have any of the above characteristics. The Parties will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, sexual orientation, age (over 40), military and veteran status of any person, or any other non-merit factor unrelated to job duties and protected by law. Such action shall include, but not be limited to, the following: employment, terms, conditions or privileges of employment, promotion, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Furthermore, Parties shall include this requirement in any and all sub-contracts it enters into in any way related to this MOU. Nothing in this section shall prohibit the Parties from applying a bona fide occupational qualification, or any other exception established by the California Fair Employment and Housing Act under Government Code § 12940.

10. Ownership

All right, title and interest of deliverables from services provided under a joint Work Plan shall be owned jointly by the Parties. All right, title and interest of final deliverables resulting from this MOU shall be made publicly available and will not be sold by either Party.

11. Non Assignment

Neither Party may assign its rights or delegate its duties under the MOU to any other Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Any assignment in violation of this Section 11 shall constitute a default and is grounds for immediate termination of the MOU.

12. Entire Agreement, Modifications Waiver

This MOU constitutes the entire agreement between the AUTHORITY and the CITY pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this MOU shall be binding unless executed in writing by all the Parties. No waiver of any of the provisions of this MOU shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a

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continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

13. Captions

Captions are provided herein for convenience only and they form no part of this MOU and are not to serve as a basis for interpretation or construction of this MOU, or as evidence of the intention of the Parties hereto.

14. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the State of California.

15. Authority

Each individual executing this MOU on behalf of their respective entity represents and warrants that (i) the individual is duly authorized to execute and deliver this MOU on behalf of that entity in accordance with the entity's legal authority; and (ii) this MOU is valid and binding on that entity and enforceable against that entity in accordance with its terms.

16. Counterparts

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Notices


All notices pertaining to this MOU shall be in writing delivered to the Parties hereto personally by hand, courier service, Express Mail, or by first class mail, postage prepaid at the addresses set forth in Section 4. All notices shall be deemed given or delivered; (a) if sent by first class mail, such mail is not returned to the sender; (b) if delivered by hand, courier service or Express Mail, when delivered. The Parties may, by notice as provided above, designate a different address to which notice shall be given.

[signatures on following page]

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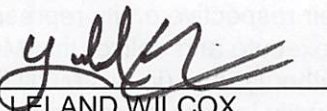
IN WITNESS WHEREOF, AUTHORITY AND CITY HAVE CAUSED THIS MOU TO BE
EXECUTED BY THEIR RESPECTIVE DULY AUTHORIZED OFFICERS ON THE
EFFECTIVE DATE.

SANTA CLARA VALLEY OPEN SPACE AUTHORITY

Signature: 
Andrea Mackenzie
General Manager


Date: 4-5-19

CITY OF SAN JOSE

Signature: 
LELAND WILCOX
Chief of Staff, Office of the City Manager

Date: 5/2/19

APPROVED AS TO FORM:


COLLEEN WINCHESTER
Senior Deputy City Attorney

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Exhibit A

**Climate Smart San José (Phase 2): Natural and Working Lands Element
Scope of Work**

General Description of Project for which Consultant will Provide Services:

The Climate Smart San José Plan recognizes the value of conducting future work to explore the carbon sequestration potential of Natural and Working Lands ("NWL") (areas with Open Space, Parklands, Habitat, Agriculture, and Open Hillside land use designations in the General Plan) and the impact that development of these areas could have on community-wide greenhouse gas ("GHG") emissions. City staff, in coordination with Santa Clara Valley Open Space Authority and the State, are conducting a spatially explicit analysis of the Climate Smart San José Plan area and incorporation of natural and working lands that addresses carbon sequestration on those lands, as well as other ways that building on those lands can impact carbon emissions ("NWL Element"). This NWL Element will allow a forum for the City to test the Climate Smart San José ("CSSJ") assumptions made around GHG emissions resulting from General Plan buildout, especially in the City's existing NWL and will be incorporated into the CSSJ Plan as a plan amendment.

The NWL Element will include a spatially-derived tool and report that evaluates how land use changes on NWL may impact the City's net GHG emissions profile. Generally, the NWL Element will establish a mapped and quantified "baseline" GHG inventory based on present day land uses and a "business-as-usual" GHG inventory based on land uses as designated in the City's General Plan. These inventories will quantify emissions associated with building energy consumption and transportation, and will quantify the City's carbon stocks. The NWL Element will then explore how protection and enhancements made on NWLs can support the City's environmental goals and GHG reduction targets.

