



## **AGENDA**

### **CITY OF UNION CITY/ SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY MEETING**

**CAROL DUTRA-VERNACI, Mayor**  
**JEFF WANG, Vice Mayor (District 3)**  
**GARY SINGH, Councilmember (District 1)**  
**JAMIE PATIÑO Councilmember (District 2)**  
**SCOTT SAKAKIHARA, Councilmember (District 4)**

**Tuesday, February 27, 2024**  
**7:00 PM**

**City Hall- Council Chamber**  
**34009 Alvarado-Niles Road**  
**Union City, CA 94587**

- 1. CALL TO ORDER**
  - 1.a. Pledge of Allegiance
  - 1.b. Roll Call
- 2. UNFINISHED BUSINESS - None**
- 3. PROCLAMATIONS AND PRESENTATIONS - None**
- 4. ORAL COMMUNICATIONS**

*An individual speaker shall have three minutes to address the Council on non-agenda items under the Oral Communications section of the agenda. The Chair may, in their discretion, lower the time limit to less than three minutes based on the number of speakers and/or business to be conducted by the City Council. Members of the public who wish to speak to the Council under the first Oral Communications section are requested to complete a speaker card, giving their name and city of residence. If a speaker wants further notification from the City, the speaker may include a*

*mailing address. Neither a speaker card or identification of name, city of residence or mailing address are required to provide public comment but are requested for record keeping purposes.*

## **5. CONSENT CALENDAR**

*All matters listed on the Consent Calendar are considered routine in nature and will be enacted by one motion. If discussion is required on a specific item, it will be removed from the Consent Calendar and considered separately.*

- 5.a. Waived Further Reading of Proposed Ordinance  
(This permits reading the title only in lieu of reciting the entire text of any proposed Ordinance.)
- 5.b. Approve The Minutes Of The City Council Meeting Held On December 12, 2023
- 5.c. Adopt Two Resolutions Of The City Council Of The City Of Union City Updating Adopted Resolutions No. 6138-23 And 6250-24 Regarding The City's Homekey Application And Implementation Of The "Project Reclamation - Alameda County Scattered Sites Project" Per Direction From The State Department Of Housing And Community Development
- 5.d. Adopt A Resolution Accepting The Completion Of The 2023-2024 Citywide Street Pavement Rehabilitation Project, City Project No. 23-01
- 5.e. Adopt A Resolution Authorizing The Award Of A Construction Contract To Bay Cities Paving & Grading, Inc., In The Amount Of \$17,049,000, And Approving A Total Construction Budget In The Amount Of \$21,222,750; Approving Two Budget Transfers, One In The Amount Of \$25,742 From The Measure B Bike & Ped Fund (Fund 2543) And Another In The Amount Of \$1,373,974 From The Measure BB Road Fund (Fund 2545), For A Total Of \$1,399,716 In Budget Transfers To The Union City Boulevard Bike Lanes Project, City Project No. 17-29; And Rejecting The Bid Protest From The Ghilotti Construction Company, Inc.
- 5.f. Adopt A Resolution Approving A Reimbursement Payment In The Amount Of \$291,676.73 To The Alameda County Water District Pursuant To The Cooperative Agreement For Cost Sharing For Pavement Work For The Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192), And Approving An Appropriation, In The Amount Of \$291,676.73 From The Allied Waste Vehicle Fee Fund Balance For Fiscal Year 2023-2024 To The Smith Street Restoration Project, City Project No. 24-05
- 5.g. Adopt A Resolution Authorizing A Legal Services Agreement With Redwood Public Law, LLP For Kristopher Kokotaylo To Continue Serving As City Attorney

- 5.h. Adopt A Resolution Approving And Authorizing The City Manager To Execute A Side Letter Agreement Between The City Of Union City And The Management Employee Group (MEG) To Allow For A Pilot Program On Alternative Work Schedules (AWS)

**6. PUBLIC HEARINGS**

- 6.a. Public Hearing And Adopt A Resolution Approving Administrative Site Development Review (ASD-23-023) And Use Permit (UP-23-008) For A New Enclosed Wireless Facility On Top Of The Avalon Union City Apartments, Located At 24 Union Square (APN 87-19-1-25), And To Increase The Height Of The Building From 79 To 86 Feet

**7. CITY MANAGER REPORTS**

- 7.a. Receive Report On Potential Public Safety Parcel Tax And Utility Users' Tax Revenue Measures For The November 2024 Election And Provide Policy Direction
- 7.b. Waive Further Reading And Adopt An Ordinance Amending Union City Municipal Code Chapter 5.42 "Tobacco Retailers"

**8. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None**

**9. AUTHORITIES AND AGENCIES - None**

**10. CITY COMMISSION / COMMITTEE REPORTS - None**

**11. ITEMS REFERRED BY COUNCIL**

**12. GOOD OF THE ORDER**

**13. CLOSED SESSION**

- 13.a. **Conference with Labor Negotiators (Pursuant to Government Code Section 54957.6) Agency Designated Representatives: Kristopher J. Kokotaylo, City Attorney; Mayor Dutra-Vernaci Unrepresented Employee: City Manager**

**14. ADJOURNMENT**

**MEETING INFORMATION**

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Unless otherwise provided, the City Council's regular meetings are held in person on the second and fourth Tuesday of each month at 7:00 p.m. inside the Council Chamber at City Hall, 34009 Alvarado-Niles Road, Union City CA 94587. The City continues to offer an opportunity to observe Council meetings via Zoom at: <https://unioncity-org.zoom.us/j/81719037355> Passcode: u8SH9cH^

Meetings are broadcast live through UCTV Channel 15 and via live stream at:

Members of the public will not have the ability to provide comment via Zoom except under limited circumstances specified below. The ability to observe remotely as identified above is predicated on the technology being available and functioning without technical difficulties. Should the remote platform(s) not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that makes the platform(s) unavailable, the City Council will proceed with the items of business in person unless otherwise prohibited by law.

Any writings or documents provided to a majority of City Council members relating to each item of business referred to on this agenda are available for review on the City's website at [www.unioncity.org](http://www.unioncity.org) or during regular business hours in the Office of the City Clerk located at 34009 Alvarado-Niles Road, Union City CA 94587.

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Office of the City Clerk at (510) 675-5448. Notification 36 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting. The City also provides closed captioning of all its Regular City Council Meetings for the hearing impair.

## **ADDRESSING THE CITY COUNCIL**

In Person Public Comment: Members of the public may address the Council on a matter on the agenda or during the Public Input portion of the meeting. Members who wish to speak are requested to complete a speaker card, giving their name and city of residence. If a speaker wants further notification from the City, the speaker may include a mailing address. Neither a speaker card nor identification of name, city of residence or mailing address are required to provide public comment but are requested for record keeping purposes.

Written Comment: To provide written comment on an item on the agenda or to address the Council about an issue during Public Comment, you may send an email to [cityclerk@unioncity.org](mailto:cityclerk@unioncity.org). Please include the phrase "public comment" in the subject line and note the agenda item number that you want to address. Written comments will be e-mailed to the City Council and made publicly available.

Public Comment via Zoom: As indicated above, the public cannot address the Council via Zoom unless the City is required to provide such opportunity pursuant to AB 2449. In the event that members of the public are allow to participate via Zoom pursuant to AB 2449, the Mayor will make an announcement at the beginning of the meeting. Raise your virtual hand to notify the host that you would like to speak during the item that you wish to speak on.

## **CITY COUNCIL NORMS AND GUIDELINES (Resolution No. 6129-23; Adopted May 23, 2023)**



The City Council of the City of Union City comply with the following norms:

1. We conduct ourselves in a professional manner, treat everyone with respect, and act with high integrity, always putting the interests of the City of Union City ahead of self-interests in accordance with our code of ethics.
2. We respect the Council-Manager form of government, and do not interfere with the City Manager's role or any professional duties of City staff.
3. We recognize that matters of confidential nature are to be kept private and undisclosed.
4. We respect each other's opinions and are supportive of each other's work advocating for the City, and we ensure that all voices are heard. We do not criticize others for having a different point of view, and we agree to disagree respectfully.
5. We understand that the City Council acts as a body, all members are equal, and policy direction is only given by a majority vote of the City Council. Once a decision is made, all members of the City Council must respect the City Council's direction.
6. We will be prepared for City Council meetings and ask our questions of the City Manager in advance so we can avoid surprising City staff at meetings.
7. We do not criticize City staff publicly or to others and will refrain from directing them. Instead, we will take our concerns and questions privately to the City Manager.
8. We will govern on an at-large basis, although elected by districts. We will maintain a citywide perspective and consider the needs and interests of the entire community.
9. We will continue to allocate resources based on long-term strategic priorities and efforts, with consideration of citywide service levels and financial capacity.
10. We understand customer service is the priority and each member of the City Council will help constituents regardless of the district in which they reside or from which a Councilmember themselves is elected.
11. We recognize the significant importance of attendance and participation at City Council meetings in proceeding with City business. All members of the City Council should endeavor to miss no more than two regular meetings per calendar year absent extraordinary circumstances. Members of the City Council should, absent unforeseen circumstances, provide a minimum of sixty days' notice to the City Council of planned absences during the Good of the Order or Items Referred by Council portion of the City Council agenda, as appropriate.

May these Council Norms be administered and enforced in the following manner:

1. Councilmembers have the primary responsibility to assure that ethical standards are understood and

met by the Council, and that the public can continue to have full confidence in the integrity of government.

2. The Mayor and the Council have the responsibility to intervene when action of its members are in violation of Council Norms.
3. The City Council can review and revise the Council Norms as needed.
4. During City Council discussions, deliberations, and proceedings, the Mayor is designated with the primary responsibility to ensure that Councilmembers adhere to the Council Norms.

#### **CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING**

This notice/agenda was posted at least 72 hours in advance of the meeting date, in accordance with the Ralph M. Brown Act, on the City's Website and on the bulletin board of City Hall.



## Agenda Item

### ATTACHMENTS:

Description	Type
 Draft Minutes 12122023	Attachment
 Desk Item 5.b. Corrected Draft Minutes 12122023	Attachment



**DRAFT MINUTES**

**CITY OF UNION CITY/  
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY MEETING**

**CAROL DUTRA-VERNACI, Mayor  
GARY SINGH, Vice Mayor (District 1)  
JAMIE PATIÑO Councilmember (District 2)  
JEFF WANG, Councilmember (District 3)  
SCOTT SAKAKIHARA, Councilmember (District 4)**

**Tuesday, December 12, 2023  
7:00 PM**

**City Hall- Council Chamber  
34009 Alvarado-Niles Road  
Union City, CA 94587**

**1. CALL TO ORDER**

1.a. Pledge of Allegiance led by Mayor Carol Dutra-Vernaci at 7:00 p.m.

1.b. Roll Call

Present: Councilmembers Patiño, Sakakihara, Wang,  
Vice Mayor Singh, Mayor Dutra-Vernaci  
Absent: None

**2. UNFINISHED BUSINESS - None**

**3. PROCLAMATIONS AND PRESENTATIONS**

3.a. Appointment of Vice Mayor

It was moved by Mayor Dutra-Vernaci and seconded by Councilmember Sakakihara to appoint Councilmember Sakakihara as Vice Mayor.

The motion was carried by the following roll call vote:

AYES: Councilmember Sakakihara and Mayor Dutra-Vernaci  
NOES: Councilmembers Patiño, Wang, and Vice Mayor Singh  
ABSTAIN: None  
ABSENT: None

It was moved by Councilmember Patiño and seconded by Vice Mayor Singh to appoint Councilmember Wang as Vice Mayor.

The motion was carried by the following roll call vote:

AYES:	Councilmembers Patiño, Wang, and Vice Mayor Singh
NOES:	Councilmember Sakakihara and Mayor Dutra-Vernaci
ABSTAIN:	None
ABSENT:	None

Councilmember Wang has been appointed Vice Mayor.

3.b. Council Assignments To Various Boards And Commissions

Mayor Dutra-Vernaci pulled this item to be considered at the next City Council meeting on January 9, 2024.

4. **ORAL COMMUNICATIONS**

Public Comment Given By:

Arshad Ali	Victor Daniel Lopez Pulido
Saba Ali	Elwood McCoy
Herb Chiu	Shamsa Rafay
Wendy Huang	Craig Roberts
Rafay Khawaja	Khaled Saad
Raymond Lim	Kashif Wasim

5. **CONSENT CALENDAR**

It was moved by Councilmember Patiño and seconded by Vice Mayor Singh to adopt consent calendar items 5.a. through 5.h.

The motion was carried by a unanimous roll call vote.

AYES:	Councilmembers Patiño, Sakakihara, Singh, Vice Mayor Wang and Mayor Dutra-Vernaci
NOES:	None
ABSTAIN:	None
ABSENT:	None

5.a. Waived Further Reading of Proposed Ordinance

(This permits reading the title only in lieu of reciting the entire text of any proposed Ordinance.)

5.b. Adopted **Resolution No. 6235-23** Authorizing The City Manager To Execute The Fourth Amendment To The Consulting Services Agreement With William R. Gray And Company, Inc., DBA Gray-Bowen-Scott, In The Amount Of \$360,000, A Total Not-To-Exceed Amount Of \$904,000, For The Progress Reporting And Reimbursement Processing For Alameda County Transportation Commission (Alameda CTC)-Funded Projects

- 5.c. Adopted **Resolution No. 6236-23** Authorizing The City Manager To Execute The Second Amendment To The Consulting Services Agreement With Park Engineering, In The Amount of \$100,000, For Encroachment Permit Inspection Services, For A Total Not-To-Exceed Amount Of \$274,000
- 5.d. Adopted **Resolution No. 6237-23** Authorizing The City Manager To Execute The Second Amendment To The Consulting Services Agreement With Urban Planning Partners, In A Form Approved By The City Attorney, To Increase The Agreement Amount By \$300,000, For A Total Not To Exceed Amount Of \$800,000, For Planning Division Support, And To Extend The Agreement To January 8, 2026
- 5.e. Adopted **Resolution No. 6238-23** Authorizing The City Manager To Execute The Seventh Amendment To The Consulting Services Agreement With 4Leaf, Inc., In A Form Approved By The City Attorney, To Increase The Agreement Amount By \$600,000, For A Not To Exceed Amount Of \$2,500,000, For Building Division Support
- 5.f. Adopted **Resolution No. 6239-23** Approving An Amendment To Update The Class Specification For The Classification Of Recreation Supervisor
- 5.g. Adopted **Resolution No. 6240-23** Receiving And Accepting The Audited Financial Statements Of The Measure B Fund, The Measure BB Fund, The Measure F Fund, And The TDA Fund For The Fiscal Year Ended June 30, 2022
- 5.h. Adopted **Resolution No. 6241-23** Appointing Subru Bhat To The Alameda County Mosquito Abatement District Board Of Trustees For A Two-Year Term Expiring January 1, 2026

**6. PUBLIC HEARINGS - None**

**7. CITY MANAGER REPORTS**

- 7.a. Consider And Provide Direction Regarding Potential New Commercial Cannabis Application Process

Vice Mayor Wang announced he had a conflict of interest in Item 7.a, related to the consideration of direction for the process for a potential Commercial Cannabis Permit, stating that while he recognizes cannabis is legal under California Law, he has personal objection to cannabis cannot act impartially in this matter.

Vice Mayor Wang recused himself and exited the Council Chambers.

City Manager Joan Malloy presented a report on the potential new Commercial Cannabis Application Process.

Public comment given by Elwood McCoy.

City Manager Malloy and Deputy City Manager Jennifer Phan responded to questions from Councilmembers.

Councilmembers provided comment.

It was moved by Councilmember Sakakihara and seconded by Councilmember Patiño to proceed with the policy direction of developing the administrative procedure to allow a new permit and return to City Council on January 9, 2024 with an alternative process, as presented in the staff report.

The motion was carried by the following roll call vote:

AYES: Councilmembers Patiño, Sakakihara, and Mayor Dutra-Vernaci  
NOES: Councilmember Singh  
ABSTAIN: None  
ABSENT: Vice Mayor Wang

Vice Mayor Wang returned to the dais.

- 7.b. Adopt A Resolution Authorizing The City Manager To Execute A Memorandum Of Understanding (MOU) With The San Joaquin Regional Rail Commission (SJRRRC) Regarding The Process, Roles And Responsibilities For The Union City Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14

Public Works Director Marilou Ayupan presented a report on the Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14.

It was moved by Councilmember Singh and seconded by Councilmember Sakakihara to Adopt **Resolution No. 6242-23** Authorizing The City Manager To Execute A Memorandum Of Understanding (MOU) With The San Joaquin Regional Rail Commission (SJRRRC) Regarding The Process, Roles And Responsibilities For The Union City Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14

The motion was carried by a unanimous roll call vote.

AYES: Councilmembers Patiño, Sakakihara, Singh, Vice Mayor Wang and Mayor Dutra-Vernaci  
NOES: None  
ABSTAIN: None  
ABSENT: None

- 7.c. Economic Development Update

Economic Development Manager Gloria Ortega presented a report on the Economic Development Update.

City Manager Malloy and Economic Development Manager Ortega responded to questions from Councilmembers.

Councilmembers provided comment.

8. **SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None**  
9. **AUTHORITIES AND AGENCIES – None**

**10. CITY COMMISSION / COMMITTEE REPORTS – None**

**11. ITEMS REFERRED BY COUNCIL**

Councilmember Patiño reported on his attendance of a League of California Cities (LOCC) Board of Directors meeting.

Councilmember Sakakihara reported on his attendance of Housing Authority of the County of Alameda (HACA) and New Haven Unified School District (NHUSD) Joint Sub-Committee meetings.

Councilmember Singh reported on his attendance of a Human Relations Commission (HRC) meeting.

Vice Mayor Wang reported on his attendance of a New Haven Unified School District (NHUSD) Joint Sub-Committee meeting.

Mayor Dutra-Vernaci reported on her attendance of Metropolitan Transportation Commission (MTC) and Alameda County Transportation Commission (ACTC) meetings.

**12. GOOD OF THE ORDER**

Councilmember Patiño reported on his attendance of the City of Union City Employee Recognition Luncheon and League of California Cities (LOCC) East Bay Division Holiday Reception.

Councilmember Sakakihara reported on his attendance of the City of Union City Employee Recognition Luncheon, Inflation Reduction Act Workshop, and Alameda County Supervisor Elisa Marquez District 2 Holiday Event.

City Manager Malloy responded to Councilmember Singh's request for an update on a transient individual reported near Union City Post Office.

Vice Mayor Wang reported on his attendance of the Union City Station District Open House and City of Union City Employee Recognition Luncheon.

Mayor Dutra-Vernaci reported on her attendance of a meeting with Alameda County District Attorney Pamela Price and City Manager Malloy.

**13. CLOSED SESSION - None**

**14. ADJOURNMENT**

Mayor Dutra-Vernaci adjourned the meeting at 9:02 p.m.

Respectfully submitted,

Johanna Ota  
Administrative Specialist  
City Clerk's Office





**DRAFT MINUTES (CORRECTED)**

**CITY OF UNION CITY/  
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY MEETING**

**CAROL DUTRA-VERNACI, Mayor  
GARY SINGH, Vice Mayor (District 1)  
JAMIE PATIÑO Councilmember (District 2)  
JEFF WANG, Councilmember (District 3)  
SCOTT SAKAKIHARA, Councilmember (District 4)**

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**1. CALL TO ORDER**

1.a. Pledge of Allegiance led by Mayor Carol Dutra-Vernaci at 7:00 p.m.

1.b. Roll Call

Present: Councilmembers Patiño, Sakakihara, Wang,  
Vice Mayor Singh, Mayor Dutra-Vernaci  
Absent: None

**2. UNFINISHED BUSINESS - None**

**3. PROCLAMATIONS AND PRESENTATIONS**

3.a. Appointment of Vice Mayor

It was moved by Mayor Dutra-Vernaci and seconded by Councilmember Sakakihara to appoint Councilmember Sakakihara as Vice Mayor.

The motion was carried by the following roll call vote:

AYES: Councilmember Sakakihara and Mayor Dutra-Vernaci  
NOES: Councilmembers Patiño, Wang, and Vice Mayor Singh  
ABSTAIN: None  
ABSENT: None

It was moved by Councilmember Patiño and seconded by Vice Mayor Singh to appoint Councilmember Wang as Vice Mayor.

The motion was carried by the following roll call vote:

AYES:	Councilmembers Patiño, Sakakihara, Wang, and Vice Mayor Singh
NOES:	Mayor Dutra-Vernaci
ABSTAIN:	None
ABSENT:	None

Councilmember Wang has been appointed Vice Mayor.

3.b. Council Assignments To Various Boards And Commissions

Mayor Dutra-Vernaci pulled this item to be considered at the next City Council meeting on January 9, 2024.

4. **ORAL COMMUNICATIONS**

Public Comment Given By:

Arshad Ali	Victor Daniel Lopez Pulido
Saba Ali	Elwood McCoy
Herb Chiu	Shamsa Rafay
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Raymond Lim	Kashif Wasim

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AYES:	Councilmembers Patiño, Sakakihara, Singh, Vice Mayor Wang, and Mayor Dutra-Vernaci
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5.a. Waived Further Reading of Proposed Ordinance

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5.b. Adopted **Resolution No. 6235-23** Authorizing The City Manager To Execute The Fourth Amendment To The Consulting Services Agreement With William R. Gray And Company, Inc., DBA Gray-Bowen-Scott, In The Amount Of \$360,000, A Total Not-To-Exceed Amount Of \$904,000, For The Progress Reporting And

Reimbursement Processing For Alameda County Transportation Commission  
(Alameda CTC)-Funded Projects

- 5.c. Adopted **Resolution No. 6236-23** Authorizing The City Manager To Execute The Second Amendment To The Consulting Services Agreement With Park Engineering, In The Amount of \$100,000, For Encroachment Permit Inspection Services, For A Total Not-To-Exceed Amount Of \$274,000
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**6. PUBLIC HEARINGS - None**

**7. CITY MANAGER REPORTS**

- 7.a. Consider And Provide Direction Regarding Potential New Commercial Cannabis Application Process

Vice Mayor Wang announced he had a conflict of interest in Item 7.a, related to the consideration of direction for the process for a potential Commercial Cannabis Permit, stating that while he recognizes cannabis is legal under California Law, he has personal objection to cannabis cannot act impartially in this matter.

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City Manager Joan Malloy presented a report on the potential new Commercial Cannabis Application Process.

Public comment given by Elwood McCoy.

City Manager Malloy and Deputy City Manager Jennifer Phan responded to questions from Councilmembers.

Councilmembers provided comment.

It was moved by Councilmember Sakakihara and seconded by Councilmember Patiño to proceed with the policy direction of developing the administrative procedure to allow a new permit and return to City Council on January 9, 2024 with an alternative process, as presented in the staff report.

The motion was carried by the following roll call vote:

AYES: Councilmembers Patiño, Sakakihara, and Mayor Dutra-Vernaci  
NOES: Councilmember Singh  
ABSTAIN: None  
ABSENT: None  
**RECUSED: Vice Mayor Wang**

Vice Mayor Wang returned to the dais.

- 7.b. Adopt A Resolution Authorizing The City Manager To Execute A Memorandum Of Understanding (MOU) With The San Joaquin Regional Rail Commission (SJRRRC) Regarding The Process, Roles And Responsibilities For The Union City Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14

Public Works Director Marilou Ayupan presented a report on the Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14.

It was moved by Councilmember Singh and seconded by Councilmember Sakakihara to Adopt **Resolution No. 6242-23** Authorizing The City Manager To Execute A Memorandum Of Understanding (MOU) With The San Joaquin Regional Rail Commission (SJRRRC) Regarding The Process, Roles And Responsibilities For The Union City Intermodal Station, Phase 3/Intercity Rail Station Project, City Project No. 23-14

The motion was carried by a unanimous roll call vote.

AYES: Councilmembers Patiño, Sakakihara, Singh, Vice Mayor Wang, and Mayor Dutra-Vernaci  
NOES: None  
ABSTAIN: None  
ABSENT: None

- 7.c. Economic Development Update

Economic Development Manager Gloria Ortega presented a report on the Economic Development Update.

City Manager Malloy and Economic Development Manager Ortega responded to questions from Councilmembers.

Councilmembers provided comment.

## **8. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None**

**9. AUTHORITIES AND AGENCIES – None**

**10. CITY COMMISSION / COMMITTEE REPORTS – None**

**11. ITEMS REFERRED BY COUNCIL**

Councilmember Patiño reported on his attendance of a League of California Cities (LOCC) Board of Directors meeting.

Councilmember Sakakihara reported on his attendance of Housing Authority of the County of Alameda (HACA) and New Haven Unified School District (NHUSD) Joint Sub-Committee meetings.

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Mayor Dutra-Vernaci reported on her attendance of Metropolitan Transportation Commission (MTC) and Alameda County Transportation Commission (ACTC) meetings.

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Councilmember Patiño reported on his attendance of the City of Union City Employee Recognition Luncheon and League of California Cities (LOCC) East Bay Division Holiday Reception.

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City Manager Malloy responded to Councilmember Singh's request for an update on a transient individual reported near Union City Post Office.

Vice Mayor Wang reported on his attendance of the Union City Station District Open House and City of Union City Employee Recognition Luncheon.

Mayor Dutra-Vernaci reported on her attendance of a meeting with Alameda County District Attorney Pamela Price and City Manager Malloy.

**13. CLOSED SESSION - None**

**14. ADJOURNMENT**

Mayor Dutra-Vernaci adjourned the meeting at 9:02 p.m.

Respectfully submitted,

Johanna Ota  
Administrative Specialist  
City Clerk's Office



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** CARMELA CAMPBELL, ECONOMIC AND COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT:** ADOPT TWO RESOLUTIONS OF THE CITY COUNCIL OF THE CITY OF UNION CITY UPDATING ADOPTED RESOLUTIONS NO. 6138-23 AND 6250-24 REGARDING THE CITY'S HOMEKEY APPLICATION AND IMPLEMENTATION OF THE "PROJECT RECLAMATION - ALAMEDA COUNTY SCATTERED SITES PROJECT" PER DIRECTION FROM THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Staff recommends the City Council adopt the attached resolutions (Attachment 1 and Attachment 2) updating two prior adopted resolutions (Resolution # 6138-23 adopted June 13, 2023 and Resolution # 6250-24 adopted January 23, 2024) per direction from the State Housing & Community Development Agency ("State HCD") related to the City's State Homekey application for the "Project Reclamation - Alameda County Scattered Sites Project" ("Project"). The attached resolutions update one of the co-applicant's name from "Bay Area Community Services" ("BACS") to "Bay Area Community Services Housing Corporation" ("BACS-HC"). The update reflects that BACS-HC, a subsidiary of BACS, will be the entity purchasing the properties that will be used for the Project. The draft resolution, labeled Attachment 2, also reflects an increase in the current conditional award amount of \$9,677,000 to "up to \$10,000,000" to provide a cushion should the project receive additional funding. These two requested corrections will allow State HCD to complete their review of the State Homekey application.

### **STRATEGIC PLAN ALIGNMENT**

This agenda item is in alignment with the following:

Goal C, Strategy 3: Develop a multi-departmental approach to address homelessness through coordination with staff, community organizations and Alameda County.

### **BACKGROUND**

A joint application for Homekey Round 3 was submitted in June 2023, which included the City of Hayward, City of Union City and BACS to fund a scattered sites program, which buys and rehabilitates single-family

residences or duplexes for use by people experiencing homelessness. The City of Hayward will serve as the lead applicant for the Project and will assume the primary administrative responsibilities of managing the grant in coordination with BACS-HC. The Project budget anticipates acquiring 6 homes, 1 of which will be in Union City.

Under this highly cost-effective program model, BACS-HC acquires, owns, operates, and manages small site, scattered, residential properties for low-income individuals experiencing homelessness. Each resident is paired with a Care Coordinator who helps them build independent living skills through job support, benefits assistance, mental health support, financial assistance, job support, group activities, and money management. Residents learn skills by sharing responsibilities for cleaning, paying bills, and running their household. For more information regarding the program and application process to date, see City Council staff report dated June 13, 2023 and the City Council staff report dated January 23, 2024.

## **DISCUSSION**

Staff is recommending the City Council adopt the two updated resolutions (Attachment 1 and 2) in order to make requested corrections from State HCD related to the City's Homekey application. As detailed above, the City Council adopted two resolutions related to the Homekey application. Resolution No. 6138-23, adopted June 13, 2023, authorizes submittal of the Homekey application. Resolution No. 6250-24, adopted on January 23, 2024, authorizes the use of approximately \$550,000 in Federal HOME funds to support the Project and also authorizes the City Manager to enter into any agreements to implement the Project.

The first requested correction updates one of the co-applicant's names. BACS is utilizing its real estate arm, BACS-HC, for the property transactions and State HCD has requested that we update the resolutions to reflect this. State HCD also requested that the draft resolution, included in Attachment 2, be updated to reflect a conditional award amount up to \$10,000,000. The prior adopted resolution reflected the actual award amount of \$9,677,000. State HCD requested the update to provide a cushion should the final award amount be increased. This would avoid having to come back to the City Council for additional authorization in this scenario. This update was not necessary for the resolution, labeled Attachment 1, as the initial application request was for \$10,000,000 and the wording of the adopted and draft resolutions reflect this. These two requested corrections will allow State HCD to complete their review of the State Homekey application.

## **FISCAL IMPACT**

There is no fiscal impact to the General Fund. Project costs, including capital costs for units as well as on-going operational costs, will be covered by the Homekey Award in an amount up to \$10,000,000 and a \$554,354 HOME allocation as stated in the previous staff report from January 23, 2024. In addition, in partnering with the City of Hayward and BACS, the amount of staff time and resources administering the grant will be reduced as well.

## **RECOMMENDATION**

Based on feedback from State HCD, staff recommends the City Council adopt the attached resolutions (Attachment 1 and Attachment 2) associated with the City's State Homekey application for the "Project Reclamation - Alameda County Scattered Sites Project."

**Prepared by:**

Francisco Gomez, Jr., Housing & Community Development Manager

**Submitted by:**

Francisco Gomez, Jr., Housing & Community Development Manager

**ATTACHMENTS:**

	Description	Type
▣	Attachment 1 - Draft Resolution Update from June 13, 2023 City Council Meeting	Resolution
▣	Attachment 2 - Draft Resolution Update from January 13, 2024 City Council Meeting	Resolution



**ATTACHMENT 1  
RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
UNION CITY AUTHORIZING THE SUBMISSION OF A  
JOINT APPLICATION TO AND PARTICIPATION IN THE  
HOMEKEY PROGRAM**

**WHEREAS**, the Department of Housing and Community Development (“**Department**”) has issued a Notice of Funding Availability, dated March 29, 2023 (“**NOFA**”), for the Homekey Program (“**Homekey**” or “**Program**”). The Department has issued the NOFA for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assem. Bill No. 140 (2021-2022 Reg. Sess.), § 20.); and

**WHEREAS**, City staff has worked in conjunction with the City of Livermore to utilize the City of Livermore’s Request for Information process that was released on August 11, 2021 which requested applications for “Projects and Properties to House People Experiencing Homelessness Through the Homekey Program” in which Bay Area Community Services Housing Corporation submitted a proposal for the Project Reclamation supportive shared housing program and was selected; and

**WHEREAS**, the City of Union City (“**Co-Applicant**”) desires to jointly apply for Homekey grant funds with the City of Hayward (the “**Lead Applicant**”) and Bay Area Community Services Housing Corporation (“**Co-Applicant 2**”). Therefore, Co-Applicant and Co-Applicant 2 are joining the Lead Applicant in the submittal of an application for Homekey funds (“**Application**”) to the Department for review and consideration; and

**WHEREAS**, the Department is authorized to administer Homekey pursuant to the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the Application, the Department-approved STD 213, Standard Agreement (“**Standard Agreement**”), and all other legal requirements of the Homekey Program; and

**NOW, THEREFORE, BE IT IS RESOLVED** that the City Council of the City of Union City authorizes the following:

1. Co-Applicant is hereby authorized and directed to submit a joint Application to the Department in response to the NOFA, and to jointly apply for Homekey grant funds in a total amount not to exceed **\$10,000,000**.
2. If the Application is approved, Co-Applicant is hereby authorized and directed to enter into, execute, and deliver a Standard Agreement in a total amount not to exceed **\$10,000,000**, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the “**Homekey Documents**”)

3. Co-Applicant acknowledges and agrees that it shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof. Any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement.
4. The City Manager, or his or her designee, is authorized to execute the Application and the Homekey Documents on behalf of Co-Applicant for participation in the Homekey Program.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

\_\_\_\_\_  
THAI NAM N. PHAM  
City Clerk

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
City Attorney

**ATTACHMENT 2**  
**RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY**  
**1) AUTHORIZING THE USE OF FEDERAL HOME FUNDS, ALLOCATED TO UNION CITY THROUGH THE ALAMEDA COUNTY HOME CONSORTIUM, IN AN AMOUNT UP TO \$554,354, FOR THE IMPLEMENTATION OF THE “PROJECT RECLAMATION – ALAMEDA COUNTY SCATTERED SITES PROJECT”, AND 2) AUTHORIZING THE CITY MANAGER, OR THEIR DESIGNEE, TO EXECUTE AGREEMENTS WITH BAY AREA COMMUNITY SERVICES HOUSING CORPORATION TO ACCEPT THE HOME PROGRAM FUND ALLOCATION, TO BE USED IN CONJUNCTION WITH THE HOMEKEY AWARD, FOR IMPLEMENTATION OF THE SCATTERED SITES PROJECT AND ANY NECESSARY AGREEMENTS RELATED TO THE HOME PROGRAM ALLOCATION OR STATE HOUSING AND COMMUNITY DEVELOPMENT HOMEKEY AWARD**

**WHEREAS**, the Department of Housing and Community Development (“**Department**”) has issued a Notice of Funding Availability, dated March 29, 2023 (“**NOFA**”), for the Homekey Program (“**Homekey**” or “**Program**”). The Department has issued the NOFA for Homekey grant funds pursuant to Health and Safety Code section 50675.1.3 (Assem. Bill No. 140 (2021-2022 Reg. Sess.), § 20.); and

**WHEREAS**, City staff has worked in conjunction with the City of Livermore to utilize the City of Livermore’s Request for Information process that was released on August 11, 2021 which requested applications for “Projects and Properties to House People Experiencing Homelessness Through the Homekey Program” in which Bay Area Community Services Housing Corporation (“**BACS-HC**”) submitted a proposal for the Project Reclamation supportive shared housing program and was selected; and

**WHEREAS**, the City of Union City (“**Co-Applicant**”) submitted a joint application for Homekey grant funds with the City of Hayward (the “**Lead Applicant**”) and Bay Area Community Services Housing Corporation (“**Co-Applicant 2**”). Therefore, Co-Applicant is joining the Lead Applicant and Co-Applicant 2 in the submittal of an application for Homekey funds (“**Application**”) to the Department for review and consideration; and

**WHEREAS**, the Homekey application submitted to the Department received a conditional award for Single-Family Scattered Site Housing Homekey Notice of Funding Availability from Round 3 in the amount up to \$10,000,000 for the Project Reclamation – Alameda County Scattered Sites Project. The conditional award is a reservation of funds in the amount up to \$10,000,000 in order to provide a cushion in funding once the final award amount is determined; and

**WHEREAS**, the Co-Applicant would also utilize its allocation of HOME funds in the amount of \$554,354 during the purchase of properties for the Project Reclamation-Alameda County Scattered Sites project in order to help with acquisition costs. The funds will go towards the purchase of Union City specific properties, rehabilitation on the property, or towards operating subsidy for the property; and

**WHEREAS**, the Co-Applicant will enter into an agreement with BACS-HC to utilize the City's HOME funds to go towards acquisition, rehabilitation, or towards operating subsidy to help the City purchase a single-family home(s) as part of the Project Reclamation – Alameda County Scattered Sites Project; and

**WHEREAS**, the Co-Applicant staff will work with BACS-HC and City of Hayward to refine program goals, utilize matching funding from Alameda County HOME Consortium to help with the acquisition of properties, and submit a list of properties to State HCD with purchase agreements in place for both jurisdictions to establish evidence of site control as part of the implementation of the Homekey program; and

**WHEREAS**, the Department is authorized to administer Homekey pursuant to the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Homekey funding allocations are subject to the terms and conditions of the NOFA, the Application, the Department-approved STD 213, Standard Agreement (“**Standard Agreement**”), and all other legal requirements of the Homekey Program.

**NOW, THEREFORE, BE IT IS RESOLVED** that the City Council of the City of Union City authorizes the following:

1. Co-Applicant is hereby authorized and directed to enter into, execute, and deliver a Standard Agreement in a total amount not to exceed **\$10,000,000**, any and all other documents required or deemed necessary or appropriate to secure the Homekey funds from the Department and to participate in the Homekey Program, and all amendments thereto (collectively, the “**Homekey Documents**”); and
2. Co-Applicant is hereby authorized to utilize its allocation of HOME funds in the amount up to **\$554,354** to go towards the purchase of properties, rehabilitation on the property, or towards operating subsidy for the property and to enter into an agreement with BACS-HC to utilize the City's HOME funds as part of the Project Reclamation-Alameda County Scattered Sites Homekey project; and
3. Co-Applicant is hereby authorized and directed to execute all documents and certifications necessary to secure a HOME agreement with Bay Area Community Services Housing Corporation to utilize federal HOME funds as part of the Project Reclamation-Alameda County Scattered Sites Project to participate in the Homekey Program in a total amount not to exceed **\$554,354**; and
4. Co-Applicant acknowledges and agrees that it shall be subject to the terms and conditions specified in the Standard Agreement, and that the NOFA and Application will be incorporated in the Standard Agreement by reference and made a part thereof; that any and all activities, expenditures, information, and timelines represented in the Application are enforceable through the Standard Agreement. Funds are to be used for the allowable expenditures and activities identified in the Standard Agreement; and

5. The City Manager, or his or her designee, is authorized to execute any necessary Homekey Documents on behalf of Co-Applicant for participation in the Homekey Program and is authorized to execute all documents and certifications necessary to execute a HOME agreement with BACS-HC on behalf of Co-Applicant to accept the HOME program fund allocation, to be used in conjunction with the Homekey award for implementation of the scattered sites program and participation in the Homekey Program.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

\_\_\_\_\_  
THAI NAM N. PHAM  
City Clerk

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
City Attorney



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

**SUBJECT:** ADOPT A RESOLUTION ACCEPTING THE COMPLETION OF THE 2023-2024 CITYWIDE STREET PAVEMENT REHABILITATION PROJECT, CITY PROJECT NO. 23-01

Staff recommends the City Council adopt a resolution accepting the completion of the 2023-2024 Citywide Street Pavement Rehabilitation Project, City Project No. 23-01.