Consultant's work will result in a tool that supports evaluation of land use alternatives related to the preservation and enhancement of NWLs, and how those alternatives impact the City's GHG emissions trajectory.

Service No. 1: Kick-off Meeting, Confirm Scope of Work and Report Outline (~60 days)

Description: Coordinate team meeting to confirm roles and team organization, refine scope of work, develop schedule and timeline and share information available at onset of work. Review Climate Smart San José Phase 1 and City of San José General Plan and how this work can integrate with relevant policies processes and update cycles. Identify data gaps and needs. Determine make-up and representatives of the Technical Advisory Committee ("TAC") that will provide objective expertise and input on modeling and report contents.

Deliverables

- Meeting prep and attendance
- Meeting summary and action items

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- Refined scope, schedule, timeline
- Natural and Working Lands ("NWL") element outline*
- Schedule and timeline
- Data transfer

*(*To show integration with Phase 1 Plan and City of San José General Plan)*

Service No. 2: Develop Methodology (~60 days)

Description: Engage TAC on potential models for NWL analysis to determine adequacy and appropriate data sources. Review existing data and determine what data and data refinements are needed for overall methodology and report development.

Deliverables

- Review existing literature, data and models of interest to identify benefits and limitations. NWL sequestration models of interest include but are not limited to: CALANDS, COMET Planner, and other developed methods. Land use emissions models include Urban Footprint or other land use emissions scenario model platform.
- Meetings with TAC
- Draft methodology memorandum (includes data needs/refinements)
- Incorporate feedback from TAC on methods and data before finalization
- Updated schedule and timeline

Service No. 3: Data Collection and Refinement (~60 days)

Description: Collect or develop additional information necessary to perform modeling.

Deliverables

- Complete package of input data along with metadata
- Meetings, interviews, research and field visits

Service No. 4: Modeling and Technical Reporting (~90 days)

Description: Perform modeling with interim results presented to team and refinements as needed to strengthen results. Report and present results to team prior to incorporating results into a technical summary report.

Deliverables

- Model runs/results (baseline, business-as-usual, NWL alternative)
- Interim presentation and report (including team reviews, comments and revisions)
- Final presentation and draft technical report (including team reviews, comments and revisions)
- Final technical report
- Working model, metadata, and brief guide for future use/updates

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Service No. 5: NWL Element Plan Amendment Development (~120 days)

Description: Compile the results and technical data from previous tasks and prepare what is needed for the Climate Smart San José plan amendment. Populate report outline with preliminary content for review followed by draft and final amendment narrative that reflect team comments and review. Report to include narratives, modeling results and visualization graphics in format that can be directly integrated in next regular CSSJ update. Ensure report and modelling results can inform future land use and policy decisions made by the City on NWL.

Deliverables

- Preliminary draft NWL report
- Draft NWL report
- Summary of consultant team responses to comments
- Final NWL report

(includes team review, comment and revisions)

Service No. 6: Project Management

Description: Provide supporting communication and administrative functions to ensure the completion of services including scheduling, budget and project tracking, reporting, deliverable quality control, and invoicing.

Deliverables

- Team check-in meetings
- Team conference calls
- TAC meetings
- Contract, schedule, budget and team management
- Reports
- Quality control

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Exhibit B

Insurance Requirements

1. Insurance

- a. CITY and AUTHORITY shall each procure and keep in force during the term of this MOU, at their own cost and expense, the following policies of insurance with California-admitted insurance companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company:
 - i) If CITY or the AUTHORITY has and will have employees during the term of this MOU, Workers' Compensation Insurance as required by law with limits of \$1,000,000;
 - ii) Comprehensive or Commercial General Liability Insurance, which shall be occurrence coverage, in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, combined single limit, including coverage for (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability; and
 - iii) Business Automobile Liability Insurance for each of the PARTY's vehicles used in the performance of this Contract, including owned, non-owned (e.g., owned by each PARTY's employees), leased, or hired vehicles, in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage.

Upon written request, each PARTY shall provide to the REQUESTING PARTY proof of renewal of each insurance policy at least thirty (30) days prior to the expiration of the insurance policy as long as this MOU remains in effect.

CITY and AUTHORITY each certifies that the PARTY is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. CITY and AUTHORITY shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this MOU.

In the event that any coverage required under the MOU is reduced, limited, or materially affected in any other manner, CITY and AUTHORITY shall provide written notice to the other PARTY at their earliest possible opportunity and in no case later than five days after CITY or AUTHORITY is notified of the change in coverage.