### **STRATEGIC PLAN ALIGNMENT**

This agenda item is in alignment with the following:

**Goal D, Strategy 2:** Environmental Sustainability and Infrastructure – Implement the City’s capital improvement plan.

### **BACKGROUND**

The City Council, at its regular meeting of August 8, 2023, adopted Resolution No. 6184-23, awarding the construction contract for the 2023-2024 Citywide Street Pavement Rehabilitation Project to G. Bortolotto & Company Inc., of San Carlos, California, in the amount of \$2,077,831. The contractor has completed the work in accordance with the plans and specifications approved for this project and has supplied the City with all bonding requirements as specified in the contract.

### **DISCUSSION**

The 2023-2024 Citywide Street Pavement Rehabilitation Project consisted of the following improvements:

1. Repairing failed pavement areas
2. Pavement milling
3. Repairing uplifted or damaged sidewalks, curbs & gutters
4. Installing asphalt concrete paving

5. Traffic control
6. Adjusting utility manhole covers
7. Replacing impacted pavement striping at various streets

The contractor began work in early September 2023 and substantially completed the work in early December 2023. The final cost for the project is \$2,254,487.75. The final construction cost is \$176,656.75 above the original contractor amount, or approximately 8% more than the original contract, due to increased quantities in pavement base failure repair, bike lane buffer striping detail, and change order work to make sidewalk and curb & gutter repairs. The figures above do not include approximately \$1,400 and \$5,000 that ACWD and USD, respectively, will reimburse to the City for the adjustment of their facilities as part of this work.

## **FISCAL IMPACT**

Funding for the project was a combination of the funding shown below:

<b>Funding Source</b>	<b>FY 2022-2023 SB-1 Fund</b>	<b>FY 2022-2023 Capital Projects Fund</b>	<b>FY 2023-2024 Allied Waste Fund</b>	<b>FY 2023-2024 Measure F Fund</b>	<b>FY 2023-2024 Measure BB Fund</b>	<b>Total Construction Budget</b>
<b>Account Number</b>	<b>(2515-3199-92001-54111)</b>	<b>(4100-3199-92302-54111)</b>	<b>(2620-3199-92301-54111)</b>	<b>(2544-3199-92301-54111)</b>	<b>(2545-3199-92301-54111)</b>	
<b>Total</b>	<b>\$808,120</b>	<b>\$75,000</b>	<b>\$764,236</b>	<b>\$50,000</b>	<b>\$516,618 + \$186,026 = \$702,644</b>	<b>\$2,400,000</b>

There was a total of five change orders issued during the work consisting of the following:

1. Additional removal and replacement of curbs & gutters, sidewalks, and installation of tree root barrier
2. Install additional pavement markings
3. Additional base repair and traffic control
4. Additional removal and replacement of curbs & gutters, sidewalks
5. Additional dig-out and cross trenching

The final construction cost for the project is as follows:

<b>Construction Contract Amount Invoiced (including retention)</b>	<b>\$2,154,180</b>
<b>Change Orders</b>	<b>\$100,308</b>
<b>Total Construction Phase Cost</b>	<b>\$2,254,488</b>

The overall cost of construction is \$145,512 below the total construction budget. There are sufficient funds available for the City Council to accept completion of this project and to authorize the release of the retention payment, in the amount of \$81,324.84, to G. Bortolotto & Company Inc.

## **RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution accepting the completion of the 2023-2024 Citywide Street Pavement Rehabilitation Project, and authorize the release of the retention payment, in the amount of \$81,324.84, to G. Bortolotto & Company Inc.

### **Prepared by:**

Eddie Yu, Civil Engineer II

**Submitted by:**

Marilou Ayupan, Public Works Director

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Attachment 1 - Map of Street Improvements	Attachment
<input type="checkbox"/> Draft Resolution	Resolution
<input type="checkbox"/> Exhibit A - Certificate of Completion	Exhibit
<input type="checkbox"/> Exhibit B - Notice of Completion	Exhibit



# 2023 Citywide Street Pavement Rehabilitation Project (City Project 23-01)

## Slurry Seal List

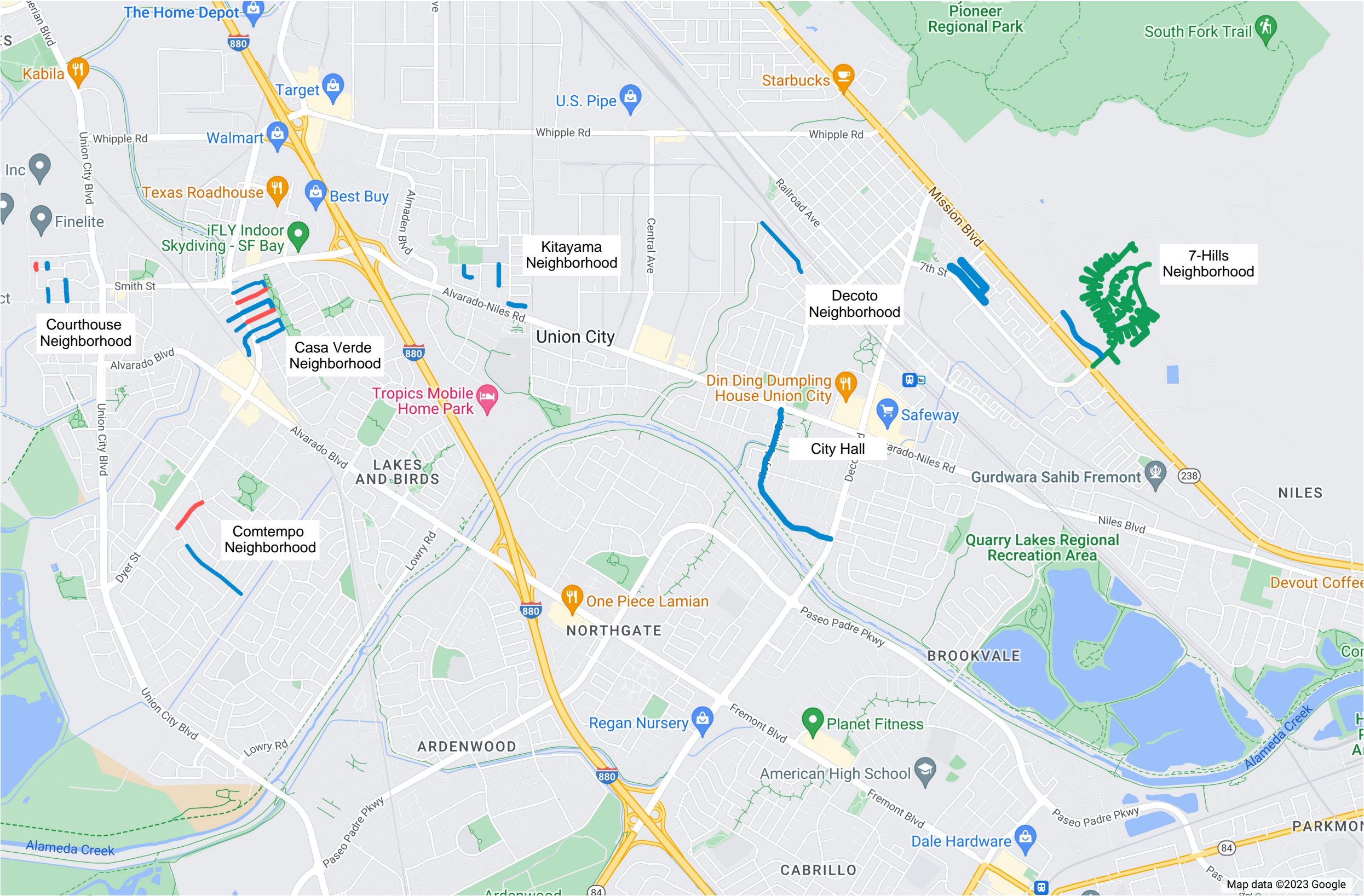
- 1) Riviera Dr
- 2) Monte Carlos Ave
- 3) Veneto Ave
- 4) Monaco Ave
- 5) Appian Way
- 6) Florence St

## Rubber Cape Seal List

- 1) San Pedro Ct
- 2) Knight Ct
- 3) San Marco Ct
- 4) San Carlos Way
- 5) Santa Susana Way
- 6) Andrew Ct
- 7) San Pablo Way
- 8) Champlain Way
- 9) Olympiad Ct
- 10) 13th St
- 11) Barrons Way
- 12) Cambridge Way
- 13) San Pablo Ct
- 14) Red Cedar Ct
- 15) Torrey Pine Ct
- 16) Deborah Dr
- 17) Red Cedar Ln
- 18) Royal Ann Dr
- 19) Torrey Pine Ln
- 20) San Pedro Way
- 21) Veneto St

## Overlay List

- 1) Canterbury Way
- 2) Alice Way
- 3) San Luces Way
- 4) San Marcos Way





## RESOLUTION NO. XXXX-24

### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY ACCEPTING COMPLETION OF THE 2023- 2024 CITYWIDE STREET PAVEMENT REHABILITATION PROJECT, CITY PROJECT NO. 23-01

**WHEREAS**, on August 8, 2023, the City Council adopted Resolution No. 6184-23, awarding a construction contract to G. Bortolotto & Company Inc., of San Carlos, California, in the amount of \$2,077,831, for the 2023-2024 Citywide Street Pavement Rehabilitation Project; and

**WHEREAS**, the 2023-2024 Citywide Street Pavement Rehabilitation Project consisted of the following improvements:

1. Repairing failed pavement areas
2. Pavement milling
3. Repairing uplifted or damaged sidewalks, curbs & gutters
4. Installing asphalt concrete paving
5. Traffic control
6. Adjusting utility manhole covers
7. Replacing impacted pavement striping at various streets; and

**WHEREAS**, the project was started in early September 2023 and was substantially complete in December 2023, and all final project punch-list items have been resolved with the contractor; and

**WHEREAS**, the final cost for the project is \$2,254,487.75. The final construction cost is \$176,656.75 above the original contractor amount, or approximately 8% more than the original contract, due to increased quantities in pavement base failure repair, bike lane buffer striping detail, and change order work to make sidewalk and curb & gutter repairs. The figures above do not include approximately \$1,400 and \$5,000, which ACWD and USD, respectively, will reimburse the City for the adjustment of their facilities as part of this work. The overall project cost came in \$43,624 below the total construction budget; and

**WHEREAS**, the project was funded through a combination of funding shown below:

Funding Source	FY 2022-2023 SB-1 Fund	FY 2022-2023 Capital Projects Fund	FY 2023-2024 Allied Waste Fund	FY 2023-2024 Measure F Fund	FY 2023-2024 Measure BB Fund	Total Construction Budget
Account Number	(2515-3199-92001-54111)	(4100-3199-92302-54111)	(2620-3199-92301-54111)	(2544-3199-92301-54111)	(2545-3199-92301-54111)	
Total	\$808,120	\$75,000	\$764,236	\$50,000	\$516,618 + \$186,026 = \$702,644	\$2,400,000

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Union City does hereby accept the improvements in the final amount of \$2,254,487.75 for the 2023-24 Citywide Street Rehabilitation Project, City Project No. 23-01, as described in the Certificate of Completion, attached as Exhibit A; and

**BE IT FURTHER RESOLVED** that the City Clerk of the City of Union City be directed to record the Notice of Completion, attached as Exhibit B, with the Office of the County Recorder of Alameda County, California; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Union City does hereby authorize the City to make a final retention payment in the amount of \$81,324.84 to G. Bortolotto & Company Inc. for the completion of improvements of City Project No. 23-01 in accordance with the plans and specifications on file at the Office of the Director of Public Works.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

\_\_\_\_\_  
THAI NAM N. PHAM  
City Clerk

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
City Attorney

**Attachments:**

1. Exhibit A – Certificate of Completion
2. Exhibit B – Notice of Completion

**CERTIFICATE OF COMPLETION**  
**(Sec. 4005 Government Code)**

**TITLE: 2023-24 CITYWIDE STREET PAVEMENT REHABILITATION PROJECT;  
CITY PROJECT NO. 23-01**

I, MARILOU AYUPAN, Public Works Director of the City of Union City, County of Alameda, State of California, do hereby certify as follows:

- a. That this project, consisting of repairing failed pavement areas, pavement milling, repairing uplifted or damaged sidewalks, curbs & gutters, installing asphalt concrete paving, traffic control, adjusting utility manhole covers, and replacing impacted pavement striping at various streets; and
- b. That contract agreement was approved by the City Council for the amount of \$2,077,831; and
- c. That the adopted and approved plans and specifications have been changed in the following respects:

CCO #	CONTRACT CHANGE DESCRIPTION	AMOUNT
	Original Contract	\$ 2,077,831.00
	Increase in Quantities	\$ 76,348.95
	Decrease in Quantities	\$ -
1	Extra Concrete Work on Royal Ann	\$ 30,700
2	Extra Striping Markings	\$ -
3	Extra Base Repair Work on Appian Way	\$ 11,913.60
4	Extra Concrete Work on 7th St. & Royal Ann	\$ 50,365.00
5	Base Repair on 349 Monaco; Mill & Fill on 203 Veneto St	\$ 7,329.20
Total Construction Contract Cost to City		\$ 2,254,487.75

- d. That the work performed has been done in accordance with such plans and specifications.
- e. That G. Bortolotto & Company Inc. performed the work, at a total cost of **\$2,254,487.75** including the above noted contract change description.
- f. That the final retention amount of **\$81,324.84** will be released after 35 days of the project's acceptance.

Dated: \_\_\_\_\_, 2024.

\_\_\_\_\_  
MARILOU AYUPAN, P.E.  
PUBLIC WORKS DIRECTOR

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

The City of Union City  
And is Exempt from Fee  
Per Government Code  
Sections 6103 and 27383

WHEN RECORDER MAIL TO:

The City Engineer  
The City of Union City  
34009 Alvarado Niles Road  
Union City, CA 94587

(THIS SPACE FOR RECORDER'S USE ONLY)

**NOTICE OF COMPLETION  
AND NOTICE OF ACCEPTANCE**

General Contract or Assessment Proceedings

**TITLE: 2023-24 CITYWIDE STREET PAVEMENT REHABILITATION  
PROJECT; CITY PROJECT NO. 23-01**

NOTICE IS HEREBY GIVEN that I, MARILOU AYUPAN, as Public Works Director of the City of Union City, County of Alameda, California, on the 27<sup>th</sup> day of February, 2024, did file with the Department of Public Works of said City, the Certificate of Completion of the following described work, the contract for which was heretofore awarded to G. Bortolotto & Company Inc., San Carlos, CA and entered into on August 8, 2023, in accordance with the specifications for said work filed with said Department of Public Works and adopted by the Public Works Director of said City.

That said street rehabilitation work and improvements, located at various streets in Union City, were actually accepted by the Public Works Director of the City of Union City on the 27<sup>th</sup> day of February, 2024, and that the name of the surety on the Contractor's bond for labor and materials on said contract is the Everest Reinsurance Company.

That the following work has been completed: 2023-24 Citywide Street Pavement Rehabilitation Project, consisting of repairing failed pavement areas, pavement milling, repairing uplifted or damaged sidewalks, curbs & gutters, installing asphalt concrete paving, traffic control, adjusting utility manhole covers, and replacing impacted pavement striping at various streets.

Dated: \_\_\_\_\_, 2024.

\_\_\_\_\_  
MARILOU AYUPAN  
PUBLIC WORKS DIRECTOR

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6)

STATE OF CALIFORNIA    )  
  )  
COUNTY OF ALAMEDA    )

MARILOU AYUPAN, being first duly sworn, deposes and says:

That she is the duly appointed Public Works Director of the City of Union City, California; that she has read the foregoing Notice of Completion and Notice of Acceptance and knows the contents thereof, and that the same is true of her own knowledge except as to the matters therein stated on her own information and belief, and as to those matters that she believes it to be true.

\_\_\_\_\_  
MARILOU AYUPAN  
PUBLIC WORKS DIRECTOR

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public in and for the City of Union City,  
County of Alameda, State of California



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

**SUBJECT:** ADOPT A RESOLUTION AUTHORIZING THE AWARD OF A CONSTRUCTION CONTRACT TO BAY CITIES PAVING & GRADING, INC., IN THE AMOUNT OF \$17,049,00, AND APPROVING A TOTAL CONSTRUCTION BUDGET IN THE AMOUNT OF \$21,222,750; APPROVING TWO BUDGET TRANSFERS, ONE IN THE AMOUNT OF \$25,742 FROM THE MEASURE B BIKE & PED FUND (FUND 2543) AND ANOTHER IN THE AMOUNT OF \$1,373,974 FROM THE MEASURE BB ROAD FUND (FUND 2545), FOR A TOTAL OF \$1,399,716 IN BUDGET TRANSFERS TO THE UNION CITY BOULEVARD BIKE LANES PROJECT, CITY PROJECT NO. 17-29; AND REJECTING THE BID PROTEST FROM THE GHILOTTI CONSTRUCTION COMPANY, INC.

Staff recommends that the City Council adopt a resolution authorizing the award of a construction contract to Bay Cities Paving & Grading, Inc., in the amount of \$17,049,000, and approving a total construction budget in the amount of \$21,222,750; approving two budget transfers, one in the amount of \$25,742 from the Measure B Bike & Ped Fund (Fund 2543), and another in the amount of \$1,373,974 from the Measure BB Roads Fund (Fund 2545), for a total of \$1,399,716 in budget transfers to the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and rejecting the bid protest from the Ghilotti Construction Company, Inc.

### **STRATEGIC PLAN ALIGNMENT**

This agenda item is in alignment with the following:

**Goal D, Strategy 1:** Environmental Sustainability and Infrastructure - Continue the build-out of the City's Bicycle and Pedestrian network, with an emphasis on closing gaps, addressing safety concerns, and increasing connectivity to the Station District.

**Goal D, Strategy 2:** Environmental Sustainability and Infrastructure – Implement the City's capital improvement plan.

## **BACKGROUND**

The Alameda County Transportation Commission (Alameda CTC) administers funding programs and projects that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee (VRF), 2014 Measure BB, CMA-TIP, and Transportation Fund for Clean Air Programs. Such funding is collectively defined as, and shall be referenced herein as, the “Alameda CTC Administered Funds.”

On April 27, 2017, the Alameda CTC approved the award of an \$8,800,000 grant to the Union City Boulevard Bikes Lanes Project, City Project No. 17-29. On October 9, 2017, Union City received the executed Alameda CTC Project Funding Agreement No. A17-0125 with grant funding in the amount of \$8,800,000 of 2014 Measure BB, CMA TIP, TFCA (Transportation Fund for Clean Air Programs) and a required local match of \$1,000,000 (Gas Tax) for the Final Design, Right of Way, and Construction Phases.

Since 2017, Union City has received other transportation funds for the Union City Boulevard Bike Lanes Projects as summarized below:

- Resolution No. 5613-20 was adopted to approve the List of Projects for FY 2020-2021, in the amount of approximately \$1.4 million funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation in various locations, including Union City Boulevard.
- Resolution No. 5768-21 was adopted to approve the List of Projects for FY 2021-2022, in the amount of approximately \$1.5 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation in various locations, including the Union City Boulevard Bike Lanes Project, City Project No. 17-29.
- Resolution No. 5951-22 was adopted to approve the List of Projects for FY 2022-2023, in the amount of approximately \$1.6 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations, including Union City Boulevard Bike Lanes Project, City Project No. 17-29
- Resolution No. 6123-23 was adopted to accept \$604,912 in Transportation Development Act (TDA), Article 3 Pedestrian/Bicycle Project Funding from the Metropolitan Transportation Commission, increasing revenue projections in the Capital Projects Fund by \$604,912, and appropriating \$604,912 to the Capital Projects Fund for the construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29.
- Resolution No. 6152-23 was adopted to accept \$1.8 million from the 2024 Comprehensive Investment Program (CIP) Grant Funds from the Alameda County Transportation Commission (Alameda CTC) for the Union City Boulevard Bike Lanes (Phase III, Complete Streets) Project, City Project No. 17-29, increasing the revenue projections in the Capital Projects Fund (Fund 4100) by \$1.8 million, appropriating \$1.8 million to Project No. 17-29, earmarking \$450,000 of previously approved SB-1 funds (Fund 2515) to meet the Local Match requirement and authorizing the City Manager to sign the required grant funding agreements, in a form approved by the City Attorney.
- Resolution No. 6160-23 was adopted to approve a List of Projects for FY 2023-2024, in the amount of approximately \$1.7 million, funded with SB-1: The Road Repair and Accountability Act of 2017 (Fund 2515), which includes, among the various projects, the Union City Boulevard Bike Lanes Project, City Project No. 17-29.
- Resolution No. 6172-23 was adopted to authorize the City Manager to execute a Consulting Services



Agreement with Park Engineering, Inc., of Emeryville, CA, in the amount of \$2,000,000, for the construction management services for the Union City Boulevard Bike Lanes Project, City Project No. 17-29.

This Union City Boulevard Bike Lanes Project will complete the bike lane gap along Union City Boulevard by providing continuous bike facilities from Alameda County Flood Control Channel (Fremont) to Smith Street for over two miles and will serve as the San Francisco Bay Trail in Union City. The improvements will also include the rehabilitation of the roadway within the project limits. The bike lane project has been enhanced and improved to incorporate input from Bicycle and Pedestrian Advisory Committee (BPAC) members, bicycle advocates and other community members. These improvements now consist of the following:

- Implement “Complete Streets” designs at intersections, including traffic signal modifications.
- Upgrade Class II to Class II buffer bike lanes.
- Provide a new Class I bikeway west of UCB from Lowry Road to Rocklin Drive to Delaine Eastin School and the east of UCB with a dedicated right-turn lane to improve student drop-off and access to the school.
- Significantly enhance street lighting (for all modes)
- Improve roadway drainage to reduce flooding.

The Engineer's Estimate for the construction phase is \$16,445,890.

## **DISCUSSION**

On November 21, 2023, the plans and specifications for the project were released and advertised for “Notice to Bid” (Attachment 1) followed by the issuance of Addendum No.1, dated December 20, 2023, Addendum No.2, dated January 12, 2024, and Addendum No.3, dated January 23, 2024.

On December 5, 2023, Park Engineering, the City’s construction management consultant, held a Pre-Bid Meeting for the interested bidders at Mark Green Sports Center to encourage potential bidders to visit the project site and to inquire about construction activities before bid opening.

On January 31, 2024, the City of Union City received seven (7) bids, and all bids were opened on the same day as noted in Exhibit A and Exhibit B. The lowest responsive and responsible bid submitted was \$17,049,000, by Bay Cities Paving & Grading, Inc. (BCPG), of Concord, California.

On February 5, 2024, Ghilotti Construction Company, Inc. (GCC), the second lowest bidder (in the amount of \$17,260,159), submitted a protest letter requesting the City to consider BCPG’s low bid as non-responsive and refrain from awarding the contract to them (see Attachment 2). GCC’s protest points out that the low bid failed to include the DIR registration numbers of the subcontractors in its bid, as required by Public Contract Code Section 4104. The following day, Marlo Manqueros, Vice President for BCPG, submitted a response to the bid protest (see Attachment 3).

When a prime contractor violates a requirement of Public Contract Code section 4100 *et seq.*, Public Contract Code section 4111 provides that “the awarding authority may exercise the option, in its own discretion” to cancel the contract. The California State Attorney General has advised that Section 4111 is permissive, and awarding agencies may use their discretion to choose not to cancel the contract of a prime contractor violating Section 4104, and instead accept the bid.

The City has verified that all of the subcontractors listed on the low bid proposal were registered with DIR at the time the bid was submitted. Therefore, BCPG’s failure to list the DIR registration numbers had no substantive impact. Consequently, City staff is recommending that the City Council exercise its own discretion

to not disqualify Bay Cities Paving & Grading, Inc. This ensures that the project is completed at the lowest cost to the City and its residents.

The low bid, in the amount of \$17,049,00, though 3.6% higher than the Engineers Estimate of \$16,455,890, is deemed very competitive because all the bids received were within a 5% to 10% threshold of the Engineer's Estimate and five of the seven bids were within the \$17,000,000 range. The lowest bid is approximately 2% less than the bids from the second and third lowest bidders.

For major roadway construction projects, the standard practice is to allocate a 10% construction contingency to address any unforeseen conditions that may require additional construction activities to ensure a successful project. Also, 2.5% of the project contingency is recommended to be set aside for a project consisting of complex construction phases such as this one. The total budget for the Construction Phase is as follows:

Construction Contract	\$17,049,000
Construction Contingency (10%)	\$1,704,900
Construction Management	\$2,000,000
Project Contingency (2.5%)	\$468,850
<b>Total Construction Cost</b>	<b>\$ 21,222,750</b>

Union City has not had a major roadway construction project for the past several years (due to staff shortage, the 2019 cyberattack, and the COVID-19 pandemic) and BCPG has not performed construction work in the City within the last five (5) years. Reference checks found their most recent work to be satisfactory. The Public Works Department therefore recommends the award of the construction contract to Bay Cities Paving & Grading, Inc.

## **FISCAL IMPACT**

The total construction cost is \$21,222,750, yet the current approved budget for the Union City Boulevard Bike Lanes Project, City Project No. 17-29 is \$19,823,034. To fill the budget shortfall of \$1,399,716 and allow the project to proceed to construction, staff recommends transferring \$25,742 from Measure B Bike & Ped (2543-3199-99999-54111) for the Alvarado-Niles Road Multimodal Corridor Study and \$1,373,974 from Measure BB Roads (2545-3199-99999-54111) for Dyer Street Resurfacing, Phase 2 project, totaling \$1,399,716.

The project budgets identified in the approved Five-Year Capital Improvement Plan (CIP) for Fiscal Year 2023-2024 to 2027-2028 for the Alvarado-Niles Multimodal Corridor Study, (CIP No. K) is \$405,000, and for Dyer Street Resurfacing, Phase 2 (CIP No. 24) is \$1,373,974, which includes an additional \$173,974 from a budget transfer for a recently completed project. The remaining balance for the Alvarado-Niles Multimodal Corridor Study is \$379,258, which is sufficient budget to initiate the study. The construction of the Dyer Street Resurfacing, Phase 2 project should not start until the completion of the Union City Boulevard Bikes Lanes Project in late 2025. This project will then be included in the next Five -Year CIP for FY 2025-2026 to FY 2028-2029.

The total construction cost of \$21,222,750 will be funded as shown in the table below:

<b>Fund Source FY 2023-2024</b>	<b>Account Number</b>	<b>Total</b>
Gas Tax	(2510-3199-91729-54111)	\$228,528
SB-1 Roads	(2515-3199-91729-54111)	\$5,299,887
SB-1 Roads	(2515-3199-91729-54110)	\$650,000
Measure B Roads	(2542-3199-91729-54111)	\$163,799

Measure B Bike & Ped	(2543-3199-91729-54111)	\$210,726
Measure B Bike & Ped	(2543-3199-91729-54110)	\$214,000
Measure F	(2544-3199-91729-54111)	\$1,000,000
Measure BB Streets	(2545-3199-91729-54111)	\$2,040,000
Measure BB Bike & Ped	(2546-3199-91729-54111)	\$888,400
Capital Projects (AlaCTC and TDA Grants)	(4100-3199-91729-54111)	\$7,991,694
Capital Projects (AlaCTC Grant)	(4100-3199-91729-54110)	\$1,136,000
	<b>Current Budget</b>	<b>\$19,823,034</b>
<i>Shortfall Fund Source (from CIP)</i>	<i>Fund Balance</i>	
<i>K. Measure B Bike &amp; Ped (Alvarado Niles Multimodal Corridor Study)</i>	<i>(2542-3199-99999-54111)</i>	<i>\$25,742</i>
<i>24. Measure BB Roads (Dyer Street Resurfacing, Phase 2)</i>	<i>(2545-3199-99999-54111)</i>	<i>\$1,373,974</i>
	<b>Requested Shortfall Transfer</b>	<b>\$1,399,716</b>
	<b>TOTAL CONSTRUCTION COST</b>	<b>\$21,222,750</b>

## **RECOMMENDATION**

Staff recommends that the City Council adopt a resolution with the following recommendation:

1. Authorizing the award of a construction contract to Bay Cities Paving & Grading, Inc., in the amount of \$17,049,000, for the construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29 and rejecting the bid protest from the Ghilotti Construction Company, Inc; and
2. Approving a total construction budget, in the amount of \$21,222,750, for construction contract, construction contingency, construction management services and project contingency; and
3. Approving the transfer of \$25,742 from Alvarado-Niles Road Multimodal Corridor Study (2543-3199-99999-54111) to the Union City Boulevard Bike Lanes Project, City Project No. 17-29 (2543-3199-91729-54111); and
4. Approving the transfer of \$1,373,974 from Dyer Street Resurfacing, Phase 2 (2545-3199-99999-54111) to the Union City Boulevard Bike Lanes Project, City Project No. 17-29 (2545-3199-91729-54111).

## **Prepared by:**

Tommy Cho, Principal Civil Engineer

## **Submitted by:**

Marilou Ayupan, Public Works Director

## **ATTACHMENTS:**

Description	Type
 Attachment 1 - Notice of Bid	Attachment

📎	Attachment 2 - Protest Letter	Attachment
📎	Attachment 3 - Response to Protest Letter	Attachment
📎	Draft Resolution	Resolution
📎	Exhibit A - Project Title Sheet	Exhibit
📎	Exhibit B - Bid Results	Exhibit
📎	Exhibit C - Bid Summary	Exhibit



**CITY OF UNION CITY  
DEPARTMENT OF PUBLIC WORKS  
CITY PROJECT NO. 17-29  
NOTICE TO CONTRACTORS**

Sealed proposals for the work shown on the plans entitled: UNION CITY BLVD. BIKE LANE IMPROVEMENTS PROJECT, CITY PROJECT NO. 17-29, will be received at the office of the City Clerk of the City of Union City, City Government Building, 34009 Alvarado-Niles Road, Union City, California, until Wednesday, January 17, 2024, 2:00PM PST, at which time they will be publicly opened and read in the Council Chambers of said building. The Engineer's estimate for this project is \$16.7 million.

The Contractor shall possess a Class A and/or C-12 California contractor's license at the time this contract is awarded.

Bids are required for the entire work described herein. This contract is subject to the State contract nondiscrimination and compliance requirements pursuant to Government Code Section 12990.

**Bid Package & Bid Package Location.** All the project work is to be done in accordance with the bid package on file with the Public Works Department - City of Union City, 34009 Alvarado- Niles Road, Union City, California 94587. Eligibility to bid on this project requires bid package to be electronically obtained from the City. Bid package may be obtained at no charge via email request to the City at [publicworks@unioncity.org](mailto:publicworks@unioncity.org). Non-biddable plans and specifications shall be available to view at various Builders' Exchanges throughout the Bay Area and on the City of Union City website at [www.unioncity.org](http://www.unioncity.org).

**General Work Description:** The work to be done, in general, consists of roadway widening into the existing median to facilitate installation of buffered bike lanes, construction of curb, sidewalk, and curb ramps, traffic signal modifications, street lighting improvements, drainage improvements, pavement rehabilitation (dig-outs and repairs), cold planing, overlay of roadway, signing, striping and landscape improvements and other related work indicated and required by the plans, Standard Specifications and these special provisions.

All questions should be emailed or fax to Tommy Cho of City of Union City, email: [tommyc@unioncity.org](mailto:tommyc@unioncity.org). The successful bidder shall furnish a Payment Bond, a Performance Bond, and a Maintenance Bond.

Minimum wage rates for this project as predetermined by the Secretary of Labor are set forth in the special provisions. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and prevailing wage rates determined by the Department of Industrial Relations for similar classifications of labor, the contractor and his subcontractors shall pay not less than the higher wage rates.

Pursuant to Section 1773 of the Labor Code, the general prevailing rate of wages in the county in which the work is to be done has been determined by the Director of the wage rates appear in the Department of Transportation publication entitled General Prevailing Wage Rates, (current semi-annual which have been predetermined and are on file with the Department of Industrial Relations are referenced but not printed in said publication.



## LETTER OF TRANSMITTAL

TO: City of Union City  
Office of the City Clerk  
34009 Alvarado-Niles Road  
Union City, CA 94587

DATE: 2/2/2024  
JOB/PROJECT: Union City Blvd Bike Lane  
Improvements Project, City Project #17-29

ATTN: Marilou Ayupan, Director of Public Works

WE ARE SENDING YOU: ☒ ENCLOSED  
THE FOLLOWING ITEMS:

☐ UNDER SEPARATE COVER VIA: Courier

☒ CONTRACTS      ☐ SOILS REPORT      ☐ SPECIFICATIONS      ☐ DBE SUBMITTALS  
☐ COPY OF LETTER      ☐ PLANS      ☐ SAMPLES      ☐

COPIES	DATE	NUMBER	DESCRIPTION
1	2/2/2024		Protest Letter and supporting documentation
1	2/2/2024		Confirmation of Transmittal to apparent low bidder – Bay Cities Paving & Grading, Inc.

THESE ARE TRANSMITTED as indicated below:

- ☐ For your approval
- ☒ For your use
- ☐ As requested
- ☐ Approved as submitted
- ☐ Approved as noted
- ☐ Returned for corrections
- ☐ Resubmit for approval
- ☐ For review and comment
- ☐ For quotation
- ☐ For bids due
- ☐ For Your Signature

REMARKS:

BY:

**Laura Hidalgo**  
Contracts Manager

*If enclosures are not as noted, kindly notify the above as soon as possible.*

— Engineering Contractor —

246 GHILOTTI AVENUE • SANTA ROSA, CA 95407 • 707-585-1221 • FAX: 707-585-0129  
www.ghilotti.com

STATE CONTRACTORS LICENSE #644515



February 2, 2024

To: Marilou Ayupan  
Director of Public Works  
Office of the City Clerk  
City of Union City  
34009 Alvarado-Niles Road  
Union City, California 94587

Re: Bid Protest  
UNION CITY BOULEVARD BIKE LANE IMPROVEMENTS PROJECT  
CITY PROJECT NO. 17-29

Bid Date: Wednesday, January 31, 2024

Dear Ms. Marilou Ayupan,

This letter serves as Ghilotti Construction Company, Inc.'s formal protest of the bid submitted by Bay Cities Paving and Grading, Inc. (BCPG) for the above referenced project. At the time of bid, Ghilotti Construction Company, Inc. (Ghilotti) was the apparent 2nd low bidder, and after review of the bid documents submitted by BCPG, Ghilotti's protest is based on the following:

BCPG failed to comply with the Subcontractor Listing Requirements of the Public Contract Code as well as the Contract Specifications.

Section 11 – SUBCONTRACTING contained in the Instructions to Bidders states the following:

*"Bids must satisfy the requirements of ...California Public Contract Code Section 4100 et seq or the Subletting and Subcontracting Fair Practices Act..."*

**California Public Contract Code (PCC) Section 4104** states, *"any person making a bid... shall, set forth: The name, the location of the place of business, the California contractor license number, and public works contractor registration number."*

BCPG failed to provide the "public works contractor registration number" for its listed subcontractors as required by California Public Contract Code and therefore its bid is non-responsive.

— Engineering Contractor —

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246 GHILOTTI AVENUE • SANTA ROSA, CA 95407 • 707-585-1221 • FAX: 707-585-0129  
www.ghilotti.com

STATE CONTRACTORS LICENSE #644515

As a result of BCPG's failure to provide the information required by both the California Public Contract Code and Contract Specifications, Ghilotti protests an award of this contract to BCPG.

Additionally, for your reference, I have provided a copy of a previous determination concerning this same topic – the non-listing of a stated subcontractor's public works contractor registration number.

By my signature below I, Thomas Smith, declare under penalty of perjury that the foregoing is true and correct.

Thank you for considering this matter.

Sincerely,



Thomas Smith  
Vice President of Estimating  
Ghilotti Construction Company, Inc.  
246 Ghilotti Avenue  
Santa Rosa, CA 95407  
(707) 484-8292 (Cell)

Cc: Bay Cities Paving & Grading, Inc., Concord, CA



**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

1727 30<sup>th</sup> Street, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

www.dot.ca.gov/hq/esc/

Making Conservation  
a California Way of Life.

June 11, 2020

Facsimile: (310) 356-3245

Robert Collins, President  
Jabre Contracting, Inc.  
1813 Manzanita Lane  
Manhattan Beach, CA 90266

07-4W7404  
07-LA-1, 10, 60, 101, 110, etc. -VAR  
B.O. 05/19/2020

Dear Mr. Collins:

The Department of Transportation (Caltrans) received a bid submitted by Jabre Contracting, Inc. (Jabre), for the above project on May 19, 2020. By this letter, Caltrans notifies Jabre that its bid is nonresponsive.

Caltrans reviewed the bid submittal and finds that Jabre listed Arrow Signs HC, Inc. on the Subcontractor List form and failed to provide the Department of Industrial Relation's Public Works Contractors registration number due at time of bid opening.

Caltrans refers Jabre to the 2018 Revised Standard Specifications (RSS) Sections:

**2-1.33**, Bid Document Completion and Submittal, and 2-1.33A, General, which states in part: Complete the forms in the Bid book...Failure to submit the forms and information as specified may result in a nonresponsive bid.

**2-1.03**, Contractor Registration states: "No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]."

In addition, Jabre failed to submit the DVBE Summary form documentation by 4:00 p.m. on the 4th business day after bid opening.

**2-1.15B**, "Submit a copy of the quote from each DVBE listed on the Certified DVBE Summary form that describes the type and dollar amount of work shown on the form no later than 4 p.m. on the 4th business day after bid opening."

*"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"*

Mr. Robert Collins  
June 11, 2020  
Page 2

Based on the above, Caltrans will proceed to award this contract to the lowest responsive and responsible bidder, provided that all the requirements have been meet.

If you have any questions, please contact Irene Beckham, Contract Awards Branch Chief, at (916) 227-6284.

Sincerely,



JILL Y. SEWELL  
Office Chief  
Construction Contract Awards  
Program/Project Management & Office Engineer  
Division of Engineering Services

*"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"*





# Office Locations

## CORPORATE HEADQUARTERS

1450 Civic Ct.  
Bldg B #400  
Concord, CA 94520

O: 925.687.6666

F: 925.687.2122 - *Forwarded 2/2/24*

E: info@baycities.us - *Emailed 2/2/24*

Mail to: PO Box 6227  
Concord, CA 94524-6227

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Digital Fax						
Feb 2	10:42AM	Fax Sent	19256872122	1:25 N/A	4	OK

Bay Cities Paving + Grading  
published fax number

**Note:**

An image of page 1 will appear here only for faxes that are sent as Scan and Fax.

## Tom Smith

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**From:** Tom Smith  
**Sent:** Friday, February 2, 2024 11:37 AM  
**To:** 'info@baycities.us'  
**Subject:** Union City Blvd Bike Lane Improvements Project  
**Attachments:** Union City Blvd Bike Lane Impvts.pdf

Bay Cities Grading + Paving  
Published email address

Please see attached.

### Thomas Smith

Vice President of Estimating  
Ghilotti Construction Company Inc.  
246 Ghilotti Avenue  
Santa Rosa, CA 95407  
Main: 707.585.1221  
Mobile: 707.484.8292  
Fax: 707.585.1601  
[tom@ghilotti.com](mailto:tom@ghilotti.com)





Marilou Ayupan  
Director of Public Works  
Office of the City Clerk  
City of Union City  
340009 Alvarado-Niles Road  
Union City, CA 94587

Re: Bid Protest from Ghilotti Construction, Inc.  
Bid Opening: 01/31/2024  
Project: 17-29

Dear Ms. Ayupan,

Bay Cities received the bid protest dated February 2, 2024 from Ghilotti Construction Company, Inc. (“GCC”) alleging that Bay Cities’ bid is non-responsive. There is no merit to GCC’s allegations and GCC’s protest should be rejected. As a preliminary matter, the Instructions to Bidders, Section 6, Bid Protests, notifies bidders that:

Each party filing the protest shall also submit with their bid protest a \$1,000.00 non-refundable fee via check or money order, made payable to “The City of Union City,” to reimburse the City for reviewing, investigating, and resolving the bid protest in accordance with the provisions of this section. Any bid protest received without the \$1,000.00 fee will be returned without further action by the City.

In its letter, GCC does not state that is including a check of \$1,000 with its protest. If GCC failed to submit a payment with its protest, its protest should be immediately returned as denied without any further action on the part of the City.

#### BAY CITIES CORRECTLY COMPLIED WITH ALL SUBCONTRACTOR LISTING REQUIREMENTS

GCC argues that Bay Cities’ bid is nonresponsive for not including the Department of Industrial Relations (DIR) registration numbers for Bay Cities’ listed subcontractors. Further, GCC cites, *in part*, Public Contract Code § 4104(a) to support its argument that a bidder’s failure to include a DIR number for each listed subcontractor renders a bid as nonresponsive. But GCC has purposely omitted the opening section of Public Contract Code §4104 to misconstrue its meaning and purpose. Simply stated, Public Contract Code § 4104 is a statute directed to Awarding Bodies and not bidders. The opening sentence of Section 4104 provides:

HQ  
1450 CIVIC CT. BLDG B #400  
CONCORD, CA 94520

MAIL  
PO BOX 6227  
CONCORD CA, 94524-6227

O: (925) 687-6666  
F: (925) 687-2122

WWW.BAYCITIES.US • CSLB# 238650

Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

Clearly, Section 4104 addresses the responsibilities of Awarding Agencies who prepare bid packages. Per Section 4104, Awarding Agencies should include all the wording listed in Section 4104 in their bid package and should create Subcontractor List bid forms which are specifically designed for the inputting of DIR registration. Due to an inadvertent omission, the City did not include this language in its Notice to Bidders or on its Bid Form. GCC argues that the City's omission renders Bay Cities' bid as nonresponsive. But contrary to GCC's implication, there is nothing within § 4104 which states that an Awarding Agency's failure to include all the required verbiage causes a bid to be rejected as nonresponsive. Moreover, any such result would only penalize City taxpayers for the City's inadvertent error by having a contract awarded to a bidder who failed to submit the lowest bid.

While § 4104 is directed to an Awarding Agency's duty in preparing its bid package, Labor Code Labor Code § 1771.1(a) sets forth a bidder's obligations with regard to DIR registration:

- (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5

Per Labor Code § 1771.1(a), a bidder (contractor or subcontractor) must be registered with the DIR on bid day to be qualified to submit a bid. GCC does not raise any issues with the DIR registrations of Bay Cities or of Bay Cities' listed subcontractors because GCC knows that Bay Cities and its listed subcontractors were all DIR-registered on bid day. *See* attached registrations.

More importantly, GCC's argument is invalid because it would undermine the statutory provisions of Labor Code Section 1771(c) which provides:

(c) **An inadvertent error in listing a subcontractor who is not registered** pursuant to Section **1725.5** in a bid proposal **shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive**, provided that any of the following apply:

- (1) **The subcontractor is registered prior to the bid opening** [for example, bids are due on a Tuesday, a bidder submits a bid on a Monday which lists an unregistered subcontractor but the subcontractor registers before the bids are opened on Tuesday]
- (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section **1725.5**.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

Under GCC's bewildering interpretation of Public Contract Code 4104 and Labor Code 1771, an Awarding Agency is required to reject a bid even though the California Legislature had declared that there is no basis for a bid protest if the subcontractors are registered before the bid opening.

THE SUBCONTRACTORS' DIR INFORMATION WAS A MATTER OF PUBLIC RECORD AND COULD BE ASCERTAINED BY THE CITY THROUGH THE SUBCONTRACTORS' CSLB NUMBERS

California's State Attorney General issued an opinion regarding whether a public entity can accept a bid which omits a subcontractor's business location but includes information from which the location can be determined. In 2003, the Attorney General Office offered an opinion to the following question:

"May a public entity accept a bid for the construction of a public works project that does not specify the business location of each listed subcontractor but does provide the state contractor's license of each listed subcontractor from which the business location may be ascertained upon further inquiry." 86 Op.Atty Gen. Cal. 90

In answer to this query, the Attorney General held that:

"We conclude that a public entity may accept a bid for the construction of a public works project that does not specify the business location of each listed subcontractor but does provide the state contractor's license number of each listed subcontractor for which the business location may be ascertained upon further inquiry."

When Bay Cities completed its Subcontractor Listing Form, Bay Cities listed the CSLB license number of each subcontractor. To help contractors and public entities, the DIR created a website in which every contractor's and subcontractor's DIR registration can be confirmed by using their CSLB license [ <https://cadir.my.salesforce-sites.com/ContractorSearch?>]. In 2003, DIR registration numbers did not exist. But the same reasoning applied to the use of a subcontractor's license number to determine a subcontractor's business location would apply to a public entity's ability to use a subcontractor's CSLB number to determine the subcontractor's DIR status at bid time. Therefore, since Bay Cities provided the CSLB number for each listed subcontractor, the City could ascertain the DIR upon further inquiry.

There is no merit to GCC's protest and it must be denied.

Sincerely,



Marlo Manqueros  
Vice-President



**RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY AUTHORIZING THE AWARD OF A CONSTRUCTION CONTRACT TO BAY CITIES PAVING & GRADING, INC., IN THE AMOUNT OF \$17,049,000, AND APPROVING A TOTAL CONSTRUCTION BUDGET IN THE AMOUNT OF \$21,222,750; APPROVING TWO BUDGET TRANSFERS, ONE IN THE AMOUNT OF \$25,742 FROM THE MEASURE B BIKE & PED FUND (FUND 2543) AND ANOTHER IN THE AMOUNT OF \$1,373,974 FROM THE MEASURE BB ROADS FUND (FUND 2545), FOR A TOTAL OF \$1,399,716 IN BUDGET TRANSFERS TO THE UNION CITY BOULEVARD BIKE LANES PROJECT, CITY PROJECT NO. 17-29, AND REJECTING THE BID PROTEST FROM THE GHILOTTI CONSTRUCTION COMPANY, INC.**

**WHEREAS**, the Alameda County Transportation Commission (Alameda CTC) administers funding programs and projects that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee (VRF), 2014 Measure BB, CMA-TIP, and Transportation Fund for Clean Air Programs, and such funding is collectively defined as and shall be referenced herein as the “Alameda CTC Administered Funds;” and

**WHEREAS**, on April 27, 2017, the Alameda CTC approved the award of an \$8,800,000 grant to the Union City Boulevard Bikes Lanes Project, City Project No. 17-29; and

**WHEREAS**, on October 9, 2017, Union City received the executed Alameda CTC Project Funding Agreement No. A17-0125 with grant funding in the amount of \$8,800,000 of 2014 Measure BB, CMA TIP, TFCA (Transportation Fund for Clean Air Programs) and a required local match of \$1,000,000 (Gas Tax) for Final Design, Right of Way and Construction Phases for Union City Boulevard Bikes Lanes Project, City Project No. 17-29; and

**WHEREAS**, on June 23, 2020, the City Council adopted Resolution No. 5613-20, in the amount of approximately \$1.4 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), to amend the list of projects for FY 2020-2021, to include pavement rehabilitation and improvements in various locations including Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, on June 8, 2021, the City Council adopted a Resolution No. 5768-21, adopting a List of Projects for FY 2021-2022, in the amount of approximately \$1.5 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations including Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, on June 14, 2022, the City Council adopted Resolution No. 5951-22, adopting a List of Projects for FY 2022-2023, in the amount of approximately \$1.6 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations to include the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, on May 23, 2023, the City Council adopted Resolution No. 6123-23 accepting \$604,912 in Transportation Development Act (TDA), Article 3 Pedestrian/Bicycle Project Funding from the Metropolitan Transportation Commission, increasing revenue projections in the Capital Projects Fund by \$604,912, and appropriating \$604,912 to the Capital Projects Fund for the construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, on June 27, 2023, the City Council adopted Resolution No. 6152-23, accepting \$1.8 million from the 2024 Comprehensive Investment Program (CIP) Grant Funds from the Alameda County Transportation Commission (Alameda CTC) for the Union Boulevard Bike Lanes (Phase III, Complete Streets) Project, City Project No. 17-29, increasing the revenue projections in the Capital Projects Fund (Fund 4100) by \$1.8 million, appropriating \$1.8 million to Project No. 17-29, earmarking \$450,000 of previously approved SB-1 funds (Fund 2515) to meet the Local Match requirement and authorizing the City Manager to sign the required grant funding agreements, in a form approved by the City Attorney; and

**WHEREAS**, on July 11, 2023, the City Council adopted Resolution No. 6160-23, adopting a List of Projects for FY 2023-2024, in the amount of approximately \$1.7 million, funded with SB-1: The Road Repair and Accountability Act of 2017 (Fund 2515), which includes, among the various projects, the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, on July 25, 2023, the City Council adopted Resolution No. 6172-23, authorizing the City Manager to execute a Consulting Services Agreement with Park Engineering, Inc., of Emeryville, CA, in the amount of \$2,000,000 for the construction management services for the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

**WHEREAS**, the proposed bike lane and roadway improvement project will complete approximately a two- (2) mile bike lane gap with buffer Class II bike lanes along Union City Boulevard (UCB) from Alameda County Flood Control Channel (Fremont) to Smith Street and will serve as the San Francisco Bay Trail in Union City, see Exhibit A. The improvements also include the rehabilitation of the pavement within the project limits. The project will include “Complete Street” improvements at all intersections, including traffic signal modifications, a new multi-purpose trail along UCB adjacent to Delaine Eastin Elementary School, providing direct access for students who bike or walk to school, and a right-turning lane into the school, streetlight modifications, roadway drainage improvements and landscape improvements at various locations; and

**WHEREAS**, on November 21, 2023, the plans and specifications for the project were released and advertised for bid, followed by the issuance of Addendum No.1, dated December 20, 2023, Addendum No.2, dated January 12, 2024, and Addendum No.3, dated January 23, 2024; and

**WHEREAS**, on December 5, 2023, Park Engineering held a Pre-Bid Meeting for the interested bidders at Mark Green Sports Center to allow potential bidders to visit the project site and inquire about construction activities before the bid opening; and

**WHEREAS**, on January 31, 2024, the City of Union City received seven (7) bids, and all bids were opened on the same day as noted in Exhibits B and C. The lowest responsive and responsible bid submitted was \$17,049,000 by Bay Cities Paving & Grading, Inc. (BCPG), of Concord, California; and

**WHEREAS**, on February 5, 2024, Ghilotti Construction Company, Inc. (GCC), the second low bidder (in the amount of \$17,260,159) submitted a protest letter requesting the City to consider BCPG's low bid as non-responsive and refrain from awarding the contract to Bay Cities Paving & Grading, Inc. GCC's protest points out that the low bid failed to include the DIR registration numbers of the subcontractors listed in its bid, as required by Public Contract Code Section 4104. The following day, Bay Cities Paving & Grading, Inc. submitted a response to the bid protest; and

**WHEREAS**, when a prime contractor violates a requirement of Public Contract Code section 4100 *et seq*, Public Contract Code section 4111 provides that "the awarding authority may exercise the option, in its own discretion" to cancel the contract. The California State Attorney General has advised that Section 4111 is permissive, and awarding agencies may use their discretion to choose not to cancel the contract of a prime contractor violating Section 4104, and instead accept the bid. (See 86 Ops.Cal.Atty.Gen. 90.); and

**WHEREAS**, the City has verified that all of the subcontractors listed on BCPG's proposal were registered with DIR at the time the bid was submitted. Therefore, BCPG's failure to list the DIR registration numbers had no substantive impact. Consequently, the City Council is exercising its own discretion to not disqualify Bay Cities Paving & Grading, Inc; and

**WHEREAS**, the low bid in the amount of \$17,049,00, though 3.6% higher than the Engineers Estimate of \$16,455,890, is deemed very competitive because all the bids received were within a 5%-10% threshold of the Engineers Estimate and five of the seven bids were within the \$17,000,000 range; and

**WHEREAS**, the total recommended budget to complete construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29 is \$21,222,750, which includes the low bid, a 10% construction contingency, construction management service, and about a 2.5% project contingency; and

**WHEREAS**, the current budget for the construction phase for Union City Boulevard Bike Lanes Project, City Project No. 17-29 is \$19,823,034 which includes Gas Tax (Fund 2510), SB-1 Road (Fund 2515), Measure B Roads (Fund 2542) Measure B Bike & Ped (Fund 2543), Measure F Roads (Fund 2544) Measure BB Roads (Fund 2545), Measure BB Bike & Ped (Fund 2546) and Capital Projects from Alameda CTC Grant and TDA Article 3 Grant (Fund 4100) with a shortfall of \$1,399,716; and

**WHEREAS**, the construction budget shortfall will be funded with \$25,742 from ACTIA/Measure B Bike & Ped (2543-3199-99999-54111) for the Alvarado-Niles Road Multimodal Corridor Study and \$1,373,974 from Measure BB Roads (2545-3199-99999-54111) for Dyer Street Resurfacing, Phase 2 project, totaling \$1,399,716; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Union City hereby rejects the bid protest submitted by Ghilotti Construction Company, Inc. for the reasons set forth above.

**BE IT FURTHER RESOLVED** that the City Council of the City of Union City hereby awards the construction contract to Bay Cities Paving & Grading, Inc., of Concord, CA, in the amount of \$17,049,000, and authorizes the construction budget, with low bid, a 10% construction contingency, construction management services and a 2.5% project contingency in the amount of

\$21,222,750, for the Union City Boulevard Bikes Lanes Project, City Project No. 17-29; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Union City hereby approves the budget transfer of \$25,742 from Alvarado-Niles Road Multimodal Corridor Study (2543-3199-99999-54111) to the Union City Boulevard Bike Lanes Project, City Project No. 17-29 (2543-3199-91729-54111) and \$1,373,974 from Dyer Street Resurfacing, Phase 2 project (2545-3199-99999-54111) to the Union City Boulevard Bike Lanes Project, City Project No. 17-29 (2545-3199-91729-54111) to fill the budget shortfall in the amount of \$1,399,716.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

\_\_\_\_\_  
THAI NAM N. PHAM  
City Clerk

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
City Attorney

**Attachments:**

1. Exhibit A – Project Title Sheet
2. Exhibit B – Bid Results
3. Exhibit C – Bid Summary

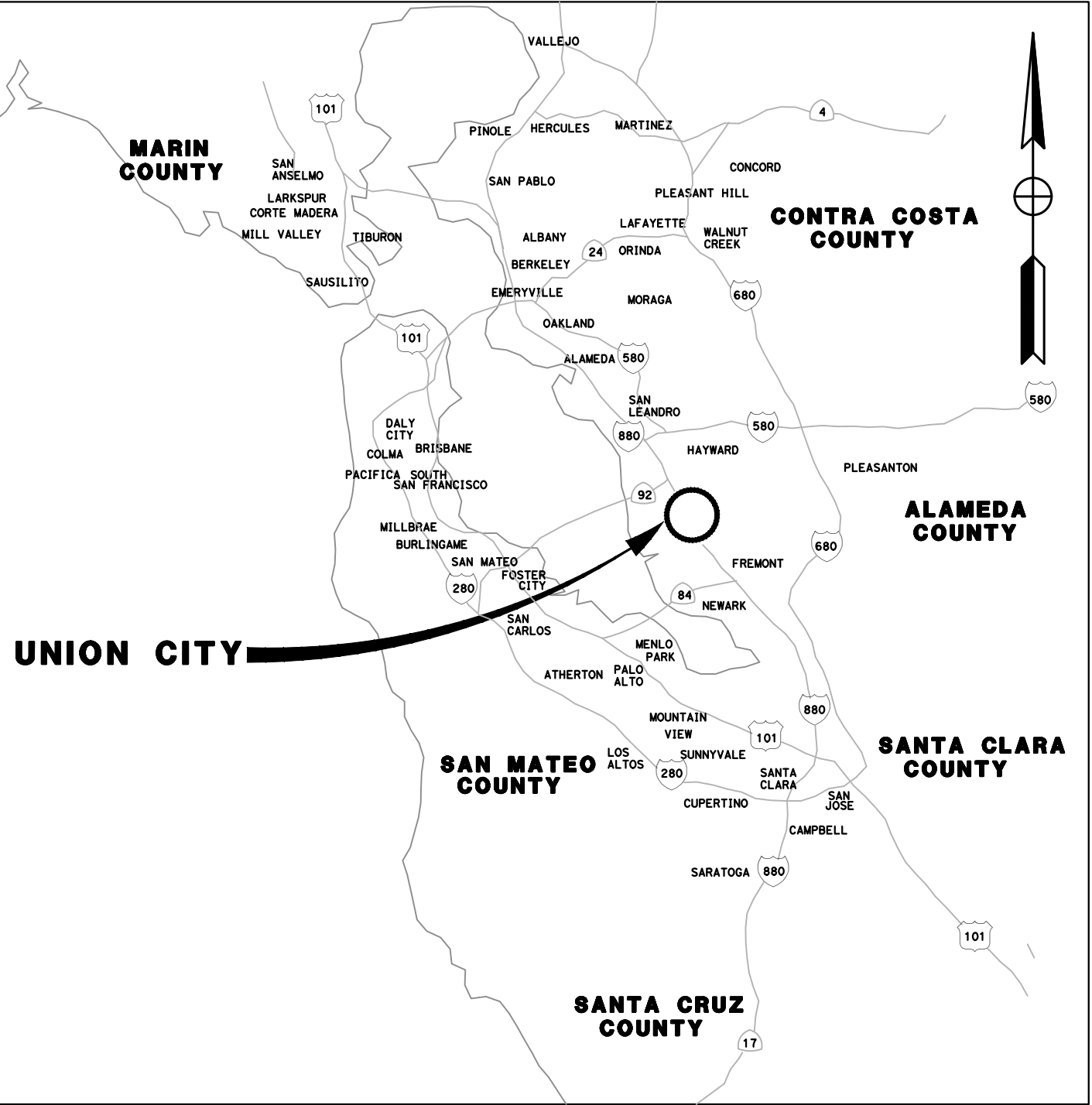


CITY OF UNION CITY  
PROJECT PLANS FOR  
UNION CITY BOULEVARD  
BIKE LANE IMPROVEMENTS  
FROM SOUTHERN CITY LIMITS TO SMITH  
STREET

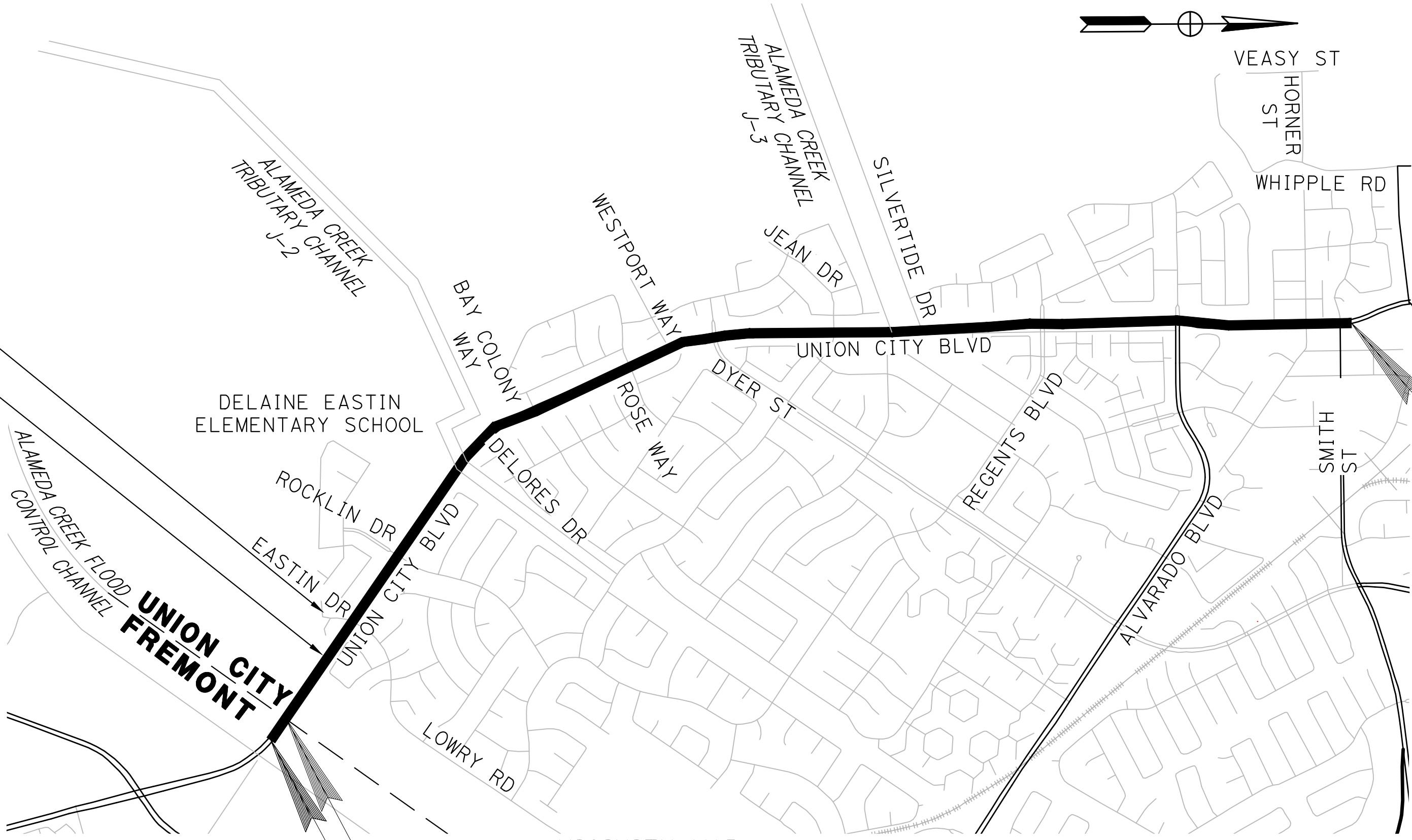
in Alameda County

To be supplemented by California Department of Transportation Standard  
Plans 2018 Edition and City of Union City Standard Details.

CITY PROJECT NO. 17-29



LOCATION MAP  
NO SCALE



VICINITY MAP  
NO SCALE

END WORK (UNION CITY Blvd)

END CONSTRUCTION (UNION CITY Blvd)  
Sta "UCB" 140+50

PROJECT TEAM

OWNER:  
CITY OF UNION CITY  
34009 ALVARADO NILES RD,  
UNION CITY, CA 94587  
PHONE: 510-675-5308

CIVIL ENGINEER:  
KIMLEY-HORN & ASSOCIATES  
4637 CHABOT DR., SUITE 300  
PLEASANTON CA 94588  
PHONE: 925-398-4840

PLANS PREPARED UNDER MY SUPERVISION

*[Signature]* 08/30/2023  
DATE

JOHN PULLIAM, P.E.  
KIMLEY-HORN AND ASSOCIATES, INC.

CITY OF UNION CITY  
*[Signature]* 11/20/2023  
DATE

FAROOQ M. AZIM  
CITY ENGINEER

BEGIN CONSTRUCTION (UNION CITY Blvd)  
Sta "UCB" 12+34

BEGIN WORK (ARDENWOOD BLVD)  
Sta "UCB" 6+19

BIKE LANE IMPROVEMENT PLANS

Sheet No.	DESCRIPTION
1	TITLE SHEET AND LOCATION MAP
2-7	TYPICAL CROSS SECTIONS
8	PROJECT CONTROL
9-19	LAYOUT
20-75	CONSTRUCTION DETAIL
76-86	TEMPORARY WATER POLLUTION CONTROL
87-106	DRAINAGE PLAN
107	DRAINAGE QUANTITIES
108-122	UTILITY PLAN
123-128	SUMMARY OF QUANTITIES
129-130	CONSTRUCTION AREA SIGNS
131-137	STAGE CONSTRUCTION PLAN
138-211	TRAFFIC HANDLING PLAN
212-221	TRAFFIC HANDLING DETAILS
222	TRAFFIC HANDLING QUANTITIES
223	DETOUR PLAN
224-238	PAVEMENT DELINEATION PLAN
239-255	PAVEMENT DELINEATION QUANTITIES
256-260	SIGN QUANTITIES
261-280	TRAFFIC SIGNAL PLANS
281-297	INTERCONNECT PLANS
298-305	LIGHTING PLANS
306-307	RADAR SPEED FEEDBACK SIGN

LANDSCAPING PLANS

1-2	GENERAL
3-19	LANDSCAPE
20-37	IRRIGATION
38-39	DETAILS

LIST OF CONTACTS

AGENCY	CONTACT	PHONE NUMBER
ACWD	JOSE RODRIGUEZ	510-668-4419
AIR PRODUCTS	RYAN REYES	480-228-2389
ALLIED WASTE SERVICES	KIRK GUERRERO	510-657-3500
AT&T	LAURA WENDOVER	408-635-8835
CENTURYLINK	CALEB KING	918-547-0007
COMCAST	KURT MURPHY	408-635-8998
CITY OF HAYWARD	TAY NGUYEN	510-583-4715
PG&E GAS	BORIS LUU	510-427-2735
PG&E ELECTRIC	ALFONSO MACEDO	925-373-2686
UNION SANITARY DISTRICT	ROD SCHURMAN	510-477-7317
VERIZON	CHRISTOPHER HANCOCK	925-279-6606
ZAYO	MANUEL VALENCIA	925-413-0170

TRANSIT CONTACTS

AGENCY	CONTACT	PHONE NUMBER
UC TRANSIT	STEVE ADAMS	(510) 675-5446
AC TRANSIT	DAVID BERMAN	(510) 891-4744



4637 CHABOT DRIVE, STE 300 PLEASANTON, CA 94588  
PHONE: 925-398-4840  
WWW.KIMLEY-HORN.COM



DATE SIGNED: 11/02/2023

FOR REDUCED PLANS  
ORIGINAL SCALE IS IN INCHES

Scale	NO SCALE
Designed By:	AP
Drawn By:	AP/HW
Checked By:	JP/FH
Consultant's Job No.	197274001



City of Union City  
Alameda County  
California

City of Union City  
34009 Alvarado Niles Rd.  
Union City, CA 94587

CITY OF UNION CITY  
DEPARTMENT OF PUBLIC WORKS  
UNION CITY BLVD BIKE LANES PROJECT

TITLE SHEET

City of Union City  
Project No. 17-29

Drawing No.

CV-01

Sheet 1 of 307



## Exhibit B

### CITY OF UNION CITY BID SUMMARY

PROJECT: Union City Blvd. Bike Lane Improvements Project,  
City Project No. 17-29

PROJECT MANAGER: Tommy Cho ([tommymc@unioncity.org](mailto:tommymc@unioncity.org)), Principal Civil Engineer

DATE: January 31, 2024

TIME: 2:00 p.m.

LOCATION: City Council Chambers

No	BIDDERS	BID AMOUNT	*CORRECTED BID AMOUNT
1.	PATRIOT CONTRACTING, INC.	\$17,628,738.58	\$17,629,260.74
2.	GHILOTTI BROS., INC	\$19,198,201.01	
3.	GHILOTTI CONSTRUCTION COMPANY	\$17,260,159.86	
4.	REDGWICK CONSTRUCTION COMPANY	\$19,087,475.00	
5.	DE SILVA GATES CONSTRUCTION LLC	\$17,666,666.00	
6.	BAY CITIES PAVING & GRADING, INC	\$17,049,000.00	
7.	MC GUIRE AND HESTER	\$17,351,970.00	
8.			
9.			
10.			

I, Johanna Ota, from the City Clerk's Office of the City of Union City, do hereby certify that on January 31, 2024, I received and opened **SEVEN (7)** bids for the above-mentioned project.

\* Note: All bid amounts will be verified by the Engineer. Any corrections will be shown in the column above.

  
\_\_\_\_\_  
Johanna Ota  
Interim City Clerk  
City Clerk's Office

Exhibit C

City of Union City  
Union City Blvd Bike Lanes Project, City Project No. 17-29  
BID SUMMARY  
Date:1/31/2024

Note: Yellow highlights indicate the discrepancies in the submitted bid proposal.

				Lowest Bid-Bay Cities Paving & Grading , Inc.		Second-Ghilotti Construction Company		Third- McGuire and Hester		Fourth-Patriot Contracting, Inc.		Fifth-De Silva Gates Construction LLC		Sixth-Redgwick Construction Company		Seventh-Ghilotti Bros., Inc.	
Item No.	Bid Item	Estimated Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	MOBILIZATION	1	LS	\$1,646,400.22	\$1,646,400.22	\$1,100,000.00	\$1,100,000.00	\$800,000.00	\$800,000.00	\$3,045,000.00	\$3,045,000.00	1,766,666.00	1,766,666.00	\$ 1,752,750.00	\$ 1,752,750.00	\$1,820,000.00	\$1,820,000.00
2	PARTNERING	1	\$	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	15,000.00	15,000.00	\$ 15,000.00	\$ 15,000.00	\$15,000.00	\$15,000.00
3	JOB SITE MANAGEMENT	1	LS	\$120,000.00	\$120,000.00	\$48,000.00	\$48,000.00	\$2,000.00	\$2,000.00	\$397,182.00	\$397,182.00	50,000.00	50,000.00	\$ 148,500.00	\$ 148,500.00	\$20,000.00	\$20,000.00
4	TRAFFIC CONTROL SYSTEM	1	LS	\$1,030,000.00	\$1,030,000.00	\$688,000.00	\$688,000.00	\$990,901.00	\$990,901.00	\$291,500.00	\$291,500.00	904,440.00	904,440.00	\$ 1,293,885.00	\$ 1,293,885.00	\$550,000.00	\$550,000.00
5	CONSTRUCTION AREA SIGNS	1	LS	\$70,500.00	\$70,500.00	\$80,500.00	\$80,500.00	\$40,000.00	\$40,000.00	\$22,260.00	\$22,260.00	75,000.00	75,000.00	\$ 25,000.00	\$ 25,000.00	\$70,500.00	\$70,500.00
6	CONSTRUCTION PROJECT FUNDING IDENTIFICATION SIGN	2	EA	\$325.00	\$650.00	\$325.00	\$650.00	\$1,000.00	\$2,000.00	\$10,070.00	\$20,140.00	500.00	1,000.00	\$ 2,000.00	\$ 4,000.00	\$325.00	\$650.00
7	DEVELOP WATER SUPPLY	1	LS	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00	\$8,000.00	\$8,000.00	\$18,762.00	\$18,762.00	1,000.00	1,000.00	\$ 5,000.00	\$ 5,000.00	\$2,000.00	\$2,000.00
8	TEMPORARY BARRIER	20,000	LF	\$15.00	\$300,000.00	\$15.00	\$300,000.00	\$23.00	\$460,000.00	\$10.60	\$212,000.00	25.00	500,000.00	\$ 6.00	\$ 120,000.00	\$40.00	\$800,000.00
9	TEMPORARY CRASH CUSHION	38	EA	\$500.00	\$19,000.00	\$2,500.00	\$95,000.00	\$4,000.00	\$152,000.00	\$1,060.00	\$40,280.00	4,000.00	152,000.00	\$ 100.00	\$ 3,800.00	\$4,812.36	\$182,869.68
10	TYPE I BARRICADE	72	EA	\$30.00	\$2,160.00	\$30.00	\$2,160.00	\$31.50	\$2,268.00	\$235.32	\$16,943.04	50.00	3,600.00	\$ 50.00	\$ 3,600.00	\$91.06	\$6,556.32
11	TYPE III BARRICADE	33	EA	\$70.00	\$2,310.00	\$70.00	\$2,310.00	\$73.00	\$2,409.00	\$254.40	\$8,395.20	100.00	3,300.00	\$ 110.00	\$ 3,630.00	\$334.97	\$11,054.01
12	CHANNELIZER (SURFACE MOUNTED)	900	EA	\$40.00	\$36,000.00	\$40.00	\$36,000.00	\$42.00	\$37,800.00	\$37.10	\$33,390.00	50.00	45,000.00	\$ 40.00	\$ 36,000.00	\$93.63	\$84,267.00
13	TEMPORARY TRAFFIC STRIPE (PAINT)	45,000	LF	\$0.75	\$33,750.00	\$1.50	\$67,500.00	\$0.80	\$36,000.00	\$0.80	\$36,000.00	0.75	33,750.00	\$ 0.75	\$ 33,750.00	\$1.25	\$56,250.00
14	PORTABLE RADAR SPEED FEEDBACK SIGN	27	EA	\$499.58	\$13,488.66	\$1,600.00	\$43,200.00	\$1,490.00	\$40,230.00	\$5,300.00	\$143,100.00	1,000.00	27,000.00	\$ 700.00	\$ 18,900.00	\$2,500.00	\$67,500.00
15	FLASHING ARROW SIGN	8	EA	\$560.76	\$4,486.08	\$4,500.00	\$36,000.00	\$3,500.00	\$28,000.00	\$2,120.00	\$16,960.00	2,500.00	20,000.00	\$ 1,400.00	\$ 11,200.00	\$12,000.00	\$96,000.00
16	PORTABLE CHANGEABLE MESSAGE SIGN	2	EA	\$16,974.34	\$33,948.68	\$16,000.00	\$32,000.00	\$16,000.00	\$32,000.00	\$4,770.00	\$9,540.00	15,000.00	30,000.00	\$ 3,000.00	\$ 6,000.00	\$21,000.00	\$42,000.00
17	CONTRACTOR-SUPPLIED BIOLOGIST (REVOCABLE)	1	LS	\$10,000.00	\$10,000.00	\$7,400.00	\$7,400.00	\$5,500.00	\$5,500.00	\$10,600.00	\$10,600.00	5,000.00	5,000.00	\$ 2,500.00	\$ 2,500.00	\$10,000.00	\$10,000.00
18	CONSTRUCTION SURVEYING	1	LS	\$66,370.00	\$66,370.00	\$66,370.00	\$66,370.00	\$68,000.00	\$68,000.00	\$111,300.00	\$111,300.00	125,000.00	125,000.00	\$ 95,000.00	\$ 95,000.00	\$85,000.00	\$85,000.00
19	CONTRACTOR POTHOLING	30	EA	\$957.95	\$28,738.50	\$800.00	\$24,000.00	\$760.00	\$22,800.00	\$1,643.00	\$49,290.00	500.00	15,000.00	\$ 1,388.00	\$ 41,640.00	\$1,500.00	\$45,000.00
20	PREPARE STORM WATER POLLUTION PREVENTION PLAN	1	LS	\$3,000.00	\$3,000.00	\$1,450.00	\$1,450.00	\$2,000.00	\$2,000.00	\$4,240.00	\$4,240.00	2,000.00	2,000.00	\$ 2,500.00	\$ 2,500.00	\$3,200.00	\$3,200.00
21	STORM WATER SAMPLING AND ANALYSIS DAY	1	LS	\$3,375.00	\$3,375.00	\$8,200.00	\$8,200.00	\$4,350.00	\$4,350.00	\$10,600.00	\$10,600.00	5,000.00	5,000.00	\$ 15,000.00	\$ 15,000.00	\$2,500.00	\$2,500.00
22	RAIN EVENT ACTION PLAN	1	LS	\$1,500.00	\$1,500.00	\$5,500.00	\$5,500.00	\$525.00	\$525.00	\$4,240.00	\$4,240.00	5,000.00	5,000.00	\$ 8,600.00	\$ 8,600.00	\$400.00	\$400.00
23	STORM WATER ANNUAL REPORT	1	LS	\$1,200.00	\$1,200.00	\$4,000.00	\$4,000.00	\$1,000.00	\$1,000.00	\$5,300.00	\$5,300.00	2,000.00	2,000.00	\$ 2,000.00	\$ 2,000.00	\$2,500.00	\$2,500.00
24	TEMPORARY INLET PROTECTION (TYPE 5 WITHOUT SILT FENCE)	50	EA	\$325.58	\$16,279.00	\$150.00	\$7,500.00	\$215.00	\$10,750.00	\$530.00	\$26,500.00	200.00	10,000.00	\$ 180.00	\$ 9,000.00	\$500.00	\$25,000.00
25	CLEARING & GRUBBING	1	LS	\$75,608.98	\$75,608.98	\$47,075.00	\$47,075.00	\$198,340.00	\$198,340.00	\$137,800.00	\$137,800.00	125,000.00	125,000.00	\$ 219,500.00	\$ 219,500.00	\$15,000.00	\$15,000.00
26	TREE PROTECTION	1	LS	\$34,022.27	\$34,022.27	\$18,250.00	\$18,250.00	\$50,000.00	\$50,000.00	\$32,860.00	\$32,860.00	75,000.00	75,000.00	\$ 16,500.00	\$ 16,500.00	\$35,000.00	\$35,000.00
27	TRIM TREES	1	LS	\$24,000.00	\$24,000.00	\$500.00	\$500.00	\$29,000.00	\$29,000.00	\$11,660.00	\$11,660.00	100,000.00	100,000.00	\$ 5,000.00	\$ 5,000.00	\$45,000.00	\$45,000.00
28	REMOVE ASPHALT CONCRETE DIKE	16,800	LF	\$2.40	\$40,320.00	\$5.00	\$84,000.00	\$0.60		\$3.29	\$55,272.00	2.00	33,600.00	\$ 1.00	\$ 16,800.00	\$3.60	\$60,480.00
29	REMOVE CONCRETE (CURB & GUTTER)	3,300	LF	\$17.85	\$58,905.00	\$20.00	\$66,000.00	\$13.00	\$42,900.00	\$21.07	\$69,531.00	30.00	99,000.00	\$ 60.00	\$ 198,000.00	\$56.50	\$186,450.00
30	REMOVE CONCRETE (SIDEWALK)	20,200	SF	\$5.41	\$109,282.00	\$6.00	\$121,200.00	\$4.50	\$90,900.00	\$4.29	\$86,658.00	5.00	101,000.00	\$ 7.00	\$ 141,400.00	\$3.50	\$70,700.00
31	REMOVE CONCRETE (CROSSWALK)	1,100	SF	\$10.57	\$11,627.00	\$20.00	\$22,000.00	\$18.00	\$19,800.00	\$44.52	\$48,972.00	10.00	11,000.00	\$ 25.00	\$ 27,500.00	\$7.00	\$7,700.00
32	REMOVE CONCRETE (MEDIAN PAVING)	4,200	SF	\$5.55	\$23,310.00	\$14.00	\$58,800.00	\$5.00	\$21,000.00	\$12.04	\$50,568.00	10.00	42,000.00	\$ 12.00	\$ 50,400.00	\$8.00	\$33,600.00
33	REMOVE INLET	15	EA	\$2,263.83	\$33,957.45	\$2,200.00	\$33,000.00	\$1,130.00	\$16,950.00	\$8,551.02	\$128,265.30	2,000.00	30,000.00	\$ 2,300.00	\$ 34,500.00	\$1,900.00	\$28,500.00
34	REMOVE WOOD HEADERBOARD	14,400	LF	\$3.34	\$48,096.00	\$2.50	\$36,000.00	\$3.25	\$46,800.00	\$1.80	\$25,920.00	2.00	28,800.00	\$ 1.00	\$ 14,400.00	\$5.00	\$72,000.00
35	ADJUST MONUMENT BOX TO GRADE	10	EA	\$1,000.00	\$10,000.00	\$1,200.00	\$12,000.00	\$1,120.00	\$11,200.00	\$742.00	\$7,420.00						

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Item No.	Bid Item	Estimated Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
54	TEST EXISTING BASE MATERIAL (REVOCABLE)	1	LS	\$37,289.30	\$37,289.30	\$5,800.00	\$5,800.00	\$6,000.00	\$6,000.00	\$22,260.00	\$22,260.00	10,000.00	10,000.00	\$ 3,500.00	\$ 3,500.00	\$25,000.00	\$25,000.00
55	PLACE EXISTING BASE MATERIAL (REVOCABLE)	5,600	CY	\$21.86	\$122,416.00	\$50.00	\$280,000.00	\$58.00	\$324,800.00	\$18.69	\$104,664.00	50.00	280,000.00	\$ 18.00	\$ 100,800.00	\$82.00	\$459,200.00
56	CLASS 2 AGGREGATE BASE (REVOCABLE)	3,000	CY	\$79.19	\$237,570.00	\$34.00	\$102,000.00	\$73.00	\$219,000.00	\$151.58	\$454,740.00	100.00	300,000.00	\$ 30.00	\$ 90,000.00	\$115.00	\$345,000.00
57	COLD PLANE ASPHALT CONCRETE PAVEMENT	78,000	SY	\$5.46	\$425,880.00	\$6.00	\$468,000.00	\$3.50	\$273,000.00	\$4.59	\$358,020.00	6.00	468,000.00	\$ 5.00	\$ 390,000.00	\$5.20	\$405,600.00
58	HOT MIX ASPHALT (TYPE A)	15,000	TON	\$149.50	\$2,242,500.00	\$170.00	\$2,550,000.00	\$188.00	\$2,820,000.00	\$140.50	\$2,107,500.00	180.00	2,700,000.00	\$ 228.00	\$ 3,420,000.00	\$165.00	\$2,475,000.00
59	ROADWAY BASE REPAIR	48,000	SF	\$17.02	\$816,960.00	\$25.00	\$1,200,000.00	\$23.00	\$1,104,000.00	\$9.84	\$472,320.00	20.00	960,000.00	\$ 23.00	\$ 1,104,000.00	\$20.00	\$960,000.00
60	MICRO-SURFACING (TYPE II)	14,000	SQYD	\$4.58	\$64,120.00	\$4.58	\$64,120.00	\$4.80	\$67,200.00	\$5.09	\$71,260.00	5.00	70,000.00	\$ 4.60	\$ 64,400.00	\$5.34	\$74,760.00
61	CRACK TREATMENT	1	LS	\$11,500.00	\$11,500.00	\$11,500.00	\$11,500.00	\$12,000.00	\$12,000.00	\$22,260.00	\$22,260.00	10,000.00	10,000.00	\$ 11,500.00	\$ 11,500.00	\$16,600.00	\$16,600.00
62	RECOMPACT DECOMPOSED GRANITE	28,000	SF	\$1.23	\$34,440.00	\$2.00	\$56,000.00	\$1.75	\$49,000.00	\$1.13	\$31,640.00	0.50	14,000.00	\$ 0.50	\$ 14,000.00	\$5.00	\$140,000.00
63	MINOR CONCRETE (CITY STANDARD 208 CURB & GUTTER)	1,800	LF	\$67.59	\$121,662.00	\$80.00	\$144,000.00	\$74.25	\$133,650.00	\$79.92	\$143,856.00	50.00	90,000.00	\$ 100.00	\$ 180,000.00	\$116.50	\$209,700.00
64	MINOR CONCRETE (CALTRANS TYPE A1-8 CURB)	19,700	LF	\$38.50	\$758,450.00	\$40.00	\$788,000.00	\$44.75	\$881,575.00	\$51.41	\$1,012,777.00	40.00	788,000.00	\$ 65.00	\$ 1,280,500.00	\$38.00	\$748,600.00
65	MINOR CONCRETE (12" RETAINING CURB)	73	LF	\$92.55	\$6,756.15	\$160.00	\$11,680.00	\$89.00	\$6,497.00	\$190.80	\$13,928.40	70.00	5,110.00	\$ 195.00	\$ 14,235.00	\$115.00	\$8,395.00
66	MINOR CONCRETE (ROLLED CURB)	640	LF	\$61.99	\$39,673.60	\$85.00	\$54,400.00	\$76.00	\$48,640.00	\$87.72	\$56,140.80	50.00	32,000.00	\$ 100.00	\$ 64,000.00	\$93.00	\$59,520.00
67	MINOR CONCRETE (CITY STANDARD 211 BIORETENTION CURB & GUTTER)	490	LF	\$170.37	\$83,481.30	\$175.00	\$85,750.00	\$128.65	\$63,038.50	\$149.46	\$73,235.40	150.00	73,500.00	\$ 300.00	\$ 147,000.00	\$154.00	\$75,460.00
68	MINOR CONCRETE (CURB OPENING)	22	EA	\$250.00	\$5,500.00	\$465.00	\$10,230.00	\$105.00	\$2,310.00	\$530.00	\$11,660.00	250.00	5,500.00	\$ 300.00	\$ 6,600.00	\$504.00	\$11,088.00
69	MINOR CONCRETE (SIDEWALK)	11,900	SF	\$13.08	\$155,652.00	\$30.00	\$357,000.00	\$23.75	\$282,625.00	\$23.32	\$277,508.00	15.00	178,500.00	\$ 24.00	\$ 285,600.00	\$29.00	\$345,100.00
70	MINOR CONCRETE (DRIVEWAY)	590	SF	\$29.93	\$17,658.70	\$45.00	\$26,550.00	\$24.35	\$14,366.50	\$53.00	\$31,270.00	20.00	11,800.00	\$ 40.00	\$ 23,600.00	\$46.00	\$27,140.00
71	MINOR CONCRETE (MAINTENANCE VEHICLE PAD)	5,400	SF	\$22.86	\$123,444.00	\$32.00	\$172,800.00	\$21.50	\$116,100.00	\$27.56	\$148,824.00	20.00	108,000.00	\$ 25.00	\$ 135,000.00	\$40.00	\$216,000.00
72	MINOR CONCRETE (VALLEY GUTTER APRON)	320	SF	\$32.27	\$10,326.40	\$40.00	\$12,800.00	\$26.00	\$8,320.00	\$37.10	\$11,872.00	20.00	6,400.00	\$ 45.00	\$ 14,400.00	\$36.00	\$11,520.00
73	MEDIAN COBBLESTONE TREATMENT	13,100	SF	\$24.41	\$319,771.00	\$30.00	\$393,000.00	\$26.40	\$345,840.00	\$4.35	\$56,985.00	20.00	262,000.00	\$ 25.00	\$ 327,500.00	\$12.49	\$163,619.00
74	CLEAN EXISTING STORM DRAIN PIPES	2,430	LF	\$16.23	\$39,438.90	\$9.00	\$21,870.00	\$14.00	\$34,020.00	\$21.62	\$52,536.60	15.00	36,450.00	\$ 10.00	\$ 24,300.00	\$24.20	\$58,806.00
75	MODIFY INLET (RECONSTRUCT TOP)	1	EA	\$4,064.21	\$4,064.21	\$3,400.00	\$3,400.00	\$3,600.00	\$3,600.00	\$7,632.00	\$7,632.00	4,000.00	4,000.00	\$ 6,000.00	\$ 6,000.00	\$1,900.00	\$1,900.00
76	FIELD INLET	10	EA	\$8,413.70	\$84,137.00	\$2,800.00	\$28,000.00	\$3,650.00	\$36,500.00	\$8,745.00	\$87,450.00	4,000.00	40,000.00	\$ 5,000.00	\$ 50,000.00	\$2,100.00	\$21,000.00
77	STORM DRAIN INLET (CALTRANS G0 INLET)	38	EA	\$11,115.49	\$422,388.62	\$9,500.00	\$361,000.00	\$7,700.00	\$292,600.00	\$5,300.00	\$201,400.00	10,000.00	380,000.00	\$ 9,400.00	\$ 357,200.00	\$5,000.00	\$190,000.00
78	STORM DRAIN INLET (COUNTY TYPE VI)	1	EA	\$10,235.96	\$10,235.96	\$9,500.00	\$9,500.00	\$18,800.00	\$18,800.00	\$13,250.00	\$13,250.00	10,000.00	10,000.00	\$ 16,000.00	\$ 16,000.00	\$9,200.00	\$9,200.00
79	SIDEWALK UNDERDRAIN	10	EA	\$2,000.00	\$20,000.00	\$5,500.00	\$55,000.00	\$3,600.00	\$36,000.00	\$2,385.00	\$23,850.00	2,500.00	25,000.00	\$ 2,500.00	\$ 25,000.00	\$2,500.00	\$25,000.00
80	6" PVC STORM DRAIN CLEANOUT	15	EA	\$578.97	\$8,684.55	\$1,500.00	\$22,500.00	\$1,350.00	\$20,250.00	\$742.00	\$11,130.00	1,000.00	15,000.00	\$ 900.00	\$ 13,500.00	\$1,500.00	\$22,500.00
81	4" PERFORATED PLASTIC PIPE UNDERDRAIN	890	LF	\$46.41	\$41,304.90	\$8.00	\$7,120.00	\$24.00	\$21,360.00	\$6.89	\$6,132.10	30.00	26,700.00	\$ 40.00	\$ 35,600.00	\$23.00	\$20,470.00
82	12" RCP CLASS III STORM DRAIN PIPE	550	LF	\$334.22	\$183,821.00	\$440.00	\$242,000.00	\$620.00	\$341,000.00	\$113.95	\$62,672.50	600.00	330,000.00	\$ 500.00	\$ 275,000.00	\$227.00	\$124,850.00
83	STORM DRAIN MANHOLE	6	EA	\$17,778.38	\$106,670.28	\$8,000.00	\$48,000.00	\$19,400.00	\$116,400.00	\$7,950.00	\$47,700.00	10,000.00	60,000.00	\$ 16,500.00	\$ 99,000.00	\$9,000.00	\$54,000.00
84	MINOR CONCRETE (COBBLE RIP-RAP)	680	SF	\$16.01	\$10,886.80	\$25.00	\$17,000.00	\$5.90	\$4,012.00	\$15.90	\$10,812.00	20.00	13,600.00	\$ 12.00	\$ 8,160.00	\$27.45	\$18,666.00
85	REMOVE THERMOPLASTIC TRAFFIC STRIPE	45,000	LF	\$0.60	\$27,000.00	\$0.60	\$27,000.00	\$0.63	\$28,350.00	\$0.64	\$28,800.00	0.60	27,000.00	\$ 0.60	\$ 27,000.00	\$0.60	\$27,000.00
86	THERMOPLASTIC PAVEMENT MARKING (WHITE)	16,000	SF	\$10.00	\$160,000.00	\$10.00	\$160,000.00	\$10.50	\$168,000.00	\$10.60	\$169,600.00	10.00	160,000.00	\$ 10.00	\$ 160,000.00	\$10.00	\$160,000.00
87	THERMOPLASTIC PAVEMENT MARKING (YELLOW)	2,130	SF	\$10.00	\$21,300.00	\$10.00	\$21,300.00	\$10.50	\$22,365.00	\$10.60	\$22,578.00	10.00	21,300.00	\$ 10.00	\$ 21,300.00	\$10.00	\$21,300.00
88	PREFORMED THERMOPLASTIC PAVEMENT MARKING (GREEN)	25,800	SF	\$16.00	\$412,800.00	\$16.00	\$412,800.00	\$16.80	\$433,440.00	\$16.96	\$437,568.00	16.00	412,800.00	\$ 16.00	\$ 412,800.00	\$16.00	\$412,800.00
89	6" THERMOPLASTIC BUFFER STRIPE (WHITE)	7,000	LF	\$4.00	\$28,000.00	\$4.00	\$28,000.00	\$4.20	\$29,680.00	\$4.24	\$29,680.00	4.00	28,000.00	\$ 4.00	\$ 28,000.00	\$4.00	\$28,000.00
90	DETAIL 9 STRIPING	25,200	LF	\$1.80	\$45,360.00	\$1.80	\$45,360.00	\$1.89	\$47,628.00	\$1.91	\$48,132.00	2.00	50,400.00	\$ 1.80	\$ 45,360.00	\$1.80	\$45,360.00
91	DETAIL 22 STRIPING	710	LF	\$4.00	\$2,840.00	\$4.00	\$2,840.00	\$4.20	\$2,982.00	\$4.24	\$3,010.40	4.00	2,840.00	\$ 4.00	\$ 2,840.00	\$4.00	\$2,840.00
92	DETAIL 25 STRIPING	25,100	LF	\$2.50	\$62,750.00	\$2.50	\$62,750.00	\$2.63	\$66,013.00	\$2.65	\$66,515.00	0.50	12,550.00	\$ 2.50	\$ 62,750.00	\$2.50	\$62,750.00
93	DETAIL 27B STRIPING	80	LF	\$2.00	\$160.00	\$2.00	\$160.00	\$2.10	\$168.00	\$2.12	\$169.60	2.00	160.00	\$ 2.00	\$ 160.00	\$2.00	\$160.00
94	DETAIL 38 STRIPING	3,300	LF	\$3.00	\$9,900.00	\$3.00	\$9,900.00	\$3.15	\$10,494.00	\$3.18	\$10,494.00	3.00	9,900.00	\$ 3.00	\$ 9,900.00	\$3.00	\$9,900.00
95	DETAIL 39 STRIPING	52,600	LF	\$2.00	\$105,200.00	\$2.00	\$105,200.00	\$2.10	\$110,460.00	\$2.12	\$111,512.00	2.00	105,200.00	\$ 2.00	\$ 105,200.00	\$2.00	\$105,200.00
96	DETAIL 39A STRIPING	6,800	LF	\$2.50	\$17,000.00	\$2.50	\$17,000.00	\$2.63	\$17,884.00	\$2.65	\$18,020.00	2.50	17,000.00	\$ 2.50	\$ 17,000.00	\$2.50	\$17,000.00
97	FURNISH SINGLE SHEET ALUMINUM SIGN (0.080"-UNFRAMED)	23	EA	\$550.00	\$12,650.00	\$175.00	\$4,025.00	\$183.75	\$4,226.25	\$583.00	\$13,409.00	200.00	4,600.00	\$ 550.00	\$ 12,650.00	\$175.00	\$4,025.00
98	ROADSIDE SIGN (ONE POST)	47	EA	\$350.00	\$16,450.00	\$350.00	\$16,450.00	\$367.50	\$17,272.50	\$371.00	\$17,437.00	400.00	18,800.00	\$ 350.00	\$ 16,450.00	\$350.00	\$16,450.00
99	TYPE "A" NON-REFLECTIVE PAVEMENT MARKER	2,400	EA	\$6.00	\$14,400.00	\$6.00	\$14,400.00	\$6.30	\$15,120.00	\$6.36	\$15,264.00	6.00	14,400.00	\$ 6.00	\$ 14,400.00	\$6.00	\$14,400.00
100	DELINEATOR (CLASS 1)	143	EA	\$200.00	\$28,600.00	\$45.00	\$6,435.00	\$47.25	\$6,756.75	\$212.00	\$30,316.00	50.00	7,150.00	\$ 200.00	\$ 28,600.00	\$245.00	\$35,035.00
101	RELOCATE ROADSIDE SIGN	33	EA	\$205.00	\$6,765.00	\$275.00	\$9,075.00	\$288.75	\$9,528.75	\$217.30	\$7,170.90	300.00	9,900.00	\$ 205.00	\$ 6,765.00	\$275.00	\$9,075.00
102	REMOVE ROADSIDE SIGN	75	EA	\$75.00	\$5,625.00	\$125.00	\$9,375.00	\$131.25	\$9,843.75	\$79.50	\$5,962.50	100.00	7,500.00	\$ 75.00	\$ 5,625.00	\$125.00	\$9,375.00
103	REMOVE SIGN PANEL	40	EA	\$120.00	\$4,800.00	\$100.00	\$4,000.00	\$105.00	\$4,200.00	\$127.20	\$5,088.00	100.00	4,000.00	\$ 120.00	\$ 4,800.00	\$100.00	\$4,000.00
104	INSTALL NEW SIGN PANEL ON EXISTING POST	30	EA	\$200.00	\$6,000.00	\$100.00	\$3,000.00	\$105.00	\$3,150.00	\$212.00	\$6,360.00	100.00	3,000.00	\$ 200.00	\$ 6,000.00	\$100.00	\$3,000.00
105	BAY TRAIL SIGN NO LOGO (MEDIUM)	26	EA	\$350.00	\$9,100.00	\$375.00	\$9,750.00	\$367.50	\$9,555.00	\$371.00	\$9,646.00	400.00	10,400.00	\$ 350.00	\$ 9,100.00	\$375.00	\$9,750.00
106	BAY TRAIL SIGN NO LOGO (LARGE)	1	EA	\$350.00	\$350.00	\$375.00	\$375.00	\$367.50	\$367.50	\$371.00	\$371.00	400.00	400.00	\$ 350.00	\$ 350.00	\$350.00	\$350.00
107	BIORETENTION AREA	7,000	SF	\$29.69	\$207,830.00	\$22.00	\$154,000.00	\$21.00	\$147,000.00	\$12.99	\$90,930.00	30.00	210,000.00	\$ 22.00	\$ 154,000.00	\$35.38	\$247,660.00
108	IRRIGATION SYSTEM (LANDSCAPE PLANS)	1	LS	\$433,800.00	\$433,800.00	\$433,800.00	\$433,800.00	\$325,000.00	\$325,000.00	\$482,088.00	\$482,088.00	300,000.00	300,000.00	\$ 442,950.00	\$ 442,950.00	\$433,800.00	\$433,800.00
109	PLANTING (LANDSCAPE PLANS)	1	LS	\$435,000.00	\$435,000.00	\$435,000.00	\$435,000.00	\$650,000.00									



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Item No.	Bid Item	Estimated Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
116	TRAFFIC SIGNAL MODIFICATION AT ROCKLIN DR	1	LS	\$275,000.00	\$275,000.00	\$289,250.00	\$289,250.00	\$303,000.00	\$303,000.00	\$302,100.00	\$302,100.00	275,000.00	275,000.00	\$ 276,950.00	\$ 276,950.00	\$285,000.00	\$285,000.00
117	TRAFFIC SIGNAL MODIFICATION AT DELORES DR	1	LS	\$110,000.00	\$110,000.00	\$84,850.00	\$84,850.00	\$89,000.00	\$89,000.00	\$153,700.00	\$153,700.00	75,000.00	75,000.00	\$ 114,950.00	\$ 114,950.00	\$145,000.00	\$145,000.00
118	TRAFFIC SIGNAL MODIFICATION AT DYER ST	1	LS	\$200,000.00	\$200,000.00	\$250,875.00	\$250,875.00	\$263,000.00	\$263,000.00	\$196,100.00	\$196,100.00	250,000.00	250,000.00	\$ 209,500.00	\$ 209,500.00	\$185,000.00	\$185,000.00
119	TRAFFIC SIGNAL MODIFICATION AT JEAN DR	1	LS	\$100,000.00	\$100,000.00	\$97,600.00	\$97,600.00	\$102,000.00	\$102,000.00	\$153,700.00	\$153,700.00	75,000.00	75,000.00	\$ 109,500.00	\$ 109,500.00	\$145,000.00	\$145,000.00
120	TRAFFIC SIGNAL MODIFICATION AT REGENTS BLVD	1	LS	\$85,000.00	\$85,000.00	\$76,725.00	\$76,725.00	\$80,000.00	\$80,000.00	\$121,900.00	\$121,900.00	75,000.00	75,000.00	\$ 86,500.00	\$ 86,500.00	\$115,000.00	\$115,000.00
121	TRAFFIC SIGNAL MODIFICATION AT ALVARADO BLVD	1	LS	\$110,000.00	\$110,000.00	\$107,750.00	\$107,750.00	\$113,000.00	\$113,000.00	\$132,500.00	\$132,500.00	100,000.00	100,000.00	\$ 119,500.00	\$ 119,500.00	\$125,000.00	\$125,000.00
122	TRAFFIC SIGNAL MODIFICATION AT HORNER STREET	1	LS	\$100,000.00	\$100,000.00	\$87,550.00	\$87,550.00	\$92,000.00	\$92,000.00	\$127,200.00	\$127,200.00	75,000.00	75,000.00	\$ 109,500.00	\$ 109,500.00	\$120,000.00	\$120,000.00
123	TRAFFIC SIGNAL MODIFICATION AT CAMBRIDGE WAY-SMITH STRE	1	LS	\$45,000.00	\$45,000.00	\$49,150.00	\$49,150.00	\$51,000.00	\$51,000.00	\$53,000.00	\$53,000.00	50,000.00	50,000.00	\$ 47,500.00	\$ 47,500.00	\$50,000.00	\$50,000.00
124	MODIFY STREET LIGHTING SYSTEM	1	LS	\$1,100,000.00	\$1,100,000.00	\$1,129,450.00	\$1,129,450.00	\$1,185,000.00	\$1,185,000.00	\$1,362,100.00	\$1,362,100.00	1,000,000.00	1,000,000.00	\$ 1,112,950.00	\$ 1,112,950.00	\$1,185,000.00	\$1,185,000.00
125	RADAR SPEED FEEDBACK SIGN SYSTEM	1	LS	\$50,000.00	\$50,000.00	\$54,500.00	\$54,500.00	\$57,200.00	\$57,200.00	\$68,900.00	\$68,900.00	50,000.00	50,000.00	\$ 59,500.00	\$ 59,500.00	\$65,000.00	\$65,000.00
126	3" SCHEDULE 80 HDPE CONDUIT	2300	LF	\$79.00	\$181,700.00	\$77.00	\$177,100.00	\$80.85	\$185,955.00	\$90.10	\$207,230.00	75.00	172,500.00	\$ 82.50	\$ 189,750.00	\$80.00	\$184,000.00
127	2" SCHEDULE 80 HDPE CONDUIT	750	EA	\$70.00	\$52,500.00	\$75.00	\$56,250.00	\$78.75	\$59,062.50	\$79.50	\$59,625.00	75.00	56,250.00	\$ 76.50	\$ 57,375.00	\$71.00	\$53,250.00
128	N48E PULL BOX	10	EA	\$3,650.00	\$36,500.00	\$4,675.00	\$46,750.00	\$4,900.00	\$49,000.00	\$2,400.90	\$24,009.00	4,000.00	40,000.00	\$ 3,650.00	\$ 36,500.00	\$3,950.00	\$39,500.00
129	No. 6E PULL BOX	40	EA	\$1,950.00	\$78,000.00	\$2,150.00	\$86,000.00	\$2,260.00	\$90,400.00	\$1,961.00	\$78,440.00	2,000.00	80,000.00	\$ 1,950.00	\$ 78,000.00	\$1,975.00	\$79,000.00
130	MODIFY INTERCONNECT SYSTEM	1	LS	\$240,000.00	\$240,000.00	\$262,000.00	\$262,000.00	\$378,000.00	\$378,000.00	\$259,700.00	\$259,700.00	250,000.00	250,000.00	\$ 242,500.00	\$ 242,500.00	\$245,000.00	\$245,000.00
	TOTAL				\$17,049,000.00		\$17,260,159.86		\$17,341,890.00		\$17,629,260.74		17,666,666.00		\$ 19,087,475.00		\$19,198,201.01

**Note: Yellow highlights indicate the discrepancies in the submitted bid proposal.**



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

**SUBJECT:** ADOPT A RESOLUTION APPROVING A REIMBURSEMENT PAYMENT IN THE AMOUNT OF \$291,676.73 TO THE ALAMEDA COUNTY WATER DISTRICT PURSUANT TO THE COOPERATIVE AGREEMENT FOR COST SHARING FOR PAVEMENT WORK FOR THE ALVARADO-NILES PIPELINE SEISMIC IMPROVEMENT PROJECT (ACWD JOB 21192), AND APPROVING AN APPROPRIATION IN THE AMOUNT OF \$291,676.73 FROM THE ALLIED WASTE VEHICLE FEE FUND BALANCE FOR FISCAL YEAR 2023-2024 TO THE SMITH STREET RESTORATION PROJECT, CITY PROJECT NO. 24-05

Staff recommends that the City Council adopt a resolution approving a reimbursement payment in the amount of \$291,676.73 to the Alameda County Water District (ACWD) pursuant to the Cooperative Agreement Cost Sharing for Pavement Work for the Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192), and approving an appropriation in the amount of \$291,676.73 from the Allied Waste Vehicle Fee Fund balance for Fiscal Year 2023-2024 to the Smith Street Restoration Project, City Project No. 24-05.

### **STRATEGIC PLAN ALIGNMENT**

This agenda item is in alignment with the following:

**Goal D, Strategy 2:** Environmental Sustainability and Infrastructure – Implement the City’s capital improvement plan.

### **BACKGROUND**

In 2020-2021, the Alameda County Water District (ACWD) began construction of their Alvarado-Niles Pipeline Seismic Improvement Project, from Union City Boulevard to Central Avenue, as part of their Main Renewal and Seismic Upgrade Program (MRSUP) within Union City, see Attachment 1 for Project Title Sheet.

The project included installation of a new steel waterline pipe for appropriately 3.5 miles. Phase I was completed in July 2021 and included previously negotiated surface improvements within the City’s right-of-way, including partial roadway resurfacing, special stamping details for the crosswalks along Smith Street in the Old Alvarado Historic

Neighborhood from Vallejo Street to Fredi Street, and other associated additional roadway work.

The construction by ACWD's contractor required partial closure or full closure of various Smith Street blocks, impacting businesses and residents in the area. Public Works had planned to rehabilitate Smith Street as part of the Capital Improvement Program (CIP) but deferred this pavement maintenance project until completion of ACWD's pipeline seismic project. To avoid impacting the Old Alvarado District, again, in the near future, Public Works staff began discussions with ACWD staff regarding inclusion of the Smith Street Rehabilitation Project within ACWD's pipeline seismic construction.

ACWD was receptive to the City's request for these improvements and relayed the work to their Prime Contractor, Garney Construction. The ACWD's roadway work was an opportunity for the City to make these pavement improvements that would otherwise not have been made for a long period of time. Both parties agreed that the City would reimburse ACWD for the work performed.

## **DISCUSSION**

On June 22, 2021, the City Council adopted Resolution No. 5790-21, approving a Reimbursement Agreement with Alameda County Water District (ACWD) for the for the restoration of Smith Street in conjunction with ACWD's Alvarado-Niles Road Pipeline Seismic Improvement Project, in an amount not to exceed \$436,466.86, which was the estimate provided by the Contractor. The reimbursement agreement was in the form of a letter reviewed and approved by the City Attorney and signed by City Manager with an understanding that ACWD would be preparing a formal reimbursement agreement in the near future. The letter was a commitment to ACWD that the City would reimburse ACWD for the Smith Street pavement restoration before construction in early July 2021. Also, said Resolution identified funding from the Annual Overlay Program, City Project No. 20-01, for Fiscal Year 2019-2020 and Fiscal Year 2020-2021.

In late 2023, the City received the first draft of the ACWD's Cost Sharing Agreement for Paving Work for the Alvarado Niles Seismic Improvement Project (ACWD Job 21192) (see Exhibit A). Public Works staff was pleased to find out that the actual construction cost for the Smith Street paving work was \$291,676.73, a savings of approximately 33% (see Exhibit C of the Cost Sharing Agreement). The entire budget for the Annual Overlay Program, City Project No. 20-01, was transferred to the Annual Overlay Program, City Project No. 23-01 and has since been exhausted, requiring Public Works staff to seek funds from other pavement improvement accounts.

## **FISCAL IMPACT**

The reimbursement payment to Alameda County Water District in the amount of \$291,676.73 will be funded from the fund balance of the Allied Waste Vehicle Fee Fund (Account Number 2620-3199-9999-54111) for the Smith Street Restoration Project, City Project No. 24-05 for Fiscal Year 2023-2024. There is no impact to the General Fund.

## **RECOMMENDATION**

Staff recommends that the City Council adopt a Resolution:

1. Approving a reimbursement payment, in the amount of \$291,676.73, pursuant to the Cooperative Agreement Cost Sharing for Pavement Work for the Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192), for the work performed by Alameda County Water District on the City's behalf as part of their project; and
2. Authorizing the appropriation of \$291,676.73 from of the fund balance of the Allied Waste Vehicle Fee Fund for Fiscal Year 2023-2024 to the Smith Street Restoration Project, City Project No. 24-05 (Account

Number 2620-3199-92405-54111).

**Prepared by:**

Trieu Tran, Civil Engineer III

**Submitted by:**

Marilou Ayupan, Public Works Director

**ATTACHMENTS:**

Description	Type
☐ Attachment 1 - ANR Pipeline Seismic Project Title Sheet	Attachment
☐ Draft Resolution	Resolution
☐ Exhibit A - Cooperative Agreement	Exhibit

ALAMEDA COUNTY WATER DISTRICT

43885 SOUTH GRIMMER BOULEVARD, FREMONT CALIFORNIA

ALVARADO-NILES PIPELINE SEISMIC IMPROVEMENT PROJECT

JOB 21192

2019

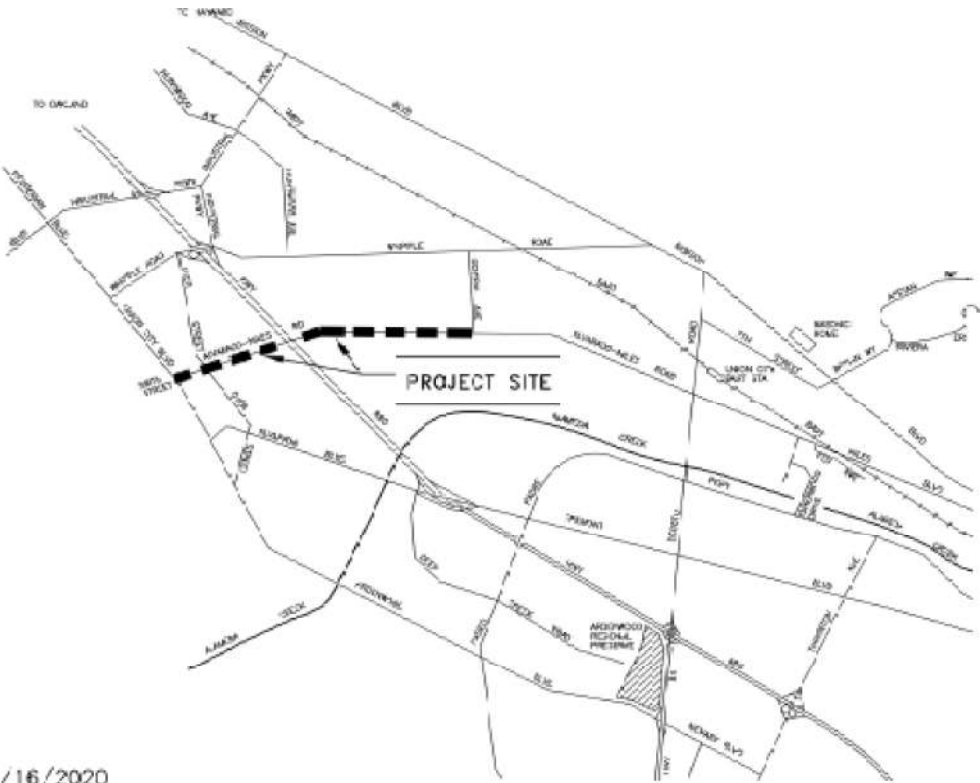
SHEET INDEX		
SHEET NUMBER	DRAWING NUMBER	DESCRIPTION
01	M-17D-04-01	TITLE SHEET
02	M-17D-04-02	ABBREVIATIONS, SYMBOLS AND GENERAL NOTES
03	M-17D-04-03	SHEET INDEX MAP - SURVEY CONTROLS/ POTHOLE LOCATIONS
04	M-17D-04-04	POT-HOLE DATA
05 - 13	M-17D-04-05 - 13	PLAN AND PROFILE STA 87+32 TO 95+32
14 - 20	M-17D-04-14 - 20	PLAN AND PROFILE STA 99+32 TO 144+62 PHASE 2 (NOT IN PACKAGE)
21 - 31	M-17D-04-21 - 31	PLAN AND PROFILE STA 144+62 TO 193+24 PHASE 2 (NOT IN PACKAGE)
32 - 42	M-17D-04-32 - 42	PIPE CLOSURE AND SYSTEM CONNECTION DETAILS
43 - 60	M-17D-04-43 - 52	PIPE CLOSURE AND SYSTEM CONNECTION DETAILS
61 - 76	M-17D-04-58 - 76	PIPE CLOSURE AND SYSTEM CONNECTION DETAILS PHASE 2 (NOT IN PACKAGE)
77-88	M-17D-04-77 - 95	DETAILS
99-106	M-17D-04-99 - 104	CATHODIC PROTECTION

BOARD OF DIRECTORS

Aziz Akbari  
James G. Gunther  
Judy Huang  
Paul Sethy  
John H. Weed

GENERAL MANAGER


Robert Shaver




FACILITY LOCATION MAP  
UNION CITY  
NOT TO SCALE




VICINITY MAP  
NOT TO SCALE

APPROVED  3/16/2020  
Ed Stevenson  
MANAGER OF ENGINEERING AND TECHNOLOGY SERVICES  
DATE

REVIEWED BY  3/17/2020  
KURT ARENDS  
MANAGER OF OPERATIONS AND MAINTENANCE  
DATE



				DESIGNED: JO		 ALAMEDA COUNTY WATER DISTRICT 43885 SOUTH GRIMMER BOULEVARD P.O. BOX 5110 FREMONT, CA 94537-5110 (510) 668-1233	ALVARADO-NILES PIPELINE SEISMIC IMPROVEMENT PROJECT			FACILITY JOB NO. M	PROJECT NO	E. NUMBER	FILE NO: 179-34-01.DWG	SHEET NO
				CHECKED: JO			TITLE SHEET				MM80.06	XXXX	DATE: FEBRUARY 2020	
3	01/2/20	ISS JTB FOR CONSTRUCTION	SM	JO	CO		REVIEWED BY: OPS SA	JOB NO	FWG NO	21192	M-17D-04-01	REV A		
4	12/9/19	ISS JTB FOR BIC	SM	JO	CO		PROJ ENGR							ENGR SUPERVISOR: CO
NO	DATE		REVISION		BY	APP								

**RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING A REIMBURSEMENT PAYMENT, IN THE AMOUNT OF \$291,676.73, TO THE ALAMEDA COUNTY WATER DISTRICT PURSUANT TO THE COOPERATIVE AGREEMENT FOR COST SHARING FOR PAVEMENT WORK FOR THE ALVARADO-NILES PIPELINE SEISMIC IMPROVEMENT PROJECT (ACWD JOB 21192), AND APPROVING AN APPROPRIATION OF \$291,676.73 FROM THE ALLIED WASTE VEHICLE FEE FUND BALANCE FOR FISCAL YEAR 2023-2024 TO THE SMITH STREET RESTORATION PROJECT, CITY PROJECT NO. 24-05**

**WHEREAS**, in June 2020, the City issued an Encroachment Permit to Alameda County Water District (ACWD) for the construction of their Alvarado-Niles Pipeline Seismic Improvement Project, Phase 1, which consisted of the installation of a 14-inch diameter potable water pipe along Smith Street between Union City Boulevard and Union Pacific Railroad (UPRR) tracks west of Dyer Street; and

**WHEREAS**, the permit conditions required the restoration of the roadway and other facilities impacted during the construction, including repaving the entire travel lane that is trenched and replacing the stamped and colored crosswalks on Smith Street; and

**WHEREAS**, the City had initially included Smith Street in the citywide overlay project (City Project No. 17-01) but deferred the project in anticipation of ACWD's project; and

**WHEREAS**, the City took the opportunity to improve the surface level infrastructure within the Old Alvarado Historic Neighborhood (Smith Street), including replacing curbs & gutters, roadway surfacing, and special crosswalk stamping, that were within the construction area of ACWD's project by sending a proposal to ACWD from their contractor, Garney Construction, Inc., on the City's behalf, to include the cost of the City's future repaving effort in their current scope; and

**WHEREAS**, on June 22, 2021, the City Council adopted Resolution No. 5790-21, approving a Reimburse Agreement with Alameda County Water District (ACWD) for the restoration of Smith Street in conjunction with ACWD's Alvarado-Niles Road Pipeline Seismic Improvement Project, in an amount not to exceed \$ 436,466.86; and

**WHEREAS**, in Resolution No. 5790-21, the reimbursement agreement was in the form of a letter reviewed and approved by the City Attorney and signed by the City Manager with an understanding that ACWD would be preparing a formal reimbursement agreement in the near future; and

**WHEREAS**, the aforementioned resolution also identified funding the pavement restoration of Smith Street with the Annual Overlay Program, City Project No. 20-01, for Fiscal Year 2019-2020 and Fiscal Year 2020-2021; and

**WHEREAS**, in FY 2020-2021, ACWD began construction of their Alvarado-Niles Pipeline Seismic Improvement Project, Phase 1, completing work in July 2021, including pavement improvements within the City's right-of-way; and

**WHEREAS**, City and ACWD staff were required to coordinate and review the contractor's construction documents, quantities, and progress payments specifically for the Smith Street pavement restoration work to determine reimbursement amount resulting in administrative delays and continued negotiations between ACWD and the City; and

**WHEREAS**, in late 2023, ACWD provided Public Works with an initial cooperative agreement with the estimated cost for the paving work on Smith Street for City's review and comments; and

**WHEREAS**, in late January 2024, ACWD submitted the final *Cooperative Agreement between the City of Union City and the Alameda Water District, ACWD Cost Sharing for Paving Work for the Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192)* ("Agreement"), see Exhibit A; and

**WHEREAS**, said Agreement identifies the actual reimbursement cost for Smith Street pavement restoration as \$291,676.73, an estimated cost savings of \$144,790 (33%) below the original estimate; and

**WHEREAS**, on August 8, 2023, the City Council of Union City adopted Resolution No. 6184-23, approving the award of the construction contract to G. Bortolotto & Company, Inc. in the amount of \$2,077,831 for the Citywide Street Pavement Rehabilitation Project, City Project No. 23-01, and approving a total construction budget in the amount of \$2,400,000, exhausting all project funds for Fiscal Year 2023-24 pavement overlay, which included funds transferred from FY2019-2020 through FY2022-2023; and

**WHEREAS**, the reimbursement amount of \$291,676.73 for the Smith Street Restoration Project, City Project No. 24-05, is available in the Allied Waste Vehicle Fee Fund (Account 2620) from the fund balance for Fiscal Year 2023-2024; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Union City hereby approves a reimbursement payment, in the amount of \$291,676.73, pursuant to the Union City-ACWD Cooperative Agreement Cost Sharing for Pavement Work for the Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192), see Exhibit A for the work ACWD performed on the City's behalf; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Union City hereby authorizes the appropriation from the fund balance of the Allied Waste Vehicle Fee Fund for the reimbursement payment, in the amount of \$291,676.73 to the Smith Street Restoration Project, City Project No. 24-05 (Account Number 2620-3199-92405-54111).

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

---

CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

---

THAI NAM N. PHAM  
City Clerk

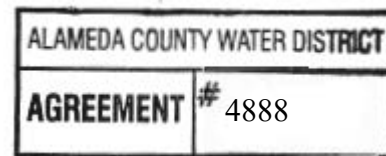
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KRISTOPHER J. KOKOTAYLO  
City Attorney

**Attachments:**

1. Exhibit A - Cooperative Agreement between the City of Union City and the Alameda Water District, ACWD



**Exhibit A****COOPERATIVE AGREEMENT**

**BETWEEN CITY OF UNION CITY AND THE ALAMEDA COUNTY WATER  
ACWD FOR COST SHARING FOR PAVING WORK FOR THE ALVARADO NILES  
PIPELINE SEISMIC IMPROVEMENT PROJECT  
(ACWD Job 21192)**

This “Cooperative Agreement for the Alvarado Niles Pipeline Seismic Improvement Project (ACWD Job 21192)” (“Agreement”) is made and entered into by and between the City of Union City, a municipal corporation (“City”), and the Alameda County Water (ACWD), a county water ACWD duly organized and existing under the County Water ACWD Law (being Division 12 of the Water Code of the State of California), (“ACWD”). City and ACWD may be collectively referred to herein as the “Parties.”

**RECITALS**

- A. As part of its Main Renewal Program, ACWD caused the construction of improvements to its water system within the City right-of-way including within Smith Street between Union City Boulevard and the Union Pacific Railroad (UPRR) tracks, and within Alvarado Niles Road between the UPRR tracks and Santa Maria Drive, and between Almaden Boulevard and Central Avenue. The work included installation of new 14 and 16-inch water mains, fire hydrants and hydrant laterals, water service laterals, and related appurtenances, and removal from service of existing 6-inch, 14-inch and 16-inch water mains (ACWD Job 21192). The work was performed by Garney Pacific, Inc. (Garney) under contract with ACWD.
- B. The scope of work within the City’s right-of-way included demolition of existing pavement and concrete, trench excavation, installation, testing, and disinfection of water pipe and appurtenances, and restoration of the pavement and concrete to the City’s standards. The City authorized the demolition and restoration of its improvements (concrete curb, gutter, sidewalk, and median, and asphalt concrete paving) as part of the project via an encroachment permit.
- C. The project work commenced in May 2020 and was largely completed in July 2021. Garney installed pipe and appurtenances on Smith Street between the UPRR tracks and Union City Boulevard in the winter of 2020-2021 and spring of 2021. Prior to restoration of the City’s improvements in this area, the City requested that ACWD have Garney perform additional work on the City’s behalf, for the City’s benefit and at the City’s cost. Because the restoration work to be performed by Garney on ACWD’s behalf would significantly impact traffic on Smith Street, and because the City had planned to perform its own pavement restoration work on Smith Street in the future, independent of ACWD’s project, the City desired to take advantage of the traffic disruptions that would occur as part of ACWD’s project and have Garney perform pavement improvements on Smith Street outside of ACWD’s restoration area.
- D. The additional work requested of ACWD by the City for its benefit and at its cost consisted of the following work on Smith Street between the UPRR tracks and Union City Boulevard, and outside of the area to be restored by the ACWD as part of its project: asphalt concrete grind and overlay from curb to curb, decorative crosswalk restoration (stamping, coloring), deep

pavement section removal and replacement in areas of suspected subbase failure, and associated ancillary work such as raising and lowering of iron manholes, valve pots, and other objects that would interfere with or be damaged by the paving operation.

- E. To minimize the impacts to the public who would be inconvenienced by two successive pavement projects on Smith Street (ACWD's restoration, and future paving by the City), and in a spirit of partnership and cooperation, ACWD agreed to the City's request to have Garney perform additional work on the City's behalf. Given the very short time between the City's request and the planned execution of the work, it was not possible to execute a formal agreement between the Parties without significantly disrupting the construction operation and schedule. Accordingly, in advance of the restoration work, the City and ACWD agreed, via a countersigned letter (which is attached as Exhibit A, and referred to herein as "2021 Letter Agreement" and is incorporated by this reference), to subsequently execute a formal agreement memorializing the terms contained in Exhibit A under which the City would reimburse the ACWD for the costs associated with the paving work performed by the ACWD's contractor on the City's behalf. ACWD and City staff who signed the letter were authorized to do so by the ACWD's Board of Directors (June 10, 2021 Board meeting), and the City's City Council (City Council meeting of June 22, 2021), respectively.
- F. The 2021 Letter Agreement included a cost estimate of \$311,762.04 for the work requested by and to be performed solely for the benefit of the City, with a contingency of \$124,704.82 for unexpected or additional costs that could be incurred during prosecution of the work for the City. The combined value of the cost estimate plus contingency is \$436,466.86, referred to herein as the Compensation Limit.
- G. The work requested of ACWD by the City has been completed to the satisfaction of both parties. This agreement documents the extent of work completed, the compensation amount due to ACWD from the City, compensation terms, and other ancillary items.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS  
AND CONDITIONS IDENTIFIED HEREIN,  
THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. DESCRIPTION OF WORK AREA.**

- 1.1 The area that the City requested via the Letter Agreement be improved at its cost and for its benefit is defined herein as the City's Improvement Area.
- 1.2 The outline of the City's Improvement Area is generally described as follows and is as generally shown on Exhibit B: that area of Smith Street, starting at the north-south trending, easternmost crosswalk line, or "stop line" at the intersection of Smith Street with Union City Boulevard, and terminating 120 feet west of the centerline of the westernmost UPRR track, from the edge of asphalt pavement on the north side of the street to the edge of asphalt pavement at the south side of the street and additionally, inclusive of and three feet beyond the east-west trending stamped asphalt crosswalks at

the intersections of Smith Street with Vallejo Street, Watkins Street, and Fredi Street; at Granger Street, to the stop lines on Granger Street at its intersection with Smith Street. The City's improvement area excludes the following areas already planned to be restored by the ACWD: grind and overlay along the pipeline alignment, to a width of approximately 11 feet, and grind and overlay with a minimum width of three feet at lateral connections at cross streets, services, air valve piping, and fire hydrant laterals.

## 2. **EXTENT OF WORK REQUESTED AND COMPLETED.**

- 2.1 The work requested by the City, addressed in the 2021 Letter Agreement, and performed by Garney on behalf of the City is described below. The cost as contained in the 2021 Letter Agreement, the as-installed cost requested by Garney, and the final cost as negotiated between ACWD and Garney are as described in Exhibit C.
  - 2.1.1 Survey, temporary lowering and, following paving, raising of appurtenances on Smith Street to facilitate grinding of the existing asphalt to a depth of 1.5 inches, including, but not limited to, existing valve pots, monuments, manholes and other improvements that would be damaged by the grinding operations. Installation and removal of false bottoms in manholes.
  - 2.1.2 Coordination with Union Sanitary District (USD) and procuring a permit from USD in connection with USD's inspection and evaluation of USD-owned improvements within the work area.
  - 2.1.3 Grinding, removal, and legal disposal of existing asphalt concrete to a depth of 1.5 inches, and installation of asphalt concrete overlay and pavement striping.
  - 2.1.4 Decorative stamping of asphalt with the same pattern and location as existing decorative crosswalks as partial restoration of the crosswalk appearance.
  - 2.1.5 Garney support of subcontractors and associated indirect costs, and traffic control.
- 2.2 The work requested by the City within and outside the City's Improvement Area, included in the 2021 Letter Agreement, subject to an equal cost share between the Parties and completed by Garney is as follows:
  - 2.2.1 Application of TrafficPatternsLT color product to entirety of the stamped asphalt crosswalks
- 2.3 The work requested by the City after execution of the 2021 Letter Agreement, outside the City's Improvement Area as defined in the Letter Agreement, and completed at the City's cost by Garney is as follows:

- 2.3.1 Additional 1.5-inch grind and overlay performed between the City's Improvement Area, and the UPRR tracks, performed at the request of the City representative at a field meeting in advance of performance of the work.
- 2.3.2 Additional pavement striping performed at the request of the City's field representative during execution of the other work on the City's behalf.
- 2.4 Additional materials were required to perform the City's work, at the City's cost, but were not requested by the City and were not included in the 2021 Letter Agreement, as follows:
  - 2.4.1 Additional asphalt concrete overlay materials. In order to meet the geometric requirements of Smith Street as it existed in the field, and solely because the City requested a curb-to-curb grind and overlay, Garney was required to increase the overlay thickness from 1.5 inches to three or more inches in certain locations. An increase in materials of variable depth up to the aforementioned three inches occurred across the entire street, which includes both the ACWD's project area, and the City's Restoration Area outside the ACWD's project area (trench restoration area).
- 2.5 The work requested by the City within the City's Improvement Area at the City's cost, included in the 2021 Letter Agreement, and not completed by Garney is as follows:
  - 2.5.1 Traffic signal loop restoration at the intersection of Smith Street and Union City Boulevard was not performed because it was discovered that no traffic signal loop exists at this location.
  - 2.5.2 Dig-out, offhaul and legal disposal of existing asphalt to a depth of six inches, and paving asphalt concrete to a depth of six inches over an area of 800 square feet was not performed because once the grinding occurred it was determined by the City representative that this restoration was not necessary.

### 3. **CLAIMS FROM THE PUBLIC.**

- 3.1 Four claims from business owners or members of the public were filed with the ACWD that are associated with disruption of business operations in connection with the joint City and ACWD paving on Smith Street. One claim was settled and paid and the other three were dismissed. Given that both parties benefited from the paving work that disrupted Smith Street residents and businesses, City agrees to share 50 percent of the cost of the successful claim brought against the ACWD for impacts of the paving on Smith Street.
- 3.2 The full amount of the settled claim is as follows:

Hippies Brew: \$2,112.37 (Settled and paid by ACWD)

#### 4. **DELAY AND NEGOTIATION WITH GARNEY.**

4.1 Garney advised the ACWD that various conditions of the project resulted in delay or consequential impact for which Garney requested extended overhead cost compensation. Garney indicated that some project delay was attributed to the addition of the City's paving work.

4.2 Garney and the ACWD negotiated final costs pertaining to various items of in-scope work, out-of-scope work, differing field conditions, and delay. The completed negotiations resulted in a credit to the District from Garney for work performed on the City's behalf. That credit is reflected in Exhibit C and is deducted from the total amount owed by the City. The negotiations eliminated any delay costs associated with work performed on the City's behalf. No delay costs are passed to the City.

#### 5. **WARRANTY.**

5.1 ACWD's contract with Garney included a one-year warranty period commencing on the date of acceptance of the work by ACWD. However, given that the work performed on behalf of the City has been in service since July 2020 the City agrees that any modifications to or repair of the work executed on Smith Street by the ACWD's contractor at the City's request and for the City's benefit will be the sole responsibility of the City.

#### 6. **REIMBURSEMENT.**

6.1 The City agrees to compensate the ACWD within 45 days of receipt of undisputed invoices from the ACWD.

#### 7. **PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS.**

7.1 The construction of the project was completed in 2021. ACWD complied with all applicable California Labor Code requirements for public works projects for the construction of the project, including but not limited to prevailing wages, licensure with the Contractors State License Board, and registration with the Department of Industrial Relations. ACWD's contract with Garney, for example, included the requirements to be licensed with the Contractors State License Board, to pay prevailing wages, to maintain accurate payroll records, and to be registered with the Department of Industrial Relations.

#### 8. **RESOLUTION OF DISPUTES.** In the event the Parties should disagree regarding implementation of this Agreement, the Parties agree to use the following dispute resolution procedure.

8.1 At least one individual in a senior management position from each party will meet, in person or via commonly available electronic conferencing tools, and attempt to resolve the dispute informally.

- 8.2 If the initial meeting does not resolve the dispute, the City's City Manager and ACWD's General Manager will meet, in person or via commonly available electronic conferencing tools, and attempt to resolve the dispute informally.
- 8.3 If the meeting with the City Manager and General Manager does not resolve the dispute, the matter shall be referred to a mediation with a representative from JAMS (a company providing dispute resolution services) with JAMS' fees to be split equally between the City and ACWD.
- 8.4 If neither the staff meetings nor the meditation results in resolution of the dispute, the Parties shall have the right to exercise any of its remedies available under law.

## 9. **GENERAL PROVISIONS.**

- 9.1 **RELATIONSHIP BETWEEN THE PARTIES.** This Agreement does not create any partnership or agency between the parties.

- 9.1.1 ACWD is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, and contractors, including any negligent acts or omissions. ACWD is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever.
- 9.1.2 City is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, and contractors, including any negligent acts or omissions. City is not ACWD's agent, and shall have no authority to act on behalf of ACWD, or to bind ACWD to any obligation whatsoever.

## 9.2 **AUTHORIZED REPRESENTATIVES.**

- 9.2.1 All ACWD services under this Agreement shall be performed by, or under the direct supervision of, ACWD's Authorized Representative, Rekha Ippagunta, Project Engineering Manager, unless otherwise designated in writing by ACWD's Authorized Representative or the General Manager.
- 9.2.2 All City services under this Agreement shall be performed by, or under the direct supervision of, the City's Authorized Representative, Marilou Ayupan, Public Works Director, unless otherwise designated in writing by the City's Authorized Representative or the City Manager.

## 9.3 **INDEMNIFICATION.**

- 9.3.1 Pursuant to Government Code section 895.4, City shall indemnify, hold harmless, and defend ACWD (including its elected officials, officers, agents and employees) from and against any and all claim (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from the City's negligent acts or omissions in the performance of contract administration under this Agreement.

9.3.2 Pursuant to Government Code section 895.4, ACWD shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from ACWD's negligent performance or failure to perform, under this Agreement.

9.4 **TERM OF THE AGREEMENT.** The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all the obligations of the parties under this Agreement.

9.5 **ACCOUNTING RECORDS.** The parties shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. The parties' accounting records shall include, at a minimum, all documents which support the costs and expenses related to the work performed by ACWD for the sole benefit of the City under this Agreement, including personnel, contractors, invoices and payments, and reimbursable expenses. Each party's accounting records shall be made available to the other party within a reasonable time after request, during normal business hours.

9.6 **NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

**To: City**

Attn: City Manager  
City of Union City  
34009 Alvarado Niles Road  
Union City, CA 94587

**To: ACWD**

Attn: General Manager  
Alameda County Water District  
P.O. Box 5110  
Fremont, CA 94537-5110

9.7 **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

9.8 **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind


related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

- 9.9 **ASSIGNMENT AND DELEGATION.** This Agreement, nor any portion thereof, shall not be assigned or transferred, nor shall any of a Party's duties be delegated, without the written consent of the other Party. Any attempt to assign or delegate this Agreement without the written consent of the other Party shall be void and of no force or effect. A consent by a party to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 9.10 **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 9.11 **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 9.12 **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the matters described herein. This Agreement supersedes all prior negotiations, Agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- 9.13 **EACH PARTY'S ROLE IN DRAFTING THE AGREEMENT.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- 9.14 **COUNTERPART SIGNATURES.** The parties hereto recognize and agree that separate counterpart signature pages may be used but that all such pages constitute one and the same Agreement.
- 9.15 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the ACWD and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



IN WITNESS WHEREOF, the City and ACWD do hereby agree to the full performance of the terms set forth herein.

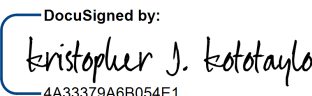
CITY OF UNION CITY

By:   
Joan Malloy

Title: City Manager

Date 1/29/2024

Approved as to form:

By:   
Kristopher J. Kokotaylo

Title: City Attorney

Attested:

By:   
Jennifer Phan

Title: Acting City Clerk

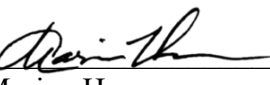
ALAMEDA COUNTY WATER DISTRICT

By:   
Ed Stevenson

Title: General Manager

Date 2/14/2024

Attested:

By:   
Marian Hsu

Title: District Secretary

## EXHIBIT A

### 2021 Letter Agreement Between Alameda County Water ACWD and City of Union City



## DIRECTORS

AZIZ AKBARI  
 JAMES G. GUNTHER  
 JUDY C. HUANG  
 PAUL SETHY  
 JOHN H. WEED

43885 SOUTH GRIMMER BOULEVARD • FREMONT, CALIFORNIA 94538  
 (510) 668-4200 • FAX (510) 770-1793 • www.acwd.org

## MANAGEMENT

ROBERT SHAVER  
 General Manager  
 KURT ARENDS  
 Operations and Maintenance  
 LAURA J. HIDAS  
 Water Resources  
 ED STEVENSON  
 Engineering and Technology Services  
 JONATHAN WUNDERLICH  
 Finance

June 14, 2021

VIA ELECTRONIC MAIL

Ms. Joan Malloy ([joanm@unioncity.org](mailto:joanm@unioncity.org))  
 City Manager  
 City of Union City  
 34009 Alvarado-Niles Road  
 Union City, CA 94587

Dear Ms. Malloy:

Subject: Letter – City of Union City Requested Restoration Work on Smith Street in conjunction with the Alvarado Niles Pipeline Seismic Improvement Project, Job 21192

The Alameda County Water District's (District's) contractor, Garney Construction, Inc. (Garney), is currently nearing completion of the construction of the Alvarado-Niles Pipeline Seismic Improvement Project, Phase 1. The project includes the installation of a 14-inch diameter potable water pipe and appurtenances on Smith Street between the Union Pacific Railroad (UPRR) tracks and Union City Boulevard, among other work. As part of the restoration work on Smith Street associated with the pipeline installation, the District's contract with Garney requires the restoration of the existing street pavement in the vicinity of the trench with a deep asphalt concrete section and a 1.5-inch grind and an 11-foot-wide asphalt overlay. The contract also requires restoration of the stamped asphalt crosswalks in the areas where they were demolished by the trenching operation.

The City of Union City (City) has requested that the District have Garney perform additional asphalt concrete grind and overlay of Smith Street between the UPRR tracks and Union City Boulevard, concurrent with the District's pavement restoration work. It is understood that this work will be performed for the City's benefit as this additional paving work will assist the City in meeting its pavement restoration goals in a cost efficient manner by taking advantage of traffic controls, mobilization and demobilization, and other costs and activities that are already part of the District's project. The Union City City Manager will recommend that the City Council authorize the City Manager to enter into an agreement to reimburse the District for this additional work. The result would include repaving the entire width of the street, rather than only the portions affected by the District's work.

City of Union City

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June 14, 2021

The “City’s Improvement Area” consists of the following:

City’s Improvement Area: that area of Smith Street, starting at the north-south trending, easternmost crosswalk line, or “stop line” at the intersection of Smith Street with Union City Boulevard, and terminating at the pipeline tie-in point, approximately 85 feet west of the centerline of the westernmost UPRR track, from the edge of asphalt pavement on the north side of the street to the edge of asphalt pavement at the south side of the street and additionally, inclusive of and three feet beyond the east-west trending stamped asphalt crosswalks at the intersections of Smith Street with Vallejo Street, Watkins Street, and Fredi Street; at Granger Street, to the stop lines on Granger Street at its intersection with Smith Street; and, excluding the following areas already planned to be restored by the District: an 11-foot wide area centered on the pipeline with the start and termination points at Union City Boulevard and the UPRR track as delineated above; pavement sections approximately three feet wide located outside of the 11-foot wide section and associated with each water line service and each fire hydrant installed on Smith Street; and, pavement sections approximately five feet wide located at the connections of the new pipeline on Smith Street to the existing pipelines on those streets connecting to Smith Street, outside the 11-foot wide section.

The City has requested that the District have Garney perform the following work within the City’s Improvement Area for its benefit:

1. Temporary lowering and, following paving, raising of appurtenances on Smith Street to facilitate grinding of the existing asphalt to a depth of 1.5 inches, including, but not limited to, existing valve pots, monuments, manholes and other improvements that would be damaged by the grinding operations;
2. Installation of false bottoms in manholes;
3. Coordination with Union Sanitary District (USD) in connection with USD’s inspection and evaluation of USD-owned improvements within items 1 and 2 above, and procuring a permit from USD addressing the items in this paragraph;
4. Grinding, offhaul, and legal disposal of existing asphalt concrete to a depth of 1.5 inches;
5. Procurement, delivery, and paving asphalt concrete meeting current City standards of 1.5-inch lift of asphalt concrete;
6. Dig-out, offhaul, and legal disposal of existing asphalt to a depth of six inches, and paving asphalt concrete to a depth of six inches over an area of 800 square feet; and
7. Decorative stamping of asphalt with the same pattern and location as existing decorative crosswalks.

Additionally, the City and District have agreed to share equally the cost associated with the application of TrafficPatternsLT color product to the entirety of the stamped asphalt crosswalks, including areas impacted by the District’s project and areas not impacted by the District’s project. This work would follow the paving work described above. The contractor's proposal for the work requested by and for the benefit of the City is attached as Exhibit A.

City of Union City

Page 3

June 14, 2021

By signing this letter, the City Manager concurs with the aforementioned scope of work that Garney would perform on the City's behalf. The City Manager also agrees to recommend that the City Council authorize the City Manager to execute an agreement on behalf of the City, in a form approved by the City Attorney, for the following:

To reimburse the District up to \$311,762.04 for items 1 through 7 above, including an allowance of up to \$10,000 for items 1 through 3 associated with USD-related work, and the City's portion of shared cost associated with the crosswalk coloring.

To reimburse the District, up to an allowance of 40 percent of the total cost of the work within the City's Improvement Area and on behalf of the City and the City's portion of the shared cost of the crosswalk coloring, for additional costs that may be incurred by Garney should there be a change in the scope of work within the City's Improvement Area and for the benefit of the City. This allowance would also include 50 percent of the cost of asphalt testing on Smith Street (up to an anticipated maximum allowance of \$5,000 allocated to the City of Union City). With the inclusion of the allowance, the City would agree to compensate the District up to \$ 436,466.86 for the aforementioned work.

By:



Joan Malloy  
City Manager  
City of Union City

Date: June 15, 2021

3787702.1

By:



Robert Shaver  
General Manager  
Alameda County Water District

Date: June 15, 2021



324 E. 11<sup>th</sup> St, Suite E2, Tracy, CA 95376  
 Phone: 925-800-1848  
 Fax: 925-292-7216  
 www.garney.com

Date: 06/03/2021

Alameda County Water District  
 43885 South Grimmer Boulevard  
 Fremont, CA 94538

RE: Alvarado-Nile Pipeline Seismic Improvement Project

Subject: Additional Smith Street Overlay Per Request

The following breakdown of costs covers all scope of work and support outside of the original contract scope with respect to completion of full grind and overlay of Smith Street roadway from Union City Blvd heading east to the railroad tracks. The included backup includes grind and overlay, additional stamping work and associated traffic control, striping, lower/raise of iron/monuments and support costs for Garney operations.

The summary sheet indicates all subcontract and Garney performed work while the support is separate and includes markups per project specifications. The subtotals are indicated below:

Garney support - \$4,445.32/day for 7 total days equating to \$ 31,117.24

Subcontract and Garney field work (excluding crosswalk coloring/stamping) - \$ 188,843.50

Subtotal of work requested - \$ 219,960.74 ← **CUC responsibility**

The asphalt impressions scope is attached, but not priced into the cover sheet with the remaining items as it seems certain aspects will be shared by the district and Union City.

From Garney's perspective, the added stamping and coloring costs outside of the contractual trench-line is \$ 126,654.15 bringing the grand total of work requested for the overlay scope to \$ 346,614.89.

Sincerely,

*Clinton Gust*

Clinton Gust  
 Project Manager  
 775-813-7056

**City of Union City's Portion of this proposal**

\$219,960.74 from above

\$10,000.00 Union Sanitary District Allowance

\$36,948.45 City crosswalk stamping from next page

\$44,852.85 City's half of crosswalk color from next page

**\$311,762.04 total CUC portion without allowance**

**Asphalt Impressions Inc.**

8150 37th Avenue, Sacramento, CA 95824-2306

Phone: (916) 383.0441 Fax: (916) 381.3448

Internet: [www.acstamp.com](http://www.acstamp.com) CA License # 900385 A, C12, C32**Job Title & Location:**

Alvarado Niles Pipeline Improvement Project  
 Smith Street  
 Union City CA

**Submitted to:**

Garney Construction  
 Attn: Clinton Gust  
 324 E. 11th St, Suite E2  
 Tracy CA 94605  
 Email: [cgust@garney.com](mailto:cgust@garney.com)

**Union Signatory Contractor**

Contractor's Registration #1000002092

**PROPOSAL#: 20169DBG R2.1****Contact Information:**

Phone#: 925.315.4205 ext.  
 Mobile#: 775.813.7056  
 Additional#:  
 Fax#: 925.800.1846  
 Website:

We have included the following items in our proposed price:

Proposal Date: Jun-03-21

Valid Through: Jul-03-21

Bid Item	Description	Quantity	UM	Unit Price	Total Price
<b>TP 01</b>	<b>Stamp and Apply TrafficPatternsLT to Trench Area</b> - Standard Pattern to match existing. Color to be Terracotta. Product to be TrafficPatterns LT by Ennis-Flint.	732	SF	\$16.50	\$12,078.00
<b>TC for TP 01</b>	<b>Traffic Control for Trench portion</b> - Price includes four traffic controllers; 2 traffic control trucks; FAS (Arrowboard); and traffic control equipment (cones, signs, and barricades). Price excludes traffic control plans, permits, and fees. Customer may choose to provide traffic control with his own forces.	3	Day	\$4,080.00	\$12,240.00
<b>ACWD responsibility</b> <b>Trench SF</b> <b>Total TP 01</b>					<b>\$24,318.00</b>
<b>TP 02</b>	<b>Stamp Remaining Crosswalk Areas</b> - Standard Pattern to match existing. Product to be TrafficPatterns LT by Ennis-Flint.	4,436	SF	\$4.25	\$18,853.00
<b>TC for TP 02</b>	<b>Traffic Control Option</b> - Price includes four traffic controllers; 2 traffic control trucks; FAS (Arrowboard); and traffic control equipment (cones, signs, and barricades). Price excludes traffic control plans, permits, and fees. Customer may choose to provide traffic control with his own forces.	4	Day	\$4,084.00	\$16,336.00
<b>CUC responsibility plus 5% markup = \$36,948.45</b> <b>Total TP 02</b>					<b>\$35,189.00</b>
<b>TP 03</b>	<b>Place and Melt TrafficPatternsLT to Remaining Crosswalk Areas</b> - Color to be Terracotta. Product to be TrafficPatterns LT by Ennis-Flint.	4,436	SF	\$16.50	\$73,194.00
<b>TC for TP 03</b>	<b>Traffic Control Option</b> - Price includes four traffic controllers; 2 traffic control trucks; FAS (Arrowboard); and traffic control equipment (cones, signs, and barricades). Price excludes traffic control plans, permits, and fees. Customer may choose to provide traffic control with his own	3	Day	\$4,080.00	\$12,240.00
<b>Additional stamp and coloring requested</b> <b>half is CUC responsibility plus 5% markup 44,852.85</b> <b>Total TP 03</b>					<b>\$85,434.00</b>
<b>Subtotal \$120,623.00</b> <b>Total with markup \$126,654.15</b>					
<b>Job Total</b>					<b>\$144,941.00</b>

Asphalt Impressions is a certified applicator of Ennis-Flint® TrafficScapes™ Thermoplastics products.

**Specific Conditions Unique To This Proposal:**

- ° Pricing based on performing all items concurrently. Pricing only valid if all TP bid items are awarded.
- ° Customer is to provide proposed schedule or a notice of anticipated month, day and year for commencement of Asphalt Impressions' work. If a schedule or notice is not provided, Asphalt Impressions does not have an obligation to meet project schedule deadlines and will not be subjected to Liquidated damages and/or backcharges. Schedules, notices or changes of expected start date must be issued at minimum eight (8) weeks prior to expected actual start date.
- ° No sealcoat is to be applied at the location of the asphalt enhancements. It will be the customer's responsibility to ensure that no sealcoat is applied within those limits.
- ° For any unit price prevailing agreements that are less than 5,000 Square feet, the following condition applies: Any changes to the scope of work which reduces the quantity greater than 25% will subject the unit price to an increase. Asphalt Impressions will have the rights to increase its unit price or add additional charges.



100% Employee Owned

<b>PROJECT:</b>	Alvarado-Niles Pipeline Seismic Improvement Project	<b>PROJECT NUMBER</b>
<b>OWNER:</b>	Alameda County Water District	21192/1184
<b>CONTRACTOR:</b>	Garney Construction	Pricing Request
<b>PM</b>	Clint Gust	

**SCOPE:** Pavement restoration additional costs. Backup per MCK and AI attached. Pricing includes new tonnage pricing for additional overlay requested, additional days of traffic control to support. Crosswalks to be replaced in full to offset costs in hand work and conform grinding.

Extra Work Tag #	Date Performed	Description of Work Completed	Subcontractor Direct Cost	Subtotal of Field Tag Direct Costs
001	TBD	Additional traffic control for additional day of paving overlay only.	\$ 5,500.00	\$ -
002	TBD	Full mill 1.5" depth - estimated SF	\$ 33,145.20	\$ -
003	TBD	Pricing for additional overlay requested via Union City	\$ 113,850.00	\$ -
004	TBD	Deduct of 1.5" mill and overlay per original contract scope	\$ (39,839.25)	\$ -
005	TBD	Additional striping outside the original scope of work and asphalt replacement sections	\$ 11,865.00	\$ -
006	TBD	Lower and raise utilities outside of normal scope of work	\$ 30,500.00	\$ -
007	TBD	Survey verification prior to and post lower/raise monuments	\$ 7,500.00	\$ -
008	TBD	Loop replacement at Smith St and Union City Blvd.	\$ 6,610.00	\$ -
009	TBD	"Dig out" grind and replacement based on provided areas	\$ 10,720.00	\$ -
			Subtotal of Field Tags	\$ -
			25% on Subtotal ≤ \$16,000	\$ -
			20% Markup After \$16,000	\$ -
			Subcontractor Cost Subtotal	\$ 179,850.95
			Subcontractor 5% Markup	\$ 8,992.55
			Markup Total	\$ 8,992.55
			Grand Total	\$ 188,843.50

Contractor: Garney Construction By CLINT GUST  
 Date: May 28, 2021 CLINT GUST

By \_\_\_\_\_ Date \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

Approved for Payment by  
[OWNER]

Approved for Payment by  
[ENGINEER/CM]



5/27/2021

**PROPOSAL*****MCK Services, Inc.******Asphalt Paving/Resurfacing/Rehabilitation***

P.O. Box 5697  
 Concord, CA 94524  
 PH: 925-957-9200  
 Fax : 925-957-9292  
 Lic# 783116  
 DIR# 1000002375

Job Name Alvarado Niles Rd Pipeline UC  
 Bid Date May 12, 2021  
 Estimator Dave Praklet  
 EXPIRATION DATE **30 Days**

Scope: **1.5" Full Mill and Overlay**

Railroad Tracks to Union City Blvd

Bid Item	Description	UNIT	QTY	UNIT PRICE	LINE TOTAL
1	TC/Partial	LS	1	\$ 5,500.00	\$5,500.00
2	Full Mill 1.5" (Estimate)	SF	73,656	\$ 0.45	\$33,145.20
3	1.5" Overlay - Virgin AC	TN	690	\$ 165.00	\$113,850.00
4	Lower and Raise Utilities Water Valve, Monument boxes	EA	5	\$ 1,000.00	\$5,000.00
5	Lower and Raise Manhole Frame and Cover	EA	17	\$ 1,500.00	\$25,500.00
Ded 1	1.5" Mill Lane width - District Cost (1815' x 11' W)	SF	-19965	\$ 0.45	-\$8,984.25
Ded 2	1.5" AC Cap - District Portion	TN	-187	\$ 165.00	-\$30,855.00
Note:	All decorative crosswalks on Smith St. to be removed as part of this work. Replacement by others.				
	Work must take place at the same timing as the trench restoration. No remob to complete this work				
<b>TOTAL</b>					<b>\$143,155.95</b>

**SPECIAL CONDITIONS:**

1. Based on 1 Move-ins
2. AC price based on rack asphalt oil price at time of bid. For every \$25 increase Asphalt will increase \$2.00 Ton
3. Payment to be made in full within 30 Days
4. Specifications associated with bid items listed above
5. Cutback tapers required for Paving Work
6. Contractor to provide water source and meter.
7. Temporary Floppies and Tape
8. Traffic Control for AC scope only
9. USA of utilities for our scope only.
10. Quantities are estimated. No actual quantities provided. Tonnage based on
11. All Lowering and Raising of utility iron. Tie-off of Utilities located outside of trench scope of work

**EXCLUSIONS:**

1. All Permits and License Fees, Bonds, Insurance Waiver of Subrogation Fees, Resident Notices, As-builts, LCP
2. Specialty Signage, Perminant Signage and Striping, Fog Seal, Prime Coat SC-70, AC Dike, Routing for Crack Sealing
4. Grading and staking, Off-haul of Contaminated Material
5. SWPPP/WPCP, DI protection
6. Water Source and Meter for Equipment.
7. Traffic Control Plan, Bathrooms, CMS boards, Light Tower
9. AC plug at new curb and Gutter
10. Any Sawcutting Required.
11. Night and Weekend Work
12. Police for Traffic Control if required.
13. Towing of Cars
14. AC testing and Inspections. Including QC/QA, QCP, Profilograph and Diamond Grinding
15. AC leveling Course
16. Clear and Grub
17. No Petromat export unless clearly included in MCK proposal.
18. Grinding of concrete gutter pans unless specifically identified and quantified as its own pay item.
19. Replacement or touch up of any decorative crosswalks

Signature Authorizing Work:

Date:

**MCK needs 6 weeks notification prior to mobilization.**



Job Title: Alvarado-Niles Pipeline Project  
Work Performed by: Garney Construction  
Date performed: TBD  
Description of Work: Survey verification prior to and post overlay work for two total monuments in proposed overlay area.

ACWD Job No.: 21192  
Work Modification Order No. Estimate  
Date of Report:  
Labor Surcharge Rate: 10%

ROM Estimate

LABOR								
Emp. No.	Craft	Int	Last Name	Rate (Reg)	Hours	Rate (OT)	OT Hours	Extended Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
Subtotal Labor:								\$ -

EQUIPMENT						
Code	Class	Make	Model	Time	Rate	Amount
Subtotal Equipment:						\$ -

SUBCONTRACTOR/VENDOR SUPPLIED MATERIAL & LABOR						
Vendor/Contractor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
Delta Survey	TBD	TBD	Verification of monuments prior/post overlay	\$ 7,500.00	1	\$ 7,500.00
						\$ -
						\$ -
						\$ -
Subcontractor Subtotal:						\$ 7,500.00

MATERIAL (Lump Sum or Unit Price Payment)						
Vendor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
						\$ -
						\$ -
						\$ -
						\$ -
Subtotal Material:						\$ -

COST SUMMARY W/STD & SUBCONTRACTOR MARKUPS	
Direct Labor Cost Subtotal:	\$0.00
Labor Surcharge:* 10.00%	\$0.00
Direct Equipment / Material Cost Subtotal:	\$0.00
Direct Subcontractor Cost Subtotal:	\$7,500.00
Labor/Equip/Material Costs Subtotal:	\$0.00
Subcontractor Markup 5%	\$375.00
25% Markup if Subtotal ≤ \$16,000:	
20% Markup if Subtotal > \$16,000:	
TOTAL THIS REPORT:	\$7,875.00

Approved for Payment \_\_\_\_\_

Contractor's Authorized Representative      District's Authorized Representative      District Project Manager

\* Check ACWD Contract & DOT Labor Surcharge & Equipment Rental Rates for applicable rates.



Job Title: Alvarado-Niles Pipeline Project  
Work Performed by: Garney Construction  
Date performed: TBD  
Description of Work: Replace 8 loops at Smith and Union City Blvd.

ACWD Job No.: 21192  
Work Modification Order No. ROM Estimate  
Date of Report:  
Labor Surcharge Rate: 10%

ROM Estimate

LABOR								
Emp. No.	Craft	Int	Last Name	Rate (Reg)	Hours	Rate (OT)	OT Hours	Extended Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
Subtotal Labor:								\$ -

EQUIPMENT						
Code	Class	Make	Model	Time	Rate	Amount
Subtotal Equipment:						\$ -

SUBCONTRACTOR/VENDOR SUPPLIED MATERIAL & LABOR						
Vendor/Contractor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
St. Francis	TBD	TBD	8 Loops with mobilization	\$ 6,610.00	1	\$ 6,610.00
						\$ -
						\$ -
						\$ -
Subcontractor Subtotal:						\$ 6,610.00

MATERIAL (Lump Sum or Unit Price Payment)						
Vendor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
						\$ -
						\$ -
						\$ -
						\$ -
Subtotal Material:						\$ -

COST SUMMARY W/STD & SUBCONTRACTOR MARKUPS	
Direct Labor Cost Subtotal:	\$0.00
Labor Surcharge:* 10.00%	\$0.00
Direct Equipment / Material Cost Subtotal:	\$0.00
Direct Subcontractor Cost Subtotal:	\$6,610.00
Labor/Equip/Material Costs Subtotal:	\$0.00
Subcontractor Markup 5%	\$330.50
25% Markup if Subtotal ≤ \$16,000:	
20% Markup if Subtotal > \$16,000:	
TOTAL THIS REPORT:	\$6,940.50

Approved for Payment \_\_\_\_\_

Contractor's Authorized Representative      District's Authorized Representative      District Project Manager

\* Check ACWD Contract & DOT Labor Surcharge & Equipment Rental Rates for applicable rates.



Job Title: Alvarado-Niles Pipeline Project  
Work Performed by: Garney Construction  
Date performed: TBD  
Description of Work: MCK to grind out and replace "dig-out" sections per areas provided by Union City.

ACWD Job No.: 21192  
Work Modification Order No. TBD  
Date of Report:  
Labor Surcharge Rate: 10%

ROM Estimate

LABOR								
Emp. No.	Craft	Int	Last Name	Rate (Reg)	Hours	Rate (OT)	OT Hours	Extended Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
Subtotal Labor:								\$ -

EQUIPMENT						
Code	Class	Make	Model	Time	Rate	Amount
Subtotal Equipment:						\$ -

SUBCONTRACTOR/VENDOR SUPPLIED MATERIAL & LABOR						
Vendor/Contractor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
MCK	TBD	TBD	Approximate dig-out SF provided by Union City	\$ 13.40	800	\$ 10,720.00
						\$ -
						\$ -
						\$ -
Subcontractor Subtotal:						\$ 10,720.00

MATERIAL (Lump Sum or Unit Price Payment)						
Vendor	Invoice #	Date	Description	Unit Cost	Units	Total Cost
						\$ -
						\$ -
						\$ -
						\$ -
Subtotal Material:						\$ -

COST SUMMARY W/STD & SUBCONTRACTOR MARKUPS	
Direct Labor Cost Subtotal:	\$0.00
Labor Surcharge:* 10.00%	\$0.00
Direct Equipment / Material Cost Subtotal:	\$0.00
Direct Subcontractor Cost Subtotal:	\$10,720.00
Labor/Equip/Material Costs Subtotal:	\$0.00
Subcontractor Markup 5%	\$536.00
25% Markup if Subtotal ≤ \$16,000:	
20% Markup if Subtotal > \$16,000:	
TOTAL THIS REPORT:	\$11,256.00

Approved for Payment \_\_\_\_\_

Contractor's Authorized Representative      District's Authorized Representative      District Project Manager

\* Check ACWD Contract & DOT Labor Surcharge & Equipment Rental Rates for applicable rates.

6/3/2021

**PROPOSAL*****MCK Services, Inc.******Asphalt Paving/Resurfacing/Rehabilitation***

P.O. Box 5697  
 Concord, CA 94524  
 PH: 925-957-9200  
 Fax : 925-957-9292  
 Lic# 783116  
 DIR# 1000002375

Job Name Alvarado Niles Rd Pipeline UC  
 PCO June 3, 2021  
 Estimator Dave Praklet  
**EXPIRATION DATE 30 Days**  
**Attn: ESTIMATING**

Bid Item	Description	UNIT	QTY	UNIT PRICE	LINE TOTAL
A33	Base Repairs approx 6" deep or down to concrete base	SF	800	\$ 13.40	\$10,720.00
<b>TOTAL</b>					<b>\$10,720.00</b>

**SPECIAL CONDITIONS:**

1. Based on 1 Move-ins
2. AC price based on rack asphalt oil price at time of bid. For every \$25 increase Asphalt will increase \$2.00 Ton
3. Payment to be made in full within 30 Days
4. Specifications associated with bid items listed above
5. Cutback tapers required for Paving Work
6. Contractor to provide water source and meter.
7. Temporary Floppies and Tape
8. Traffic Control for AC scope only
9. USA of utilities for our scope only.

**EXCLUSIONS:**

1. All Permits and License Fees, Bonds, Insurance Waiver of Subrogation Fees, Resident Notices, As-builts, LCP
2. Specialty Signage, Perminant Signage and Striping, Fog Seal, Prime Coat SC-70, AC Dike, Routing for Crack Sealing
3. All Lowering and Raising of utility iron. Tie-off of Utilities
4. Grading and staking, Off-haul of Contaminated Material
5. SWPPP/WPCP, DI protection
6. Water Source and Meter for Equipment.
7. Traffic Control Plan, Bathrooms, CMS boards, Light Tower
8. Striping or Marker Removal. Temporary Paint Striping
9. AC plug at new curb and Gutter
10. Any Sawcutting Required.
11. Night and Weekend Work
12. Police for Traffic Control if required.
13. Towing of Cars
14. AC testing and Inspections. Including QC/QA, QCP, Profilograph and Diamond Grinding
15. AC leveling Course
16. Clear and Grub
17. No Petromat export unless clearly included in MCK proposal.
18. Grinding of concrete gutter pans unless specifically identified and quantified as its own pay item.

Signature Authorizing Work:

Date:

**MCK needs 6 weeks notification prior to mobilization.**



Lic# 1003811

CA DIR # 1000022208 Exp. 6-30-20

Bond Rate 1%

**DATE**  
1/23/2020

Alameda County Water District Alvarado Niles Pipeline Seismic Improvements Project 21192

Item	Description	Unit	Qty.	Price	Total
A39	Traffic Detector Loops	EA	15	\$ 595.00	\$ 8,925.00

SCOPE OF WORK	
YES	NO
	<b>x</b>
	<b>Addendum</b>
<b>x</b>	layout Loop Detectors With Inspector
	<b>x</b>
	*****SFE Layout lane lines,Stop Bar,Cat Tracking*****
<b>x</b>	***\$1850.00 Re-Mob Charge if lane Lines/ Stop Bar Not Laid out Day of Scheduled Work Date ***
<b>x</b>	**** lane lines,Stop Bar,Cat Tracking Must be <b>Laid Out By Others Prior to Scheduled Start Date</b> ****
	<b>x</b>
	Survey,Post No Parking Signs, Traffic Control Plans, Police Officers for Traffic Control
	<b>x</b>
	Attenuator Truck, Portable Changeable Message Signs, SWPPP or WPCP Plan
	<b>x</b>
	Testing and Inspection Fees / Railroad Permits and Bond Fees / Railroad Flaggers
	<b>x</b>
	<b>Permit and bond Fees</b>
<b>x</b>	<b>No Retention</b>
<b>x</b>	<b>Day Work</b>
<b>x</b>	<b>General Gives 3 Weeks Advance Notice for Scheduling SFE Work</b>
	<b>x</b>
	General to Provide SFE Day of Traffic Control
<b>x</b>	SFE Traffic Control ( Our Work )
<b>x</b>	Off Haul Spoils
<b>x</b>	Saw Cut Detector Loops
<b>x</b>	<b>Install Loop Wire and Splice to Existing Labeled DLC Cabled</b>
<b>x</b>	Type 1or 2 Wire Only / Hot Rubber Or Asphaltic Emulsion Only
<b>x</b>	<b>Loops Not Visable Cut During The Repairs Are Not SFE Fault &amp; will Replace At unit Price</b>
	<b>x</b>
	ID Existing DLC Cables For Splicing in Loops
	<b>x</b>
	Installation of Piezo Axcel Sensors
	<b>x</b>
	Expoxy Loop Filler / Elastomeric Loop Sealer
	<b>x</b>
	Removal of Any Asphalt or Cold Patch From Conform Areas for Loop Installation
	<b>x</b>
	Concrete or Asphalt Replacement
	<b>x</b>
	New Pull box Installation
	<b>x</b>
	New Conduit
	<b>x</b>
	New DLC Cable Installed & Termination
	<b>x</b>
	New Detector Hand Hole (DH)

[javila@sfe-inc.com](mailto:javila@sfe-inc.com)

If you have any questions call Jesus Avila @ 510-750-8283  
975 Carden St San Leandro Ca. 94577  
Fax 510-639-4653

**GENERAL CONDITIONS**

Project: 1184 - Alavarado-Niles Seismic Improvement Project

Days	Description			Unit Cost	Amount	Subtotal
<b><u>Project Personnel:</u></b>						
1	Project Manager - Clint Gust	Daily	100%	\$701.23	\$701.23	
0.25	General Superintendent - Greg Lutes	Daily	100%	\$1,025.38	\$256.35	
1	Project Engineer - Melinda Ray	Daily	100%	\$449.84	\$449.84	
1	<u>Superintendent - Brian Thompson</u>	<u>Daily</u>	<u>100%</u>	<u>\$793.85</u>	<u>\$793.85</u>	
Subtotal Project Personnel:						<b>\$2,201.27</b>
						Surcharge 10% <b>\$220.13</b>
						Total W/LS <b>\$2,421.39</b>
						Total <b>\$2,421.39</b>
<b><u>Trucks/Vehicles</u></b>						
1	Project Manager	Daily	100%	\$52.50	\$25.00	\$77.50
0.25	General Superintendent	Daily	100%	\$63.00	\$40.00	\$55.75
1	Superintendent	Daily	100%	\$63.00	\$40.00	\$103.00
1	Project Engineer	Daily	100%	\$40.00	\$25.00	\$65.00
Subtotal Trucks/Vehicles						<b>\$301.25</b>
						Total <b>\$301.25</b>
<b><u>Project Administration</u></b>						
0	Lodging - Project Manager	Daily	100%	\$71.43	\$0.00	
Subtotal Project Administration						<b>\$0.00</b>
						Total <b>\$0.00</b>
<b><u>Temporary Utilities</u></b>						
1	Electrical - PG&E	Daily	100%	\$5.29	\$5.29	
1	United Site Services	Daily	100%	\$2.89	\$2.89	
Subtotal Temporary Utilities						<b>\$8.18</b>
						Total <b>\$8.18</b>
<b><u>Temporary Field Office &amp; Equipment</u></b>						
1	Field Office Trailer - Garney	Daily	100%	\$33.60	\$33.60	
0	Temp Office Copier	Daily	100%	\$0.00	\$0.00	
2	Temp Toilet & Hand Wash	Daily	100%	\$12.55	\$25.11	
2	Rock Entrance Plates	Daily	100%	\$15.47	\$30.93	
3	Connex Boxes - EA	Daily	100%	\$6.42	\$19.27	
1	<u>Temporary Fence Rental</u>	<u>Daily</u>	<u>100%</u>	<u>\$13.65</u>	<u>\$13.65</u>	
2	<u>Fuel Storage Tank</u>	<u>Daily</u>	<u>100%</u>	<u>\$5.73</u>	<u>\$11.47</u>	
1	<u>Smith and Dowe Street Construction Yards</u>	<u>Daily</u>	<u>100%</u>	<u>\$309.33</u>	<u>\$309.33</u>	
Subtotal Field Office & Equipment						<b>\$443.37</b>
						Total <b>\$443.37</b>
<b><u>Other</u></b>						
1	10 Yard Dumpster	Daily	100%	\$38.32	\$38.32	
Subtotal Other						<b>\$38.32</b>
						Total <b>\$38.32</b>
Total General Conditions Per Day						<b>\$3,212.51</b>
Bonds & Insurance @ 2.5%						<b>\$80.31</b>
TOTAL DAILY						<b>\$3,292.83</b>
Subtotal						<b><u>1 Days Total</u></b>
						<b>\$3,292.83</b>
Markup						\$ 823.21
						\$ -
Additional 10% Allowance for Consumables						\$ 329.28
Grand Total						\$ 4,445.32

## EXHIBIT B

### City Restoration Area





\*The area excluded from the City Improvement Area is generally described as follows:  
grind and overlay along the pipeline alignment, to a width of approximately 11 feet,  
and grind and overlay with a width with a likely minimum of three feet at at lateral  
connections at cross streets, services, air valve piping, and fire hydrant laterals

LEGEND

—

ALIGNMENT

—

SERVICE LATERAL

—

FIRE HYDRANT LATERAL

—

AIR VALVE

—

SERVICE CONNECTION

City's Improvement Area  
Alvarado Niles Pipeline Seismic Improvement Project  
Job 21192

No Scale

## EXHIBIT C

### Costs Associated with Components of Work

City of Union City Agreement with ACWD for Smith Street Paving Exhibit C						
Agreement Paragraph	Component of Work	Cost Breakdown	June 14, 2021 Letter Agreement Total	Actual Cost Expended by Garney Cost Breakdown	Actual Cost Expended by Garney Total	Negotiated Payment by ACWD
2.1.5	<b>Garney Support of Work on City Behalf</b> Garney Support of work on City Behalf	\$31,117.24		\$31,117.24		
			<b>\$31,117.24</b>		<b>\$31,117.24</b>	<b>\$31,117.24</b>
	<b>Subcontract and Garney Field Work</b>					
2.1.5	Additional traffic control	\$5,775.00		\$5,775.00		
2.1.1	Lower and raising appurtenances	\$32,025.00		\$32,550.00		
2.1.1	Survey for lower and raise appurtenance	\$7,875.00		\$7,875.00		
2.1.3	Asphalt 1.5-inch grind and overlay	\$112,513.75		\$144,341.51		
2.1.3	Striping in City work area	\$12,458.25		\$13,718.25		
2.5.2	Deep lift asphalt dig-out	\$11,256.00		\$0.00		
2.5.1	Traffic Loop Replacement	\$6,940.50		\$0.00		
			<b>\$188,843.50</b>		<b>\$204,259.76</b>	<b>\$170,647.00</b>
	<b>USD Coordination and Permit</b>					
2.1.2	USD Coordination and permit	\$10,000.00		\$7,055.00		
			<b>\$10,000.00</b>		<b>\$7,055.00</b>	<b>\$7,055.00</b>
	<b>City Crosswalk Stamping</b>					
2.1.4	Stamp Crosswalk	\$36,948.45		\$36,948.45		
			<b>\$36,948.45</b>		<b>\$36,948.45</b>	<b>\$36,948.45</b>
	<b>City Half of Crosswalk Color</b>					
2.2.1	City portion TrafficPatternsLT color	\$44,852.85		\$44,852.85		
			<b>\$44,852.85</b>		<b>\$44,852.85</b>	<b>\$44,852.85</b>
	<b>Total</b>	<b>\$311,762.04</b>	<b>\$311,762.04</b>	<b>\$324,233.30</b>	<b>\$324,233.30</b>	<b>\$290,620.54</b>
				<b>Total Cost of City of UC Work</b>	<b>\$324,233.30</b>	
				<b>Negotiated Cost of City of UC Work</b>		<b>\$290,620.54</b>
				<b>50% of Settled Claims</b>		<b>\$1,056.19</b>
				<b>Total Cost to City</b>		<b>\$291,676.73</b>



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** JOAN MALLOY, CITY MANAGER

**SUBJECT:** ADOPT A RESOLUTION AUTHORIZING A LEGAL SERVICES AGREEMENT WITH REDWOOD PUBLIC LAW LLP FOR KRISTOPHER KOKOTAYLO TO CONTINUE SERVING AS CITY ATTORNEY

Kristopher Kokotaylo has served as City Attorney since 2017 through a legal services agreement with the law firm Meyers Nave and has been providing legal services to Union City since 2013. The City Attorney and City Manager are the two positions in the City that are directly hired by the City Council. Mr. Kokotaylo is transitioning to a new law firm, Redwood Public Law LLP, and the City Council has now expressed a desire for Mr. Kokotaylo to continue serving as City Attorney. A new legal services agreement with Redwood Public Law has been prepared and reviewed by outside counsel. The agreement contains the same existing rates as those that exist with Meyers Nave and there will thus be no fiscal impact as a result of this agreement. Additionally, other substantive provisions are unchanged between agreements. Staff recommends that the City Council adopt a Resolution authorizing a legal services agreement with Redwood Public Law LLP for Kristopher Kokotaylo to continue serving as City Attorney.

### **STRATEGIC PLAN ALIGNMENT**

The proposed action is not directly related to the Strategic Plan.

### **BACKGROUND**

In July 2013, Mr. Kokotaylo began working with Union City with Benjamin Reyes, the City Attorney at the time, through the City's contract with Meyers Nave. Shortly thereafter, Mr. Kokotaylo was appointed Deputy City Attorney by the City Council. On March 22, 2017, Governor Brown appointed Benjamin Reyes as Judge of the Superior Court for the State of California where he currently serves in Contra Costa County.

The City Council appointed Mr. Kokotaylo as City Attorney following Judge Reyes' appointment and has served in that role since then through the City's legal services agreement with Meyers Nave. He has thus been providing legal services to Union City for over a decade. Mr. Kokotaylo informed the City of his transition

from Meyers Nave to Redwood Public Law in early February.

## **DISCUSSION**

The City Council met in closed session on February 13, 2024 to discuss Mr. Kokotaylo’s transition. At the conclusion of the meeting, the City Council expressed a desire for Mr. Kokotaylo to continue serving as City Attorney through an agreement with Redwood Public Law. Redwood Public Law is a law firm that is focused on public agency representation and will include, in addition to Mr. Kokotaylo, a number of other attorneys that serve as city attorney for cities throughout the Bay Area and beyond. Alex Mog, Union City’s current Deputy City Attorney, will be joining Redwood Public Law as well.

Mr. Kokotaylo is an experienced attorney who has provided legal services to the City for nearly 11 years. Over that period of time, Mr. Kokotaylo has consistently provided excellent and timely legal services to the City, managing the full range of legal issues the City faces. As the City Council reported out following Mr. Kokotaylo’s most recent closed session performance evaluation on August 8, 2023, the City Council unanimously provided Mr. Kokotaylo with an “outstanding” review.

A legal services agreement was prepared and has been reviewed by special outside counsel, the Law Office of Jennifer E. Faught. The legal services agreement with Redwood Public Law provides the same substantive terms as the City’s agreement with Meyers Nave, thus there will be no fiscal impact. Because Mr. Kokotaylo is directly appointed by and serves at the pleasure of the City Council, the agreement with Redwood Public Law remains in effect until terminated by the City Council.

## **FISCAL IMPACT**

There are no direct fiscal impacts as a result of the City approving the proposed agreement as the rates for legal services are unchanged.

## **RECOMMENDATION**

Consistent with City Council direction, staff recommends that the City Council adopt the proposed resolution authorizing a legal services agreement with Redwood Public Law LLP for Kristopher Kokotaylo to continue serving as City Attorney.

### **Prepared by:**

Jennifer Faught, Outside Counsel

### **Submitted by:**

Joan Malloy, City Manager

## **ATTACHMENTS:**

Description	Type
❑ Resolution - Redwood Public Law	Resolution
❑ Exhibit A - Redwood Public Law Contract	Exhibit

**RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
UNION CITY AUTHORIZING A LEGAL SERVICES  
AGREEMENT WITH REDWOOD PUBLIC LAW LLP FOR  
KRISTOPHER J. KOKOTAYLO TO CONTINUE SERVING  
AS CITY ATTORNEY**

**WHEREAS**, the City Council of the City of Union City appointed Kristopher J. Kokotaylo as City Attorney on September 26, 2017; and

**WHEREAS**, Mr. Kokotaylo has been providing legal services to the City of Union City for over a decade through the law firm of Meyers Nave; and

**WHEREAS**, Mr. Kokotaylo is leaving Meyers Nave to join Redwood Public Law LLP effective at the end of business on March 14, 2024; and

**WHEREAS**, Mr. Kokotaylo possesses the education, qualifications, and experience necessary to serve as City Attorney, and during his most recent performance evaluation on August 8, 2023, the City Council unanimously provided Mr. Kokotaylo with an “outstanding” review; and

**WHEREAS**, the City Council desires to have Mr. Kokotaylo continue serving as City Attorney through an agreement with Redwood Public Law LLP; and

**WHEREAS**, Kristopher J. Kokotaylo has previously taken the oath of office.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Union City hereby authorizes the Mayor to execute an agreement with Redwood Public Law LLP, effective March 15, 2024, and in a form approved by outside counsel, Jennifer Faught, for Kristopher Kokotaylo to continue serving as City Attorney and provide other legal services as necessary, attached as Exhibit A.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

---

CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

---

THAI NAM N. PHAM  
City Clerk

---

KRISTOPHER J. KOKOTAYLO  
City Attorney

## AGREEMENT FOR LEGAL SERVICES BETWEEN

THE CITY OF UNION CITY AND

REDWOOD PUBLIC LAW, LLP

This is an Agreement for Legal Services entered into this 15th day of March, 2024 by and between the CITY OF UNION CITY hereinafter collectively referred to as "CITY" and REDWOOD PUBLIC LAW, a Limited Liability Partnership, hereinafter referred to as "ATTORNEYS."

1. Legal Service to be Provided: CITY hires ATTORNEYS to provide legal services as counsel to the CITY. As requested by the CITY, such duties shall include preparation and review of ordinances contracts, leases, resolutions and other documents of legal import; attendance at all City Council and staff meetings; rendition of legal opinions and advice on matters of City business; representation in litigation to which the CITY is a party; and such other duties or services generally performed by a general counsel and necessary to assist the CITY in achieving its goals in a sound legal manner.

2. Appointment of City Attorney. CITY, by and through its City Council, does hereby continue the appointment of Kristopher J. Kokotaylo as City Attorney of the City of Union City. Mr. Kokotaylo will serve as the primary resource for the CITY and will either provide or coordinate and supervise the provision of all legal services.

3. Legal Fees.

A. There will be a distinction for services between Routine Municipal Legal Services, Non-Routine Municipal Legal Services, and Cost Recovery Matters and an hourly rate or range of rates is established for each which is provided for in Exhibit A to this Agreement, which shall be annually adjusted by 3% or the Bay Area CPI, whichever is less.

B. "Routine Municipal Legal Services" will be defined as including but not limited to:

1. Attendance at all City Council and Planning Commission regular and special meetings, as requested;
2. receive and respond to inquiries from councilmembers;
3. attendance at staff meetings, as requested;
4. preparation of a report of pending legal actions as part of the annual audit;
5. providing advice and consultation regarding routine personnel matters and labor relations matters;
6. preparation and/or review of agendas;



7. preparation and/or review of routine ordinances, resolutions, staff reports, agreements, public notices, leases, and certificates;
8. meet regularly with the City Manager to keep abreast of City developments/issues;
9. review of correspondence to City and City Attorney, and preparation of responses as appropriate;
10. attend to daily email and phone communications with staff; attention to routine conflict of interest and Brown Act issues; assist with routine Public Records Act requests;
11. review of routine correspondence; review of new legislation and court decisions affecting the City;
12. assisting with Candidate Orientation or New Councilmember's Orientation.

C. "Routine Municipal Legal Services" will refer to those matters that can be completed in less than two (2) hours' time and that are unrelated to an existing or developing matter that falls under "Non-Routine Municipal Legal Services" set forth in "D", below.

D. "Non-Routine Municipal Legal Services" will be defined as including but not limited to:

1. preparation, prosecution and defense of litigation, including the representation of City officials and employees, as appropriate and necessary;
2. representation at administrative and regulatory hearings;
3. CEQA and other environmental analyses;
4. public property acquisition and disposal (including eminent domain proceedings);
5. attention to other property matters of a "non-routine" nature;
6. advice regarding specialized employment issues, personnel disciplinary matters;
7. non-routine land use and development projects and entitlements;
8. redevelopment matters; affordable housing matters;
9. construction disputes;

10. annexations or municipal financing matters; non-routine Code Enforcement matters;
11. re-codification or ordinances or development of new ordinances or legislative drafting requiring more than "routine" legal research;
12. opinion letters or memos that require more than "routine" legal research; all cost-recovery matters;
13. Public Finance (bond counsel and disclosure counsel);
14. appellate counsel services.

E. "Cost Recovery Matters" will be those where the CITY can pass costs on to third parties or to sources other than general fund revenue, such as development agreements; assessments, taxes and other financing mechanisms; and, similar matters.

4. Costs and Expenses. In addition to payment of legal fees, CITY shall reimburse ATTORNEYS for all reasonable costs incurred in the course of providing legal services to CITY. Such costs include all third-party expenses, such as duplicating, delivery charges, computerized legal research, postage charges, travel expenses and court costs. Costs for third-party expenses under \$100 will be paid by ATTORNEYS and reimbursed by the CITY. Costs for third-party expenses that exceed \$100 will be paid by CITY.

ATTORNEYS will not charge travel time for attending regularly scheduled meetings in the City or office hours. ATTORNEYS will charge travel time for attending meetings for "cost recovery" work, for meetings outside the City, and for non-regular (special) meetings.

5. Statements. ATTORNEYS shall bill the CITY monthly on or about the first (1st) of the month for fees and costs incurred. Services shall be separately stated as to time, date and particular services rendered. ATTORNEYS will provide CITY's City Manager with such additional information as deemed necessary on an on-going basis to provide CITY with current information regarding current legal costs and anticipated legal costs for the remainder of the fiscal year.

CITY shall pay ATTORNEYS' statement within thirty days of rendition.

6. Discharge and Withdrawal. CITY may discharge ATTORNEYS at any time. ATTORNEYS may withdraw with CITY'S consent or in the absence of such consent at any time following thirty days' prior written notice.

7. No Guarantee. ATTORNEYS agree to provide conscientious, competent and diligent services and at all times will seek to achieve solutions which are just and reasonable. However, because of the uncertainty of legal proceedings, the interpretation and changes in the law and many unknown factors, ATTORNEYS cannot and do not warrant, predict or guarantee results or the final outcome of any case or matter.

8. Assignment of Agreement. ATTORNEYS shall not assign or transfer any interest in, nor delegate any duties thereof in this Agreement, without the prior express written consent of the City.

9. Independent Contractor. ATTORNEYS hereby declare that they are engaged in an independent business and agree to perform said services as an independent contractor and not as the agent, servant or employee of the CITY. ATTORNEYS agree to be solely responsible for their own matters relating to payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. ATTORNEYS agree to be solely responsible for their own acts and those of their subordinates and employees during the life of this Agreement. ATTORNEYS hereby waive all entitlements under the Public Employees Retirement System, which may accrue pursuant to retirement statutes as a function of this contractual relationship with the CITY.

10. Conflicts of Interest. ATTORNEYS covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder.

11. Nondiscrimination. ATTORNEYS warrant that they are an Equal Opportunity Employer and shall comply with the applicable regulations governing equal opportunity employment. ATTORNEYS shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

12. Indemnification. ATTORNEYS shall indemnify, defend, and hold harmless CITY, its officers, employees, agents, and volunteers harmless from and arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of ATTORNEYS, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the sole negligence or willful misconduct of the CITY, its officers, employees, agents or volunteers. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve ATTORNEYS from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

13. Licenses. ATTORNEYS shall be responsible for any licenses required to perform services under this Agreement.

14. Professional Insurance. During the terms of this Agreement, ATTORNEYS shall take out and maintain general liability and property damage insurance in the amount of at least \$2,000,000 per occurrence, \$4,000,000 aggregate; professional errors and omissions insurance, in

an amount of at least \$2,000,000 per occurrence or claim, \$4,000,000 aggregate; Workers Compensation and Employer's Liability Insurance in an amount of at least \$1,000,000 per accident; and Auto Liability Insurance in an amount of at least \$1,000,000 combined single limit per accident for bodily injury and property damage, which insurance may not be canceled or reduced in required limits of liability unless at least thirty (30) days in advance written notice be given to CITY.

15. Conflicts. ATTORNEYS' practice involves the representation of many public agencies in the State of California of all types. It is not uncommon for public agencies to have strong views of matters of public policy that diverge from one another.

ATTORNEYS perform a variety of professional services for its clients, and it is possible that ATTORNEYS will represent public agency clients that are adverse to CITY on other, unrelated matters or that ATTORNEYS will represent a client that has views on public policy or legal matters that differ from CITY's views on those policies or matters. CITY expressly agrees that it expressly waives any actual or potential conflicts that might arise from such future representations, that it will not attempt to disqualify ATTORNEYS on such matters, and that ATTORNEYS are free to represent its clients on such matters.

By executing this Agreement, CITY acknowledges that ATTORNEYS and CITY have discussed these matters and that CITY confirms that it does not object to ATTORNEYS' representation of clients on matters where those client's legal, governmental or political objectives and/or positions may be different from or adverse to those of CITY, and that CITY waives any conflict of interests with respect to ATTORNEYS' representation of such clients with differing legal, governmental or political interests. CITY further confirms that it will not assert any conflict of interest concerning such representations or attempt to disqualify ATTORNEYS from representing such clients notwithstanding such adversity.

CITY agrees that, while it may terminate its attorney-client relationship with ATTORNEYS, ATTORNEYS would be free to represent such clients even on those matters that CITY considers adverse to CITY, and that it waives any conflict of interest in connection therewith.

Of course, CITY's acknowledgments and consents above do not permit ATTORNEYS to represent another client in the same matter in which it is adverse to CITY and do not permit ATTORNEYS to represent another client if there would be a significant risk that ATTORNEYS' representation of CITY would be materially limited by the representation of the other client. Any such representation would require ATTORNEYS to obtain the informed written consent of CITY and the other client.

16. Conclusion of Services. When ATTORNEYS' services conclude, all unpaid charges shall become immediately due and payable. After ATTORNEYS' services conclude ATTORNEYS will, upon CITY'S request, deliver CITY's file to CITY, along with any CITY funds or property in ATTORNEYS' possession.

17. Effective Date. The Agreement shall be effective as of the date stated above.

18. Applicable Law and Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs or other costs as may be fixed by the court.

REDWOOD PUBLIC LAW, LLP

Date: \_\_\_\_\_

By: \_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO

CITY OF UNION CITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CAROL DUTRA-VERNACI, MAYOR

**EXHIBIT A**  
**REDWOOD PUBLIC LAW, LLP**  
**RATE SHEET**

	<b>ROUTINE RATES</b>	<b>NON-ROUTINE RATES</b>	<b>COST RECOVERY RATES</b>
Principals	\$312 - \$317	\$350 - \$437	\$399 - \$541
Of Counsel	\$284 - \$317	\$306 - \$399	\$372 - \$453
Associates	\$262 - \$306	\$284 - \$317	\$317 - \$426
Paralegal	\$175	\$185	\$218



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

**SUBJECT:** ADOPT A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE MANAGEMENT EMPLOYEE GROUP (MEG) TO ALLOW FOR A PILOT PROGRAM ON ALTERNATIVE WORK SCHEDULES (AWS)

Staff recommends that the City Council adopt a resolution approving and authorizing the City manager to execute a side letter agreement between the City and Management Employee Group (MEG) regarding the Alternative Work Schedule (AWS) Pilot Program.

### **STRATEGIC PLAN ALIGNMENT**

This program supports Goal B. Governance and Organization Effectiveness of the strategic plan in aligning critical city services with current staffing levels.

### **BACKGROUND**

As part of a review of a MEG initiated request to consider AWS options, the City and MEG met to discuss the staffing impacts, programs and services, operational needs and employee considerations, in order to reach a side letter agreement to engage in a Pilot Program for alternative work schedules that will allow members to work a reduced work schedule, at a reduced compensation, on a temporary basis.

### **DISCUSSION**

The proposed side letter would allow the City and MEG to respond to specific and unique circumstances for represented members to have the flexibility to reduce their workload and work schedule at a lower salary step on a temporary basis. This pilot program would be reevaluated at the six month period.

## **FISCAL IMPACT**

There is no fiscal impact for the changes being proposed.

## **RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution to authorize the City Manager to execute a side letter agreement with the Management Employee Group (MEG) to allow for a Pilot Program on Alternative Work Schedules (AWS).

### **Prepared by:**

Jason Castleberry, Human Resources Director

### **Submitted by:**

Jason Castleberry, Human Resources Director

## **ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Draft Resolution - UC and MEG Side Letter	Resolution
<input type="checkbox"/> MEG Side Letter Agreement	Attachment



**RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE MANAGEMENT EMPLOYEE GROUP (MEG) TO ALLOW FOR A PILOT PROGRAM ON ALTERNATIVE WORK SCHEDULES (AWS)**

**WHEREAS**, the City has undertaken an inquiry and recommends that the City Council approve the side letter agreement between the City and MEG; and

**WHEREAS**, City staff have undertaken an analysis of necessary considerations to effectuate Alternative Work Schedules (AWS) as a pilot program, to be re-evaluated at a six-month period; and

**WHEREAS**, the City Council has identified in the Strategic Plan Goal B, Governance and Organization Effectiveness, to align critical city services with current staffing levels by ensuring the staffing structures are appropriate to provide programs and services uninterrupted; and

**WHEREAS**, the City Manager or her designee has met and conferred in good faith with the representatives of all bargaining units related to the above matters.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby approves and authorizes the City Manager to execute the proposed side letter agreement between the City and MEG for the Alternative Work Schedule (AWS) Pilot Program, attached hereto and incorporated by reference, and to take such further actions as may be necessary to implement the intent of this Resolution.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

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THAI NAM N. PHAM  
City Clerk

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KRISTOPHER J. KOKOTAYLO  
City Attorney

**Side Letter to the Memorandum  
of Understanding Between  
The City of Union City  
and  
Management Employees Group (MEG)**

The City of Union City ("City") and Management Employees Group ("MEG") (collectively the "Parties") enter into this side letter to the Parties' Memorandum of Understanding ("MOU") effective February 27, 2024, to affirm the parties intent to adopt a Pilot Program for alternative work schedules ("AWS") for represented positions as determined as operationally feasible and mutually beneficial to the parties.

WHEREAS, the City and MEG desire and agree to adopt for a Pilot Program for AWS's; and

WHEREAS the Parties wish to enter into a side letter clarifying and memorializing the Parties' agreement for a Pilot Program.

NOW, THEREFORE the Parties agree to adopt language regarding AWS's, to include the below language, effective February 27, 2024, through September 1, 2024.

The general expectation is that employees within this unit will work regular full-time schedules, but under limited circumstances, within the complete discretion of the City, an employee may receive approval to work an AWS. This program is being implemented on a pilot basis, so that both parties can evaluate the effectiveness in advance of upcoming labor negotiations. Placement on an AWS is a privilege, not a right. Employees within this unit may submit a request for an alternative work schedule to their Department Head. The request must include the proposed alternative schedule, reason for the request, and proposed duration of the request. Upon receipt of such a request, the Department Head shall meet with the employee to discuss their request. If the Department Head and City Manager approve an AWS, the City will establish the revised work schedule, workload and duration of the AWS, as well as any other terms and conditions required to be placed on an AWS. In addition, the employee will have their salary step reduced to a lower step on the salary schedule, in conformance with the City's published salary schedule, for their classification as determined by the City Manager, and all benefit contributions by the City will be reduced in proportion with the schedule reduction, including special assignment and acting pay, to the extent allowed by law. During the term of this agreement, salary step progression would not continue, though equity and COLA adjustments would still apply to positions while under this agreement. If an employee does not agree to work within all prescribed terms established by the City, their request for an AWS will be denied. The City reserves the right to amend, modify, end or deny an AWS and/or request for an AWS for any business reason(s) without any right of appeal.

While placement on an AWS will result in a reduction in an employee's workload and schedule, employees in this bargaining unit are exempt, and placement on an AWS does not relieve an employee from the expectation that the employee may regularly perform work outside of their approved AWS schedule without receiving any overtime pay. Once an AWS agreement ends, the

employee would revert back to the step in which they were previously assigned. This side letter is not subject to the grievance procedure and/or any right of appeal.

**For the City:**

**For MEG:**

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Joan Malloy  
City Manager

Date:

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Gloria Ortega  
MEG Member

Date:

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Jason Castleberry  
Human Resources Director

Date:

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Derek Farmer  
MEG Member

Date:

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Francisco Gomez  
MEG Member

Date:



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** CARMELA CAMPBELL, ECONOMIC, AND COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT:** PUBLIC HEARING AND ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING ADMINISTRATIVE SITE DEVELOPMENT REVIEW (ASD-23-023) FOR A NEW ENCLOSED WIRELESS FACILITY ON TOP OF AVALON UNION CITY APARTMENTS, LOCATED AT 24 UNION SQUARE (APN 87-19-1-25), AND TO INCREASE THE BUILDING HEIGHT FROM 79 TO 86 FEET

Staff recommends that the City Council hold a public hearing and adopt the attached Resolution (Attachment 1) approving Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) for a new enclosed wireless facility on top of Avalon Union City Apartments located at 24 Union Square (APN 87-19-1-25) and to increase the building height from 79 to 86 feet to accommodate the proposed wireless facility.

The Planning Commission recommended approval of this application to the City Council at its February 1, 2024, meeting on a 4-0 vote. Attached to this staff report are the Planning Commission Staff Report (Attachment 2), Planning Commission Desk Item (Attachment 3) Draft Planning Commission Meeting Minutes (Attachment 4), and Draft Planning Commission Resolution (Attachment 5).

### **STRATEGIC PLAN ALIGNMENT**

This agenda item does not have alignment with a specific Strategic Plan goal.

### **BACKGROUND**

The applicant, Peter Hilliard, On Air, LLC, for Verizon Wireless, on behalf of Avalon Union City, LP, is seeking Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) approval to install a new wireless facility on top of Avalon Union City Apartments located at 24 Union Square within the Core Station District sub-area. The project site has a General Plan and Zoning designation of Station Mixed Use Commercial (CSMU). The project includes construction of a 417 square-foot cupola, which will be built on top of an existing mechanical penthouse located on the top level of a parking structure. The cupola will house 16 new antennas with eight (8) new radio units. An equipment enclosure is proposed in a 192 square

foot lease area located adjacent to the wireless facility on the roof level of the parking structure. The project will facilitate improved wireless communication capacity and coverage in the area.

Per Union City Municipal Code (UCMC) Section 18.114.040, new wireless facilities in the CSMU Zoning District are subject to administrative use permit approval and administrative site development review. Per UCMC Section 18.38.140, buildings higher than five stories or 65 feet require approval of a use permit. The current height of the buildings is +/- 64 feet, which was under the threshold for triggering a use permit. The building includes several mechanical penthouses on the roof measuring up to 79 feet. Per UCMC Section 18.38.140, mechanical penthouses and elevator towers are excluded from the use permit requirement, provided that they do not exceed 25% of the roof area of the building, which these do not. As such, a use permit was not granted for any height exceedance when the project was originally approved. The wireless facility is proposed to be constructed on top of one of the mechanical penthouses, increasing the overall height of the building by 7 feet for a total building height of 86 feet in this location. The installation on top of the mechanical penthouse is triggering the need for a use permit as the building height is being increased. UCMC Section 18.56.020 requires City Council approval of use permits in the CSMU Zoning District. In addition to the height allowance, the use permit request will address the administrative use permit requirement stipulated in Chapter 18.114. Per UCMC Section 18.56.070, since the applications are being reviewed concurrently, they shall be approved, conditionally approved, or denied by the same decision maker, in this case, the City Council.

## **DISCUSSION**

The project is subject to UCMC Chapter 18.114, Wireless Telecommunications Facilities, the purpose of which is to provide standards for the development, location, siting, and installation of wireless telecommunication facilities. The project is consistent with applicable requirements, as conditioned, included in Chapter 18.114.

The project is also consistent with applicable General Plan policies including Policy PF-8.8, *Minimize Visual Impacts*, which addresses the siting and screening of wireless facilities. The proposed wireless facility will be housed in a new cupola designed to match the architecture of the existing cupolas on top of the building. The facility will be entirely screened from view. The cupola structure would be painted to match the existing building and also incorporates the use of materials consistent with the existing building.

### ***Planning Commission Meeting***

The Planning Commission reviewed the project at a public hearing on February 1, 2024 and voted 4-0 to recommend approval of the project to the City Council. For a detailed overview of the Planning Commission discussion, see attached draft Meeting Minutes labeled Attachment 4.

The Commission also considered a Desk Item (Attachment 3) which responded to questions and comments from Commissioner Lew. The Desk Item included some updates to draft condition and findings, which have been incorporated into the draft City Council resolution (Attachment 1).

To date, staff has not received any public comment on the project.

## **FISCAL IMPACT**

All new development, including this project, will result in additional revenue to the City through a one-time payment of building permit fees. The proposed work will also result in an increase of assessed property value and related property tax (exact amount to be determined by the County Assessor's Office once the project is completed).

## **RECOMMENDATION**

Consistent with the Planning Commission recommendation, staff recommends that the City Council hold a public hearing and adopt the attached Resolution (Attachment 1) approving Administrative Site

Development Review (ASD-23-023) and Use Permit (UP-23-008) for the construction of a proposed wireless facility on top of Avalon Union City Apartments, located at 24 Union Square, and to increase the building height to 86 feet to accommodate the proposed facility.

**Prepared by:**

Natalie Dean, Associate Planner

**Submitted by:**

Natalie Dean, Associate Planner

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Draft Resolution	Resolution
<input type="checkbox"/> Exhibit A: Project Plans	Exhibit
<input type="checkbox"/> Attachment 2: Planning Commission Staff Report dated 02/01/2024	Attachment
<input type="checkbox"/> Attachment 3: Desk Item dated 02/01/2024	Attachment
<input type="checkbox"/> Attachment 4: Draft Planning Commission Minutes dated 02/01/2024	Attachment
<input type="checkbox"/> Attachment 5: Draft Planning Commission Resolution	Attachment

**ATTACHMENT 1**  
**CITY COUNCIL RESOLUTION NO. XXXX-24**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY  
APPROVING ADMINISTRATIVE SITE DEVELOPMENT REVIEW (ASD-  
23-023) AND USE PERMIT (UP-23-008) FOR A NEW ENCLOSED  
WIRELESS FACILITY ON TOP OF THE AVALON UNION CITY  
APARTMENTS, LOCATED AT 24 UNION SQUARE (APN 87-19-1-25),  
AND TO INCREASE THE BUILDING HEIGHT TO 86 FEET**

**WHEREAS**, the applicant Peter Hilliard, On Air, LLC, for Verizon Wireless, on behalf of Avalon Union City, LP, is seeking Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) approval for a new enclosed wireless facility on top of an existing, five-story, 315,077 square-foot multifamily residential building and to increase the height of the building from 79 to 86 feet. The project includes construction of a new 417 square-foot cupola on the top of a mechanical penthouse located on an attached parking structure bringing the total height of the building to approximately 86 feet. The cupola will house 16 new antennas with eight (8) new radio units; and

**WHEREAS**, the 3.8-acre project site is located at 24 Union Square (APN 87-19-1-25); and

**WHEREAS**, the project site has a General Plan designation of Station Mixed Use Commercial and a Zoning designation of CSMU (Station Mixed Use Commercial); and

**WHEREAS**, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from environmental review per Section 15303, *New Construction or Conversion of Small Structures*, of the CEQA Guidelines; and

**WHEREAS**, pursuant to Section 18.76.050 of the Union City Municipal Code, the Planning Commission held a duly noticed public hearing on the Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) applications on February 1, 2024, at which time all interested parties had the opportunity to be heard. The Planning Commission considered the staff report dated February 1, 2024, and all written and oral testimony; and

**WHEREAS**, after consideration of the staff report, and all other recommendations, reports, and testimony, the Planning Commission recommended approval to the City Council on a vote of 4-0 with some modifications to the draft conditions of approval and findings; and

**WHEREAS**, a duly advertised public hearing was held before the City Council of the City of Union City on February 27, 2024 to consider the application and at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated February 27, 2024, and all other recommendations, reports and testimony before making a decision on the project.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of Union City does hereby find as follows:

1. That this project is categorically exempt under Section 15303 *New Construction or Conversion of Small Structures*, of the CEQA Guidelines; and



***Administrative Site Development Review***

2. That approval of this application is consistent with the General Plan including Policy PF-8.8 Minimize Visual Impacts, as the proposed wireless facility will be located in an enclosed cupola structure on top of an existing mechanical penthouse on the roof of a parking structure, thereby minimizing any potential visual impacts when viewed from public right of ways and residential areas. The cupola structure will be painted to match the existing building, and proposed materials will be architecturally consistent with the building. Additionally, Condition #7 requires that all visible conduits be concealed and screened. There are no specific plans applicable to the site; and
3. That approval of this application is consistent with the purpose of Title 18, which seeks to promote and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people and to promote the orderly and beneficial development of such areas. Approval of this application is also consistent with the requirements of the CSMU Zoning District; and
4. That the project will be a minor modification to an existing building and will promote orderly, attractive, and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having undesirable qualities which are not properly related to their sites, or which would not meet the specific intent clause or performance standard requirement of the zoning title. Furthermore, the presence of the new antennas will improve the coverage for Verizon Wireless and improve service to customers in the vicinity and for the needs of residents, businesses, and first responders in the City of Union City; and

***Use Permit***

5. That the proposed location of the conditional use is in accord with the purposes of Title 18 and the purpose of the CSMU district. The location of the new wireless facility will protect the character of the CSMU district by installing and screening all equipment within a new rooftop cupola and equipment enclosure; ancillary electrical equipment will be located in the building's existing electrical room on the ground floor. This new facility will promote orderly and beneficial development by improving the availability and quality of wireless service for residents and businesses. The new facility is compatible with the character of development in the CSMU district with the remodeling of the rooftop to enclose and screen the antennas and equipment. The new facility will enhance opportunities in the district for a variety of uses, such as research and development, office, and commercial, because it will provide a full array of communication services; and
6. That the location of the use, as conditioned, is not detrimental to the public health, safety, welfare, or materially injurious to properties within the vicinity. The project will adhere to all required conditions from the City and responsible agencies pertaining to public health, safety, and welfare; and
7. The project is consistent with applicable General Plan policies including Policy PF-8.8, *Minimize Visual Impacts*, which addresses the siting and screening of wireless

facilities. The project, as conditioned, is also consistent with the requirements of the CSMU Zoning District; and

***Wireless Telecommunication Facilities***

8. That visual impacts of the project will be reduced by matching the existing building in colors and materials, including trims along the edges of the structures. The applicant has provided all documents that evidence compliance with requirements for design, safety, agency, and Operation and maintenance standards; and
9. That all equipment will be screened and set back from the right-of-way as much as feasible. The wireless facility will be enclosed in a cupola structure that is designed to match the architecture of the building and screen the antennas; and
10. That the new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. Verizon will deploy a new coverage network to serve the wireless needs of residents, businesses, and first responders in the City of Union City. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements.

**BE IT FURTHER RESOLVED** that the City Council of Union City hereby approves Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008), as set forth in Exhibit A and subject to the following Conditions of Approval:

**PLANNING DIVISION**

1. All actual site improvements shall be made with adherence to the plans listed in Exhibit A, except as they may be modified by other conditions of approval listed below. Any variation or modification from the approved plans are subject to the review and approval of the Economic and Community Development Department.
2. This application shall expire one year from the date of Planning Commission approval unless building permits have been issued and construction diligently pursued.
3. The applicant and/or property owner shall include an annotated copy of the approved Planning Commission Resolution with each set of detailed construction plans submitted for plan check review. Notations to the plans shall be made to clearly indicate how all conditions of approval will be or have been complied with. Construction plans shall not be accepted without the annotated final conditions of approval included as a note sheet with each set of plans.
4. The applicant and/or property owner shall apply for and take out all required building and fire permits prior to beginning any on-site work. Plans submitted to the Building Division and Fire Department must demonstrate compliance with all applicable local and state requirements.

5. The applicant and/or property owner shall be responsible for ensuring that all contractors and subcontractors have obtained a valid City of Union City business license for the duration of the project.
6. The applicant and/or property owner shall ensure the wireless facility complies with applicable FCC Regulations regarding radio frequency and any and all recommendations for safety requirements including but not limited to those safety recommendations listed in Attachment 1 to Exhibit A, the radio frequency report.
7. Building Materials and Finishes
8. Prior to the issuance of building permits, the applicant and/or property owner shall submit samples and details of color palettes and all exterior materials, for review and approval by the Economic & Community Development Department. The color samples shall be provided in a binder with paint and material schemes along with full-size brush-outs as opposed to paint chips. Color swatches shall also be painted on the cupola structure for review and approval by the Economic and Community Development Department prior to full painting. Any future amendments or changes to the approved painting schemes shall be submitted to the Economic and Community Development Department for approval prior to the full painting of the proposed structure.
9. All visible conduits shall be concealed and screened.
10. Prior to issuance of building permits, the applicant/property owner shall pay all applicable fees (Capital Facilities Fee, Park Facilities Fee, etc.) that are in effect at the time of building permit issuance.
11. Prior to issuance of building permits, the applicant and/or property owner shall pay the General Plan Cost Recovery Fee in effect at the time of building permit issuance. The current fee is \$1.00 per \$1,000.00 of construction valuation per City Council Resolution Number 3379-07.

#### **BUILDING DIVISION**

12. Any construction shall fully comply with the Building Standard Codes in effect at the time of building permit issuance.
13. The applicant/property owner shall provide detailed construction plans (working drawings) and calculations to the Building Division for plan review prior to issuance of a building permit. Plans and supporting documents shall be prepared by a state-licensed architect or engineer. Upon completion of the plan check, all applicable fees shall be paid, and a building permit issued prior to commencement of any actual construction work on-site.
14. The applicant/property owner shall maintain the property to be free of litter, weeds, debris, etc., both before and after issuance of building permits. Daily litter and debris collection rounds shall be conducted on the site and an adequate number of trash receptacles shall be provided to minimize litter accumulation.
15. The applicant/property owner shall not locate construction debris boxes within the public right-of-way (ROW), driveways or on adjacent private properties.

#### **FIRE DEPARTMENT**

16. The existing parapet shall remain in its current position and there shall not be an increase in height.

17. It shall be noted on plans for building permits that the applicant/property owner will ensure any roof access will not be impeded and or be obstructed to direct access to the antennas.
18. Plans submitted for Building Permit review and approval shall include an enclosure constructed around the base of the antennas, containing an access door at least 36 inches in width and incorporating a Knox Box locking system to ensure security for the facility and access for emergency response personnel.
19. The applicant/property owner shall apply for a hot work permit for all welding and or cutting operations.

#### **PUBLIC WORKS DEPARTMENT**

20. The applicant/property owner shall install 'No Dumping – Drains to Bay' stencils at all storm drain inlets on site.

#### **ENVIRONMENTAL PROGRAMS**

21. The applicant/property owner is hereby advised that unauthorized discharge of any kind to the storm water system, which includes the streets and gutters, is prohibited, and that such discharges, whether intentional or not, are subject to penalties up to \$20,000 per violation per day. This applies both to the construction phase and to routine facility operations.
22. The applicant/property owner shall note on plans for building permit submittal indicating the total volume of battery electrolyte in the equipment cabinets under Verizon's control at this site at project completion.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

---

CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

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THAI NAM N. PHAM  
City Clerk

---

KRISTOPHER J. KOKOTAYLO  
City Attorney

**Attachments:**

1. Exhibit A – Project Plans





**NILES DECOTO**  
24 UNION SQUARE, UNION CITY, CA 94587  
MDG LOCATION ID: 5000372365  
PROJECT ID: 17021973

NILES DECOTO

24 UNION SQUARE  
UNION CITY, CA 94587





2785 MITCHELL DRIVE, BLDG 9  
WALNUT CREEK, CA 94598

3

# ON AIR

APPROVED BY:


	12/27/23	PLANNING COMMS	D.H.
	11/06/23	PLANNING COMMS	S.D
4	08/28/23	CLIENT REV	D.H.
3	08/09/23	CLIENT REV	D.H.
2	06/07/23	ZD 100%	C.T.C
1	05/02/23	ZD 95%	C.T.C
0	02/13/23	ZD 90%	
REV	DATE	DESCRIPTION	CAD

PRELIMINARY:  
NOT FOR  
CONSTRUCTION

KEVIN R. SORENSEN  
S4469

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DIRECTION OF A LICENSED PROFESSIONAL  
ENGINEER, TO ALTER THIS DOCUMENT.



**Streamline Engineering**  
and Design, Inc.

8445 Sierra College Blvd, Suite E Granite Bay, CA 95746  
 Contact: Kevin Sorensen Phone: 916-660-1930  
 E-Mail: kevin@streamlineeng.com Fax: 916-660-1941

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# TITLE SHEET

# T-1.1

## PROJECT DESCRIPTION

A (N) VERIZON WIRELESS UNMANNED TELECOMMUNICATION FACILITY CONSISTING OF INSTALLING:

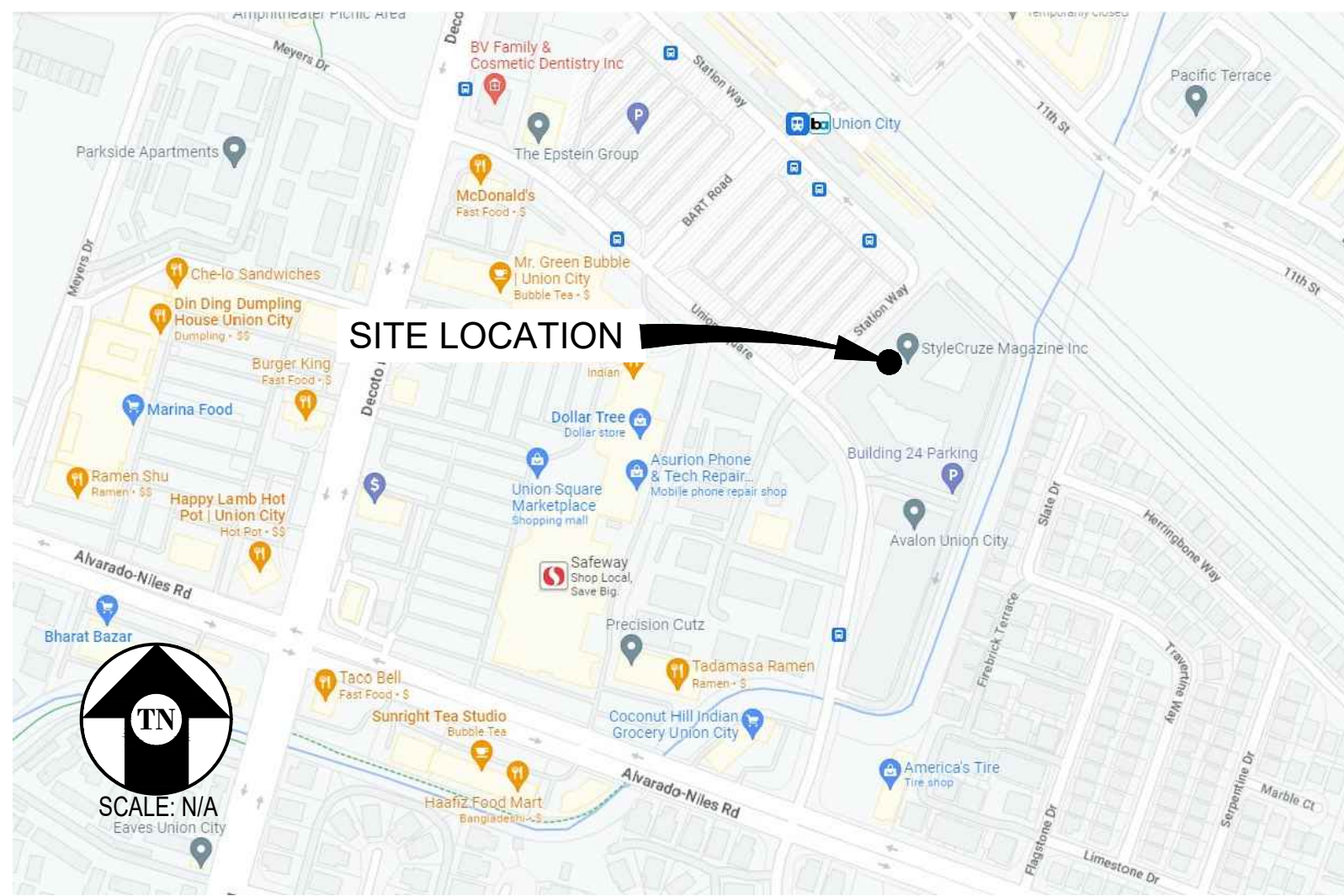
- (N) 10'-8" X 18'-0" (192 SQ FT) EQUIPMENT LEASE AREA
- (N) OUTDOOR EQUIPMENT CABINETS
- (N) 30KW COMPACT DIESEL GENERATOR ON (N) 50 GALLON UL 142 RATED FUEL TANK
- (N) (417 SQ FT) ANTENNA LEASE AREA
- (N) FRP SCREEN
- (16) (N) ANTENNAS
- (8) (N) RADIO UNITS @ ANTENNAS
- (8) (N) SURGE SUPPRESSORS, (4) @ EQUIPMENT & (4) @ ANTENNAS
- (8) (N) 6X12 HYBRID CABLES
- (1) (N) GPS ANTENNA
- (N) UTILITIES TO (N) SITE LOCATION

NOTE: EACH ANTENNA TO BE MOUNTED TO A STEEL PIPE W/ SQUARE PLATE ATTACHED TO PENTHOUSE ROOF DECK

## PROJECT INFORMATION

SITE NAME:	NILES DECOTO	APPLICANT:	VERIZON WIRELESS 2785 MITCHELL DRIVE, BLDG 9 WALNUT CREEK, CA 94598
MDG LOCATION ID:	5000372365		
COUNTY:	ALAMEDA	SITE ACQUISITION COMPANY:	ON AIR LLC 465 FIRST STREET WEST, STE 10 SONOMA, CA 95476
JURISDICTION:	CITY OF UNION CITY		
APN:	087-0019-001-25	LEASING CONTACT:	ATTN: PETER HILLIARD (707) 732-7227 PHILLIARD@ONAIRLLC.COM
SITE ADDRESS:	24 UNION SQUARE UNION CITY, CA 94587		
CURRENT ZONING:	CSMU (STATION MIXED USED COMMERCIAL)	ZONING CONTACT:	ATTN: PETER HILLIARD (707) 732-7227 PHILLIARD@ONAIRLLC.COM
CONSTRUCTION TYPE:	V-B		
OCCUPANCY TYPE:	U, (UNMANNED COMMUNICATIONS FACILITY)	CONSTRUCTION CONTACT:	ATTN: MOHAMMAD BASEER (510) 414-7075 MBASEER@ONAIRLLC.COM
POWER:	BUILDING		
PROPERTY OWNER:	AVALON UNION CITY LP 4040 WILSON BOULEVARD, SUITE 1000 ARLINGTON, VA 22203-4439 ATTN: BRIAN SNIDER SENIOR MAINTENANCE MANAGER (517) 775-3390		
LATITUDE:	N 37° 35' 20.52" N 37.589033	NAD 83 NAD 83	
LONGITUDE:	W 122° 00' 58.96" W 122.016378	NAD 83 NAD 83	
GROUND ELEVATION:	45.0' AMSL		

## VICINITY MAP



BATTERY INFORMATION:

- (2) UNITS WITH BATTERIES
- (2) STRINGS PER CABINET (16) TOTAL BATTERIES
- BATTERIES ARE ENERSYS POWERSAFE SBS190F

## NEW BATTERIES

BATTERY TYPE:	ENERSYS POWERSAFE SBS 190F		
NUMBER OF UNITS W/BATTERIES	2		
NUMBER OF BATTERIES :	4 STRINGS, 16 TOTAL BATTERIES		
MATERIAL: ELECTROLYTE	VOLUME: 2.34 GALLONS	BATTERY TOTAL:	37.44 GALLONS
MATERIAL: ACID	WEIGHT: 10.1 LBS	BATTERY TOTAL:	161.6 LBS
MATERIAL: LEAD	WEIGHT: 95.8 LBS	BATTERY TOTAL:	1,532.8 LBS
TOTAL KWH:	190AH X 12V X 16	/ 1000 =	36.48 KWH

## CODE COMPLIANCE

ALL WORK & MATERIALS SHALL BE PERFORMED & INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THESE CODES:

2022 CALIFORNIA ADMINISTRATIVE CODE, PART 1, TITLE 24 C.C.R.  
2022 CALIFORNIA BUILDING CODE (CBC), PART 2, VOLUME 1&2, TITLE 24 C.C.R.  
(2021 INTERNATIONAL BUILDING CODE AND 2022 CALIFORNIA AMENDMENTS)  
2022 CALIFORNIA ELECTRICAL CODE (CEC), PART 3, TITLE 24 C.C.R.  
(2020 NATIONAL ELECTRICAL CODE AND 2022 CALIFORNIA AMENDMENTS)  
2022 CALIFORNIA MECHANICAL CODE (CMC) PART 4, TITLE 24 C.C.R.  
(2021 UNIFORM MECHANICAL CODE AND 2022 CALIFORNIA AMENDMENTS)  
2022 CALIFORNIA PLUMBING CODE (CPC), PART 5, TITLE 24 C.C.R.  
(2021 UNIFORM PLUMBING CODE AND 2022 CALIFORNIA AMENDMENTS)  
2022 CALIFORNIA ENERGY CODE (CEC), PART 6, TITLE 24 C.C.R.  
2022 CALIFORNIA FIRE CODE, PART 9, TITLE 24 C.C.R.  
(2021 INTERNATIONAL FIRE CODE AND 2022 CALIFORNIA AMENDMENTS)  
2022 CALIFORNIA GREEN BUILDING STANDARDS CODE, PART 11, TITLE 24 C.C.R.  
2022 CALIFORNIA REFERENCED STANDARDS, PART 12, TITLE 24 C.C.R.  
ANSI/EIA-TIA-222-H

ALONG WITH ANY OTHER APPLICABLE LOCAL & STATE LAWS AND REGULATIONS

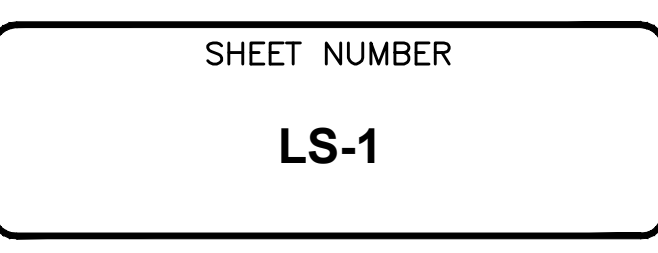
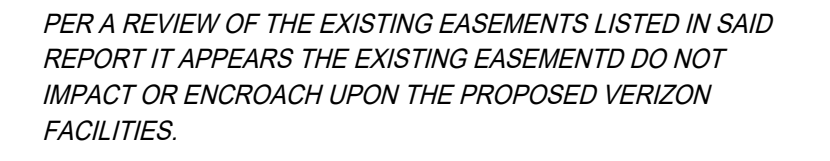
## DISABLED ACCESS REQUIREMENTS

THIS FACILITY IS UNMANNED & NOT FOR HUMAN HABITATION. DISABLED ACCESS & REQUIREMENTS ARE NOT REQUIRED IN ACCORDANCE WITH CALIFORNIA STATE BUILDING CODE, TITLE 24 PART 2, SECTION 11B-203.5

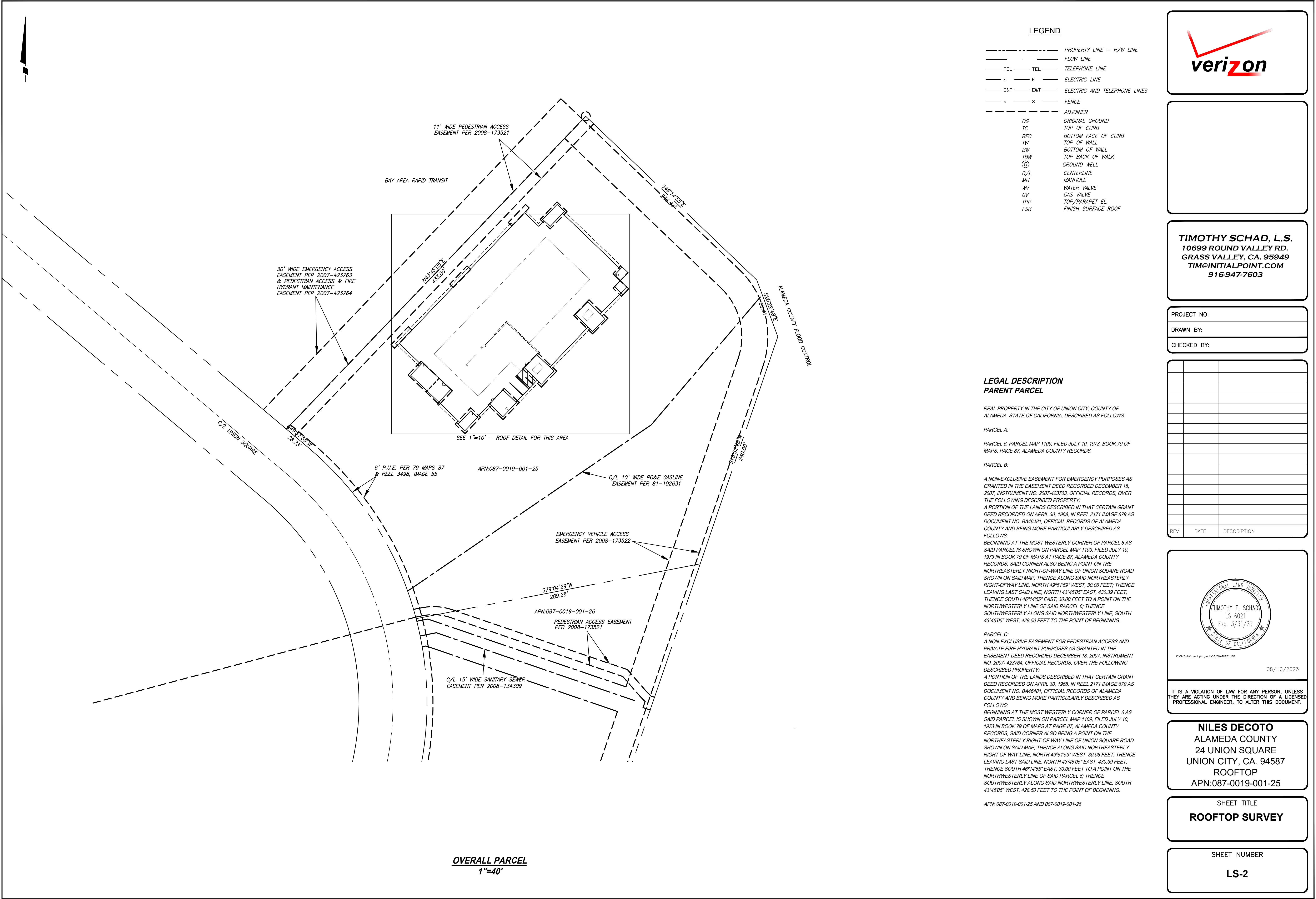
# SHEET INDEX

SHEET	DESCRIPTION	REV
T-1.1	TITLE SHEET	1,2
LS-1	ROOFTOP SURVEY	-
LS-2	ROOFTOP SURVEY	-
Δ A-1.1	OVERALL VICINITY MAP	1
A-1.2	OVERALL SITE PLAN	1
A-1.3	ENLARGED SITE PLAN	1
A-1.4	EQUIPMENT PLAN	1
A-2.1	ANTENNA PLAN	2
A-3.1	ELEVATIONS	1,2
A-3.2	ELEVATIONS	1,2
A-3.3	ELEVATION DETAIL	2
Δ A-3.4	ELEVATION DETAIL	1,2
A-3.5	ELEVATION	2
A-4.1	ANTENNA DETAILS	-
A-4.2	EQUIPMENT DETAILS	-
E-1.1	ELECTRICAL PLAN	2









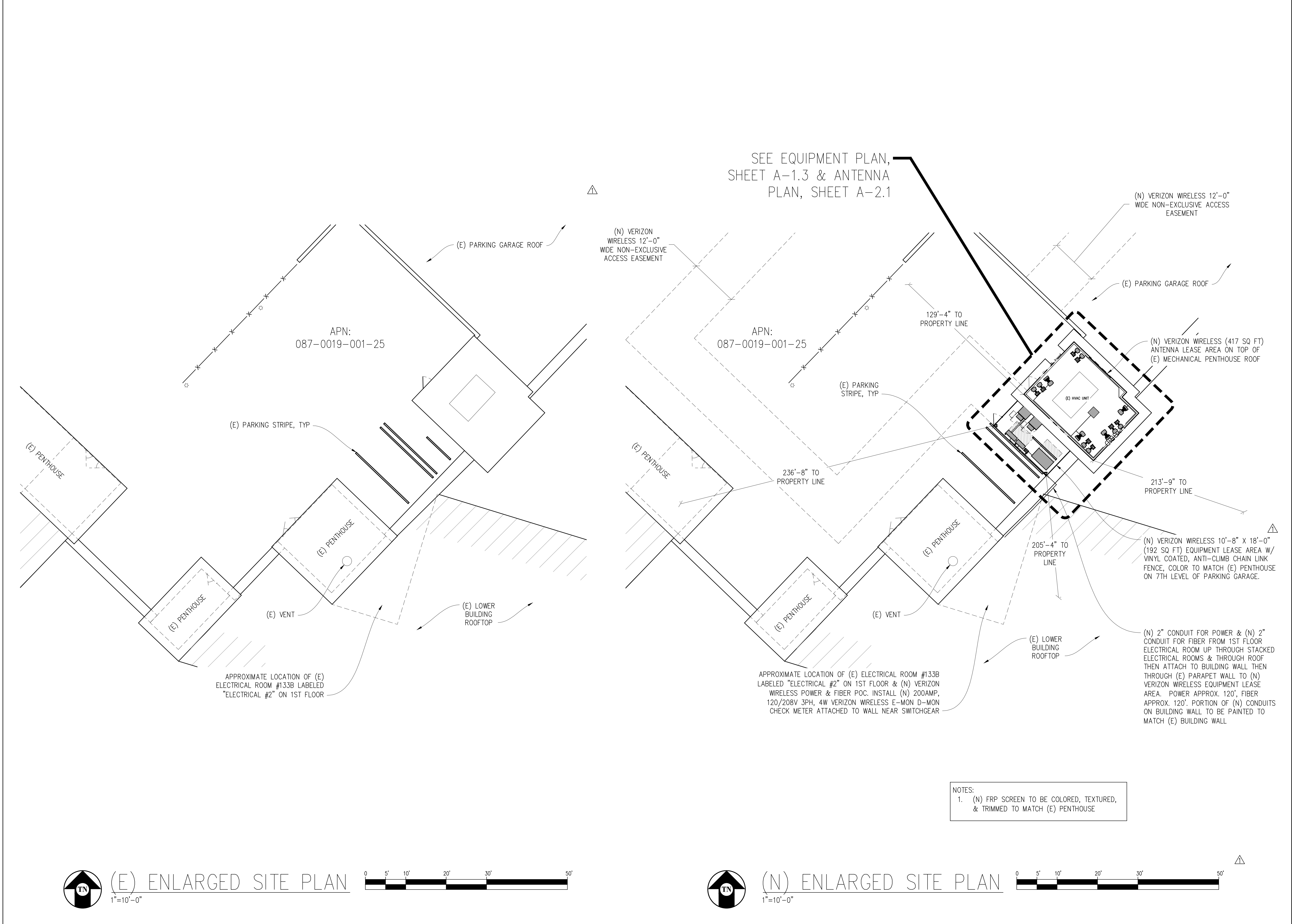













Issued For:


NILES DECOTO

24 UNION SQUARE  
UNION CITY, CA 94587

PREPARED FOR

  
2785 MITCHELL DRIVE, BLDG 9  
WALNUT CREEK, CA 94598

Vendor:



MDG LOCATION ID: 5000372365

PROJECT ID: 17021973

DRAWN BY: SEAD

CHECKED BY: J. GRAY

APPROVED BY: -

ISSUE STATUS

REV	DATE	DESCRIPTION	CAD
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1	05/02/23	ZD 95%	C.T.C
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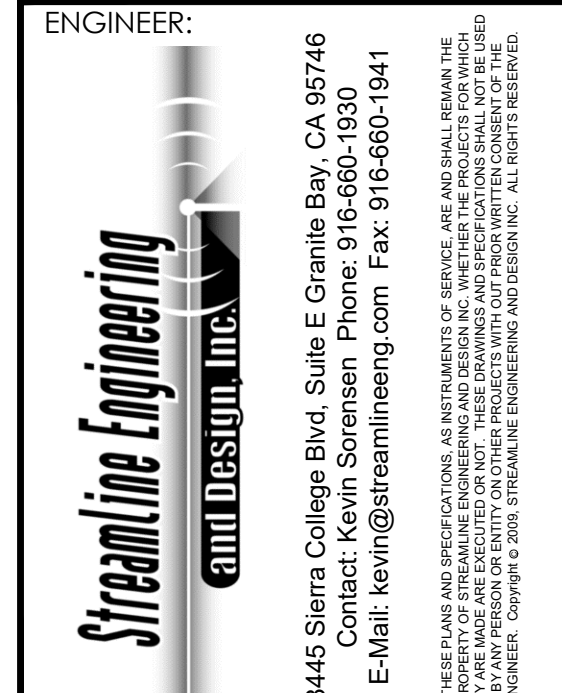
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Contact: Kevin Sorenson Phone: 916-660-1930  
E-Mail: kevin@streamlineeng.com Fax: 916-660-1941  
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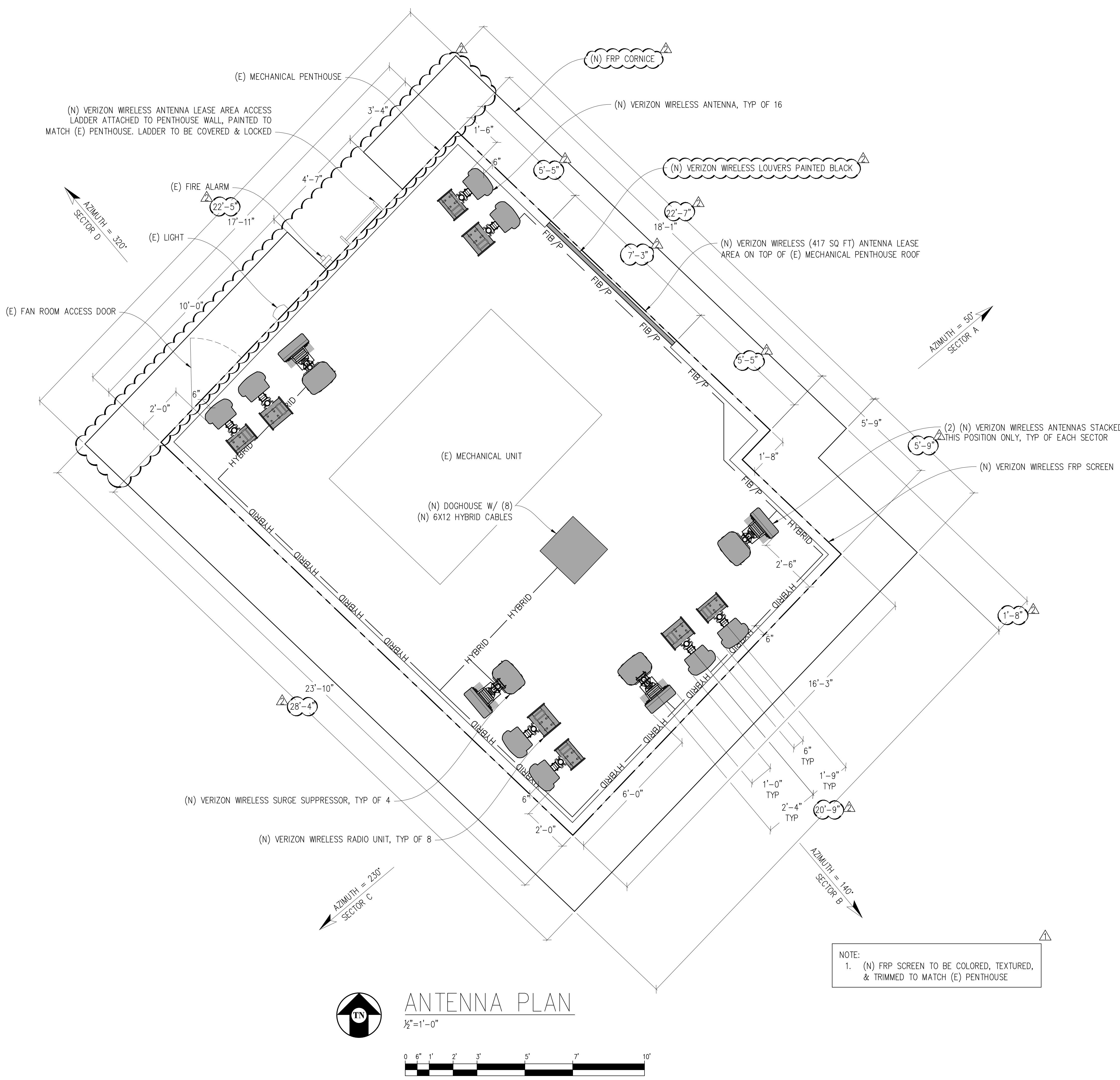
ENLARGED SITE  
PLAN

SHEET NUMBER:

A-1.3







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NILES DECOTO

24 UNION SQUARE  
UNION CITY, CA 94587

PREPARED FOR

**verizon**

2785 MITCHELL DRIVE, BLDG 9  
WALNUT CREEK, CA 94598

Vendor:



MDG LOCATION ID: 5000372365

PROJECT ID: 17021973

DRAWN BY: SEAD

CHECKED BY: J. GRAY

APPROVED BY: -

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4	08/28/23	CLIENT REV	D.H.
11	11/06/23	PLANNING COMMS	S.D.
12	12/27/23	PLANNING COMMS	D.H.

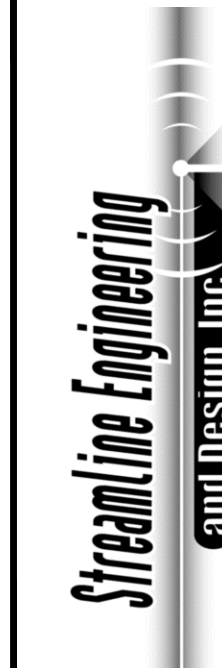
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SHEET TITLE:

ANTENNA PLAN

SHEET NUMBER:

A-2.1











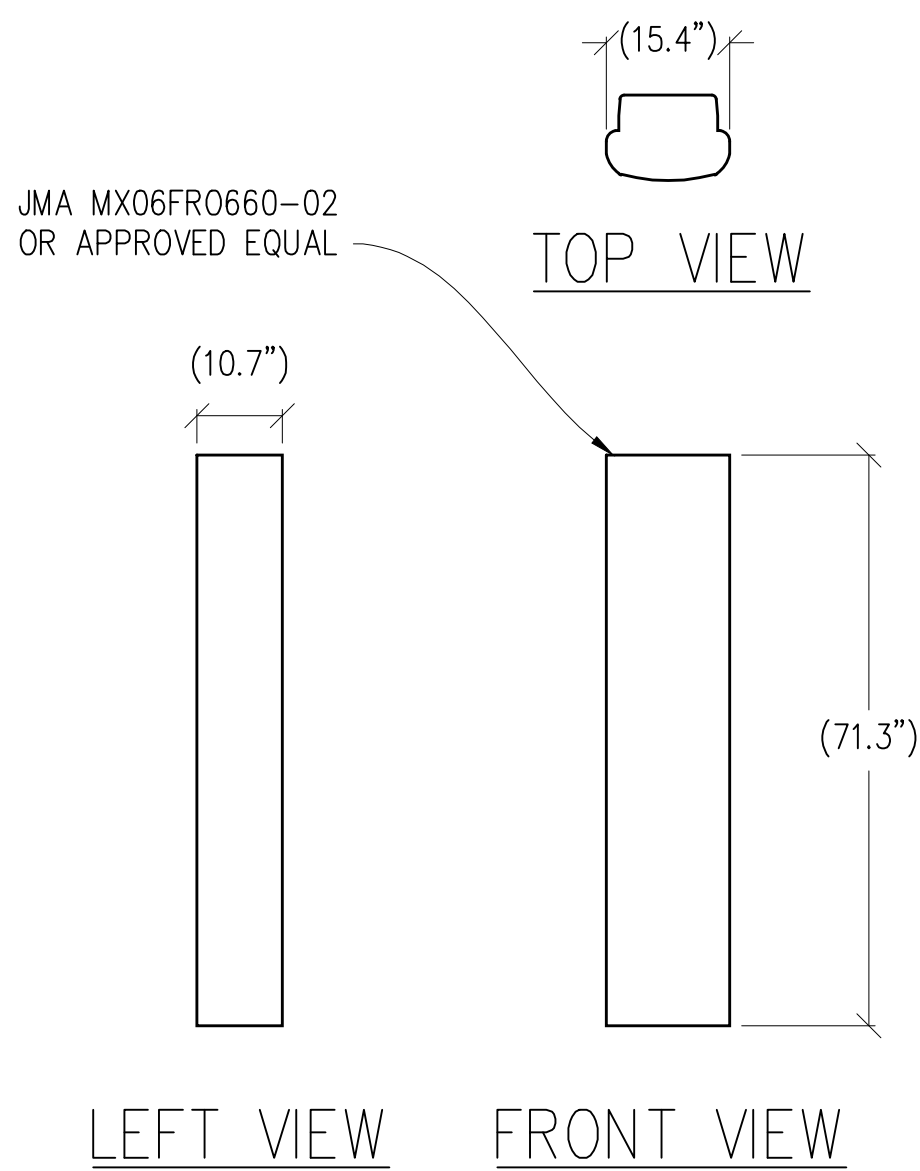
### A-3.3



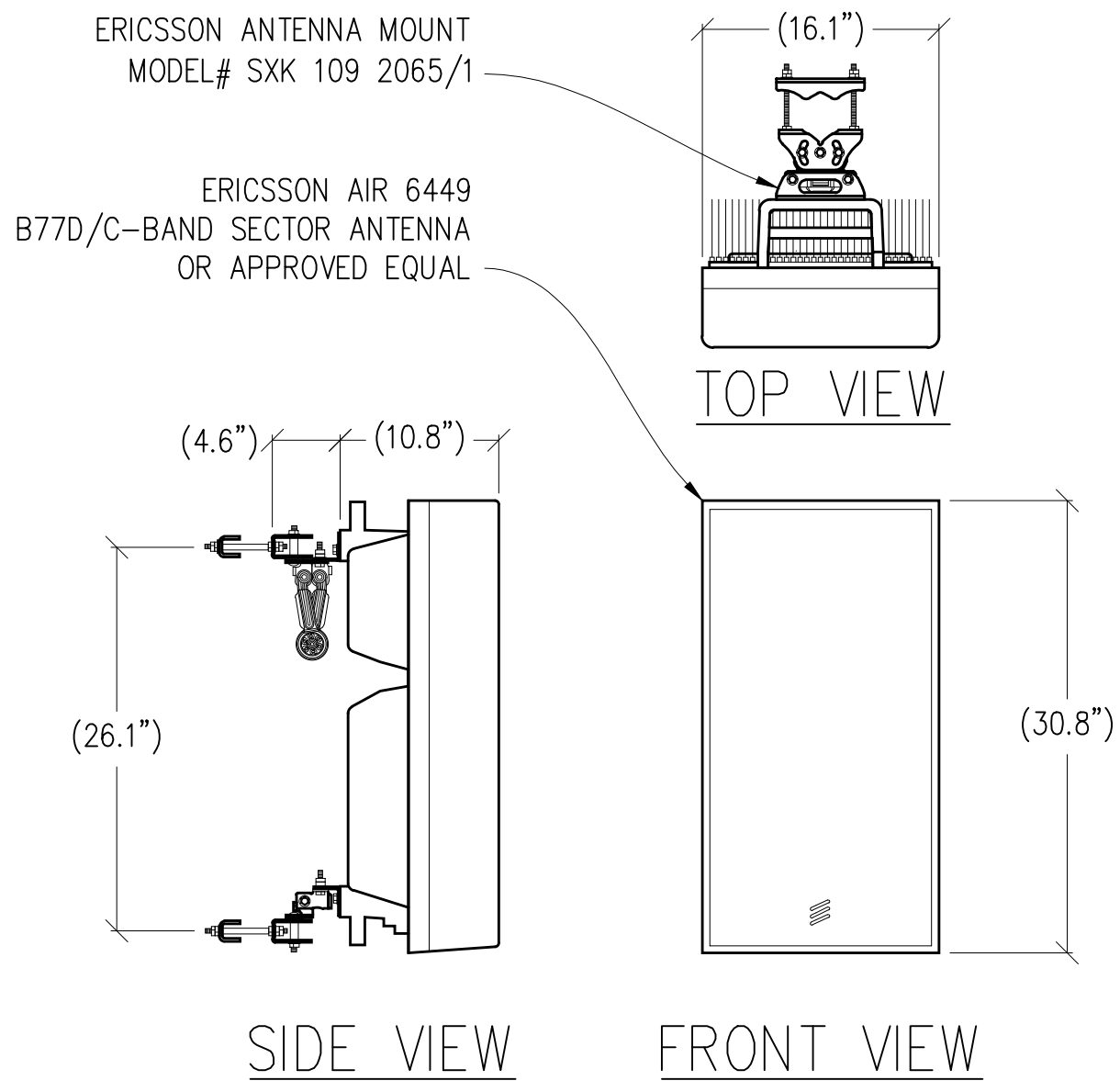




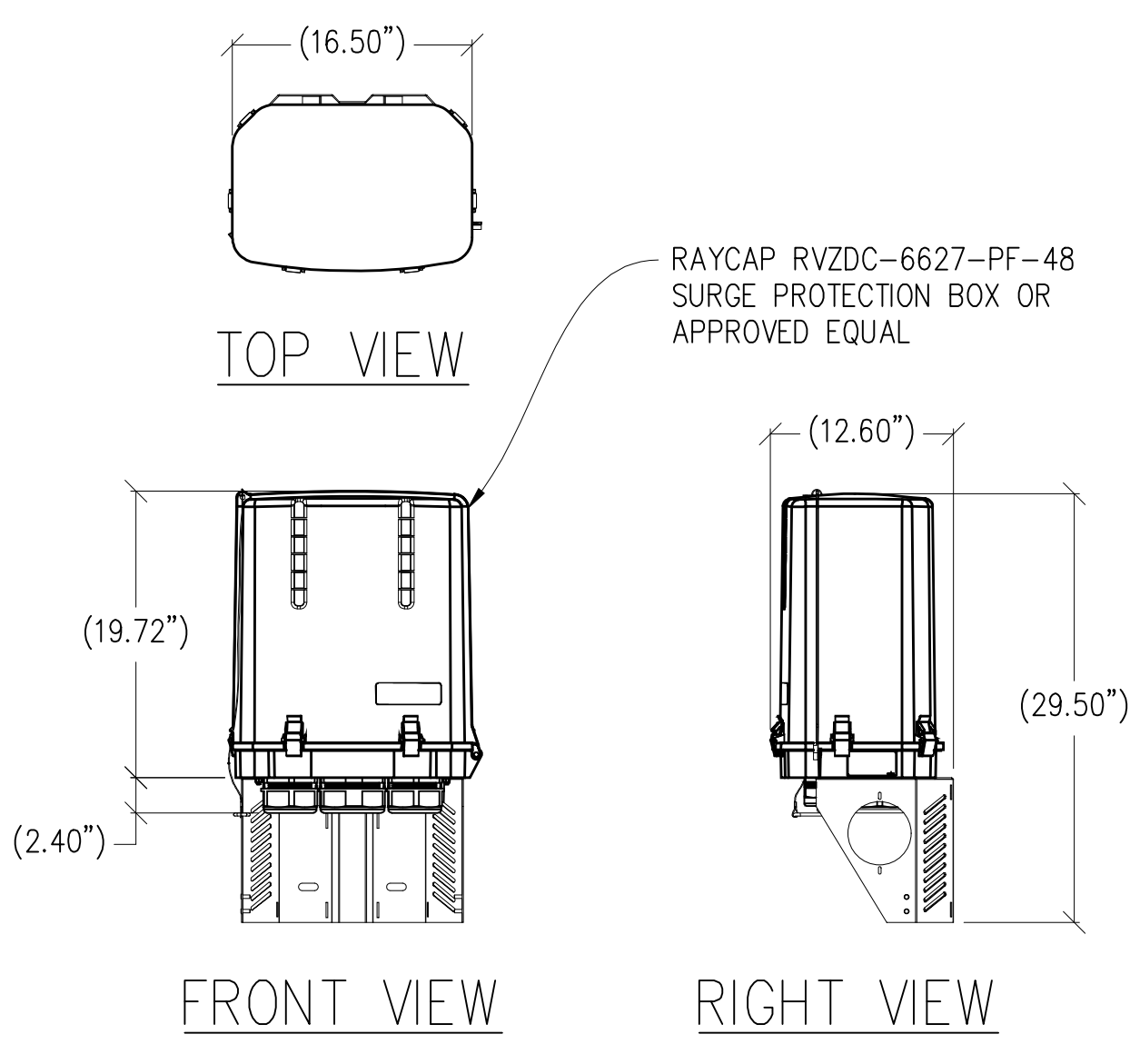




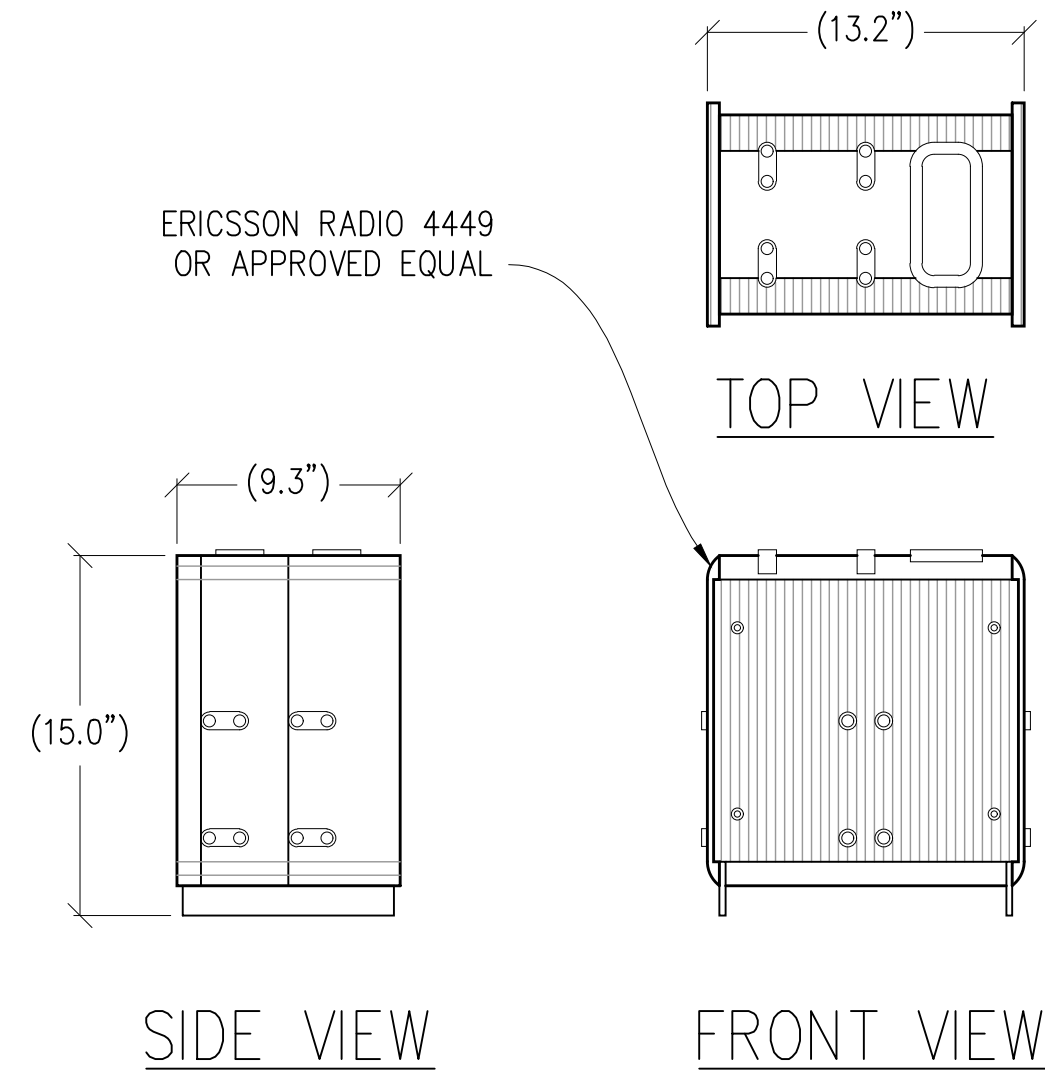
1 ANTENNA DETAIL  
1/2"=1'-0" MAX WEIGHT: 57 LBS



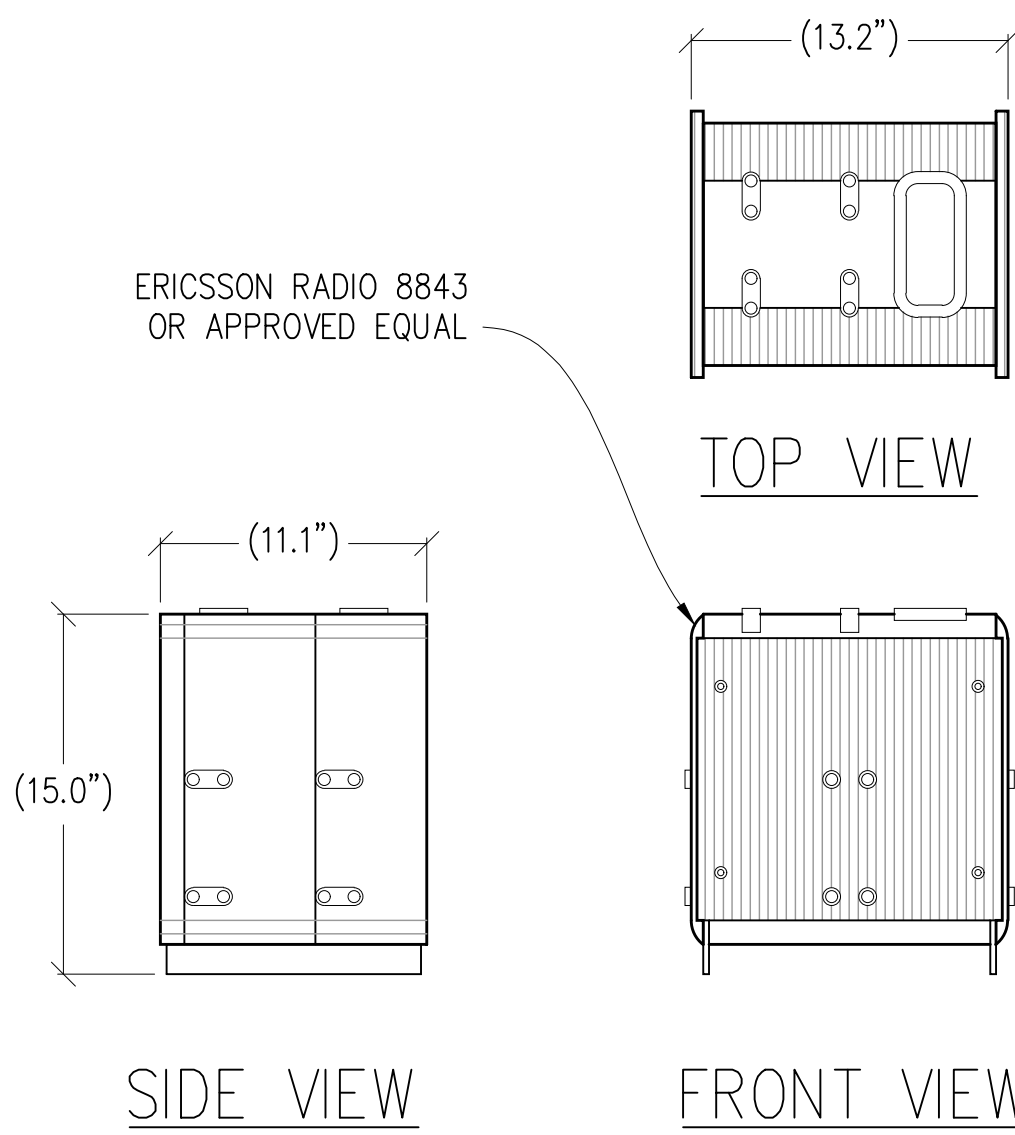
2 ANTENNA DETAIL  
1"=1'-0" MAX WEIGHT: 88 LBS



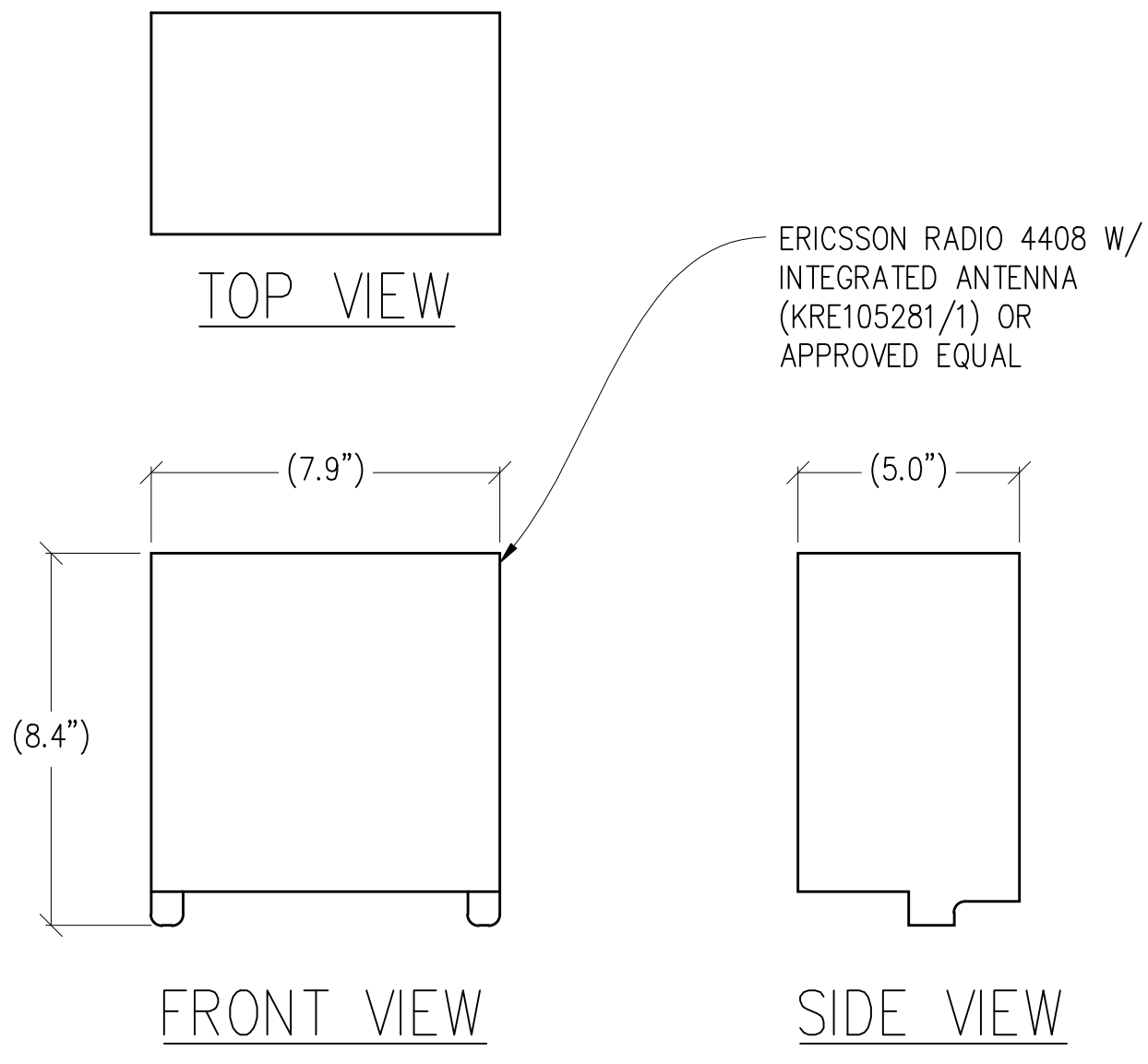
3 SURGE PROTECTION BOX  
1"=1'-0" MAX WEIGHT: 32.0 LBS



4 RADIO DETAIL  
1/2"=1'-0" MAX WEIGHT: 70 LBS



5 RADIO DETAIL  
1/2"=1'-0" MAX WEIGHT: 75 LBS



6 CBRs ANTENNA DETAIL  
3"=1'-0" MAX WEIGHT 11.1 LBS

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24 UNION SQUARE  
UNION CITY, CA 94587

PREPARED FOR

verizon

2785 MITCHELL DRIVE, BLDG 9  
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Vendor:

ON AIR

MDG LOCATION ID: 5000372365

PROJECT ID: 17021973

DRAWN BY: SEAD

CHECKED BY: J. GRAY

APPROVED BY: -

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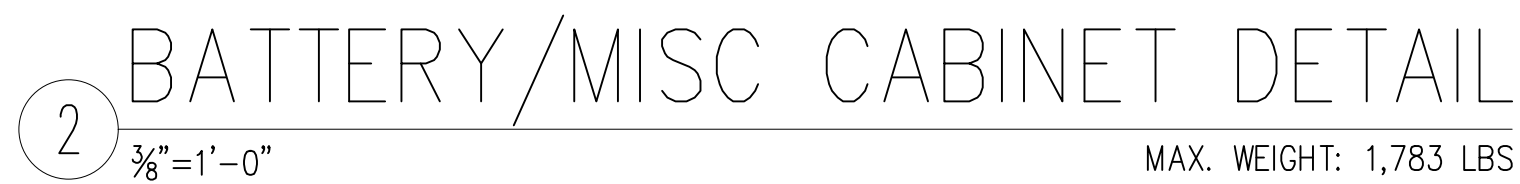
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SHEET TITLE:

ANTENNA  
DETAILS

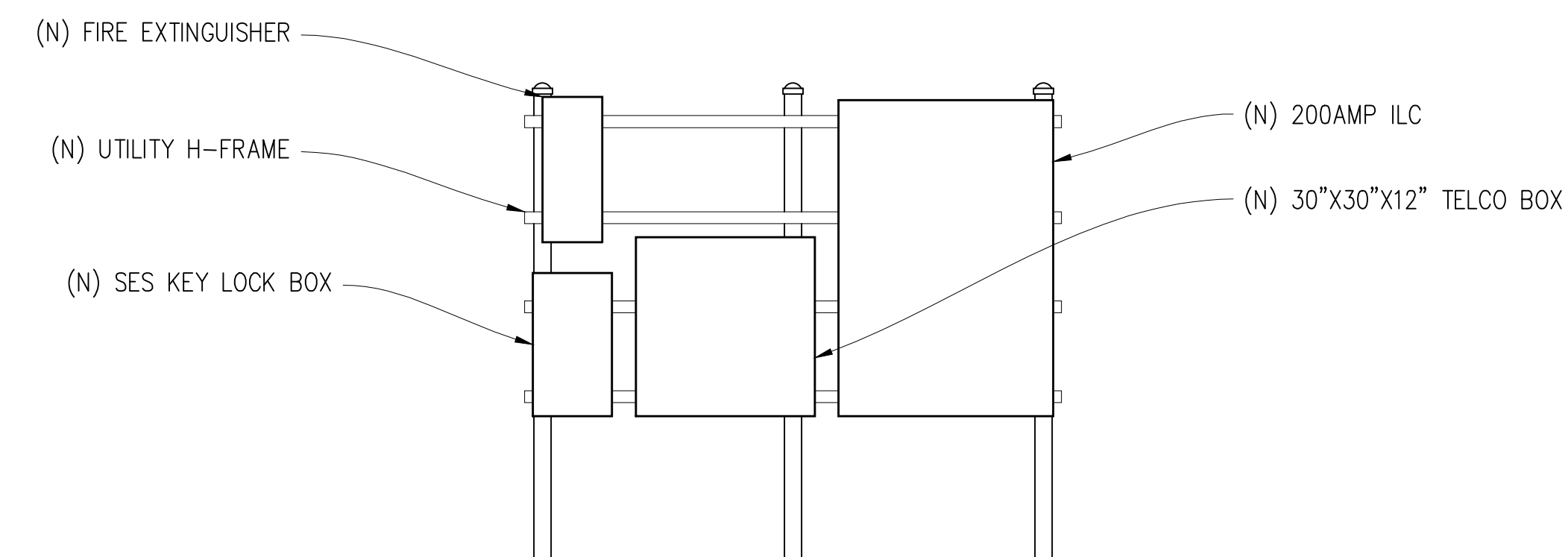
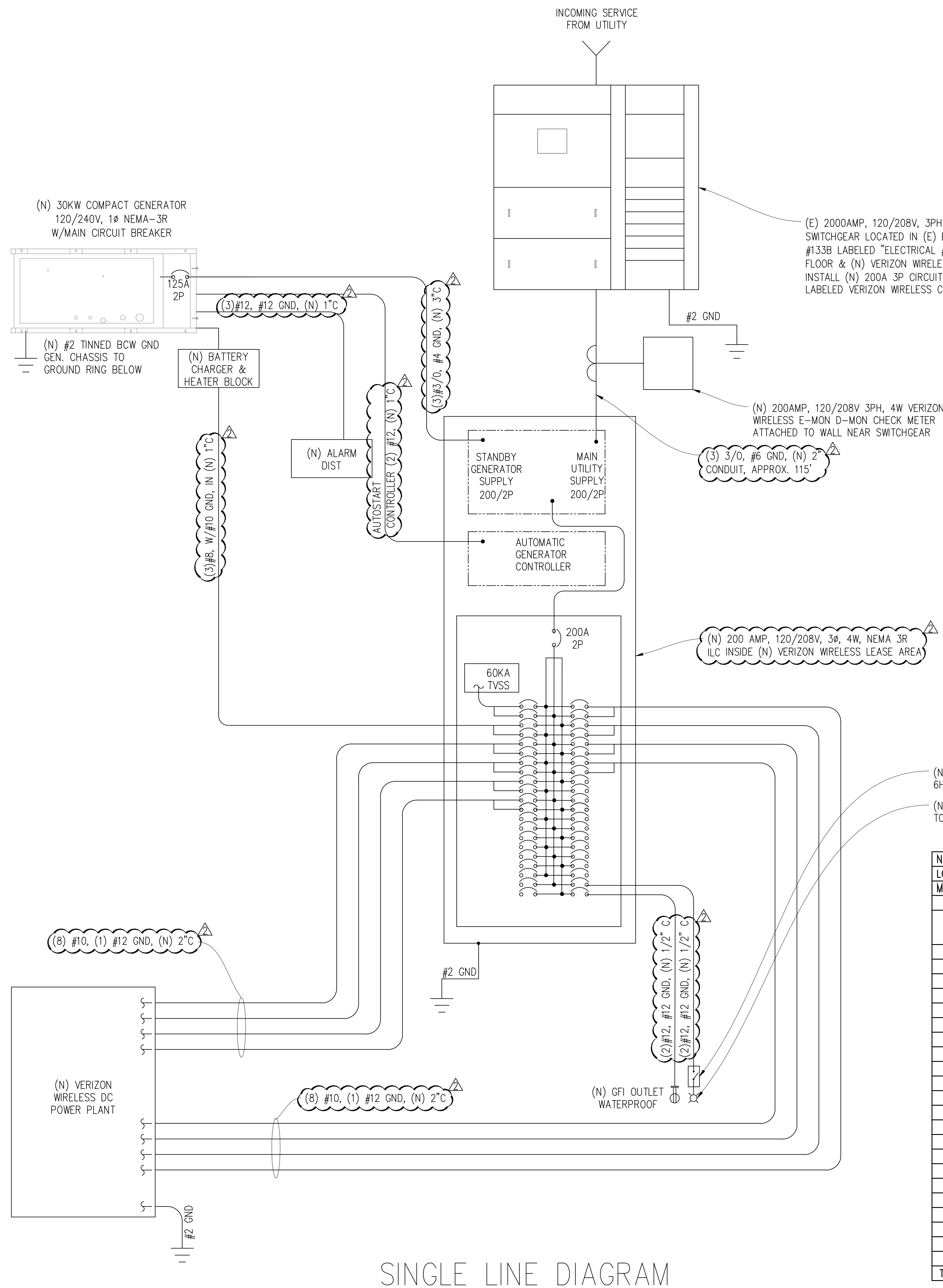
SHEET NUMBER:

A-4.1



## A-4.2





NAMEPLATE : PANEL A				SC LEVEL : 10,000				VOLTS: 120V/208V, 3ø			
LOCATION : OUTSIDE								BUS AMPS: 200A			
MOUNTING : UNISTRUT FRAME								MAIN CB: 200A			
ØA	ØB	ØC	LOAD DESCRIPTION	BKR AMP/ POLE	CIRCUIT NO		BKR AMP/ POLE	LOAD DESCRIPTION	ØA	ØB	ØC
LOAD VA	LOAD VA	LOAD VA							LOAD VA	LOAD VA	LOAD VA
30			SURGE ARRESTOR	60/2	1	2	30/2	(N) DC POWER PLANT	1320		
	30		" "	" "	3	4	" "	" "		1320	
		3840	(N) BATTERY CHARGER & HTR	40/2	5	6	30/2	" "			1320
3840			" "	" "	7	8	" "	" "	1320		
	1320		(N) DC POWER PLANT	30/2	9	10	30/2	" "		1320	
		1320	" "	" "	11	12	" "	" "			1320
1320			" "	30/2	13	14	30/2	" "	1320		
	1320		" "	" "	16	16	" "	" "		1320	
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1320			" "	" "	19	20	—	" "			
	1320		" "	30/2	21	22	—	" "			
		1320	" "	" "	23	24	—	" "			
			BLANK	—	25	26	—	" "			
			" "	—	27	28	—	" "			
			" "	—	29	30	—	" "			
			" "	—	31	32	—	" "			
			" "	—	33	34	—	" "			
			" "	—	35	36	—	" "			
			" "	—	37	38	—	" "			
			" "	—	39	40	20/1	LIGHT		300	
			" "	—	41	42	20/1	GFI RECEPTACLE			180
6510	3990	7800	PHASE TOTALS					PHASE TOTALS	3960	4260	4140
TOTAL VA =	30660		TOTAL AMPS =	85							

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APPROVED BY: -

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Contact: Kevin Sorensen Phone: 916-680-1930  
E-Mail: [kevin@streamlineeng.com](mailto:kevin@streamlineeng.com) Fax: 916-680-1941

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SHEET TITLE:

# ELECTRICAL PLAN

SHEET NUMBER:

## E-1.1



**DATE:** FEBRUARY 1, 2024

**TO:** PLANNING COMMISSION

**FROM:** CARMELA CAMPBELL, ECONOMIC AND COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT:** ADMINISTRATIVE SITE DEVELOPMENT REVIEW (ASD-23-023),  
USE PERMIT (UP-23-008)

**APPLICANT:** Peter Hilliard, On Air, LLC for Verizon Wireless

**LEGAL OWNER:** Avalon Union City

**REQUEST:** Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) approval for a new enclosed wireless facility on top of an existing, five-story, 315,077 square-foot multifamily residential building and to increase the height of the building from 79 to 86 feet. The project includes construction of one, new 417 square-foot cupola on the top of a mechanical penthouse located on an attached parking structure bringing the total height of the building to approximately 86 feet. The cupola will house 16 new antennas with eight (8) new radio units.

**LOCATION:** 14 Union Square (APN 87-19-1-25)

**SIZE OF PARCEL:** 166,263 square feet (3.8 acres)

**GENERAL PLAN:** CSMU, Station Mixed Use Commercial

**ZONING:** CSMU, Station Mixed Use Commercial District

**SURROUNDING LAND USES:**

Table 1 – Surrounding Land Uses			
Location	General Plan Designation	Zoning District	Land Use
North	Station Mixed Use Commercial	CSMU	Union City Intermodal Station

South	Station Mixed Use Commercial	CSMU	Union City Intermodal Station
East	Open Space	OS	Open Space
West	Station Mixed Use Commercial	CSMU	Multifamily Residential

**ENVIRONMENTAL ASSESSMENT:**

This project is categorically exempt under Section 15303(e) *New Construction or Conversion of Small Structures*, of the California Environmental Quality Act (CEQA) Guidelines.

**LOCATION MAPS:**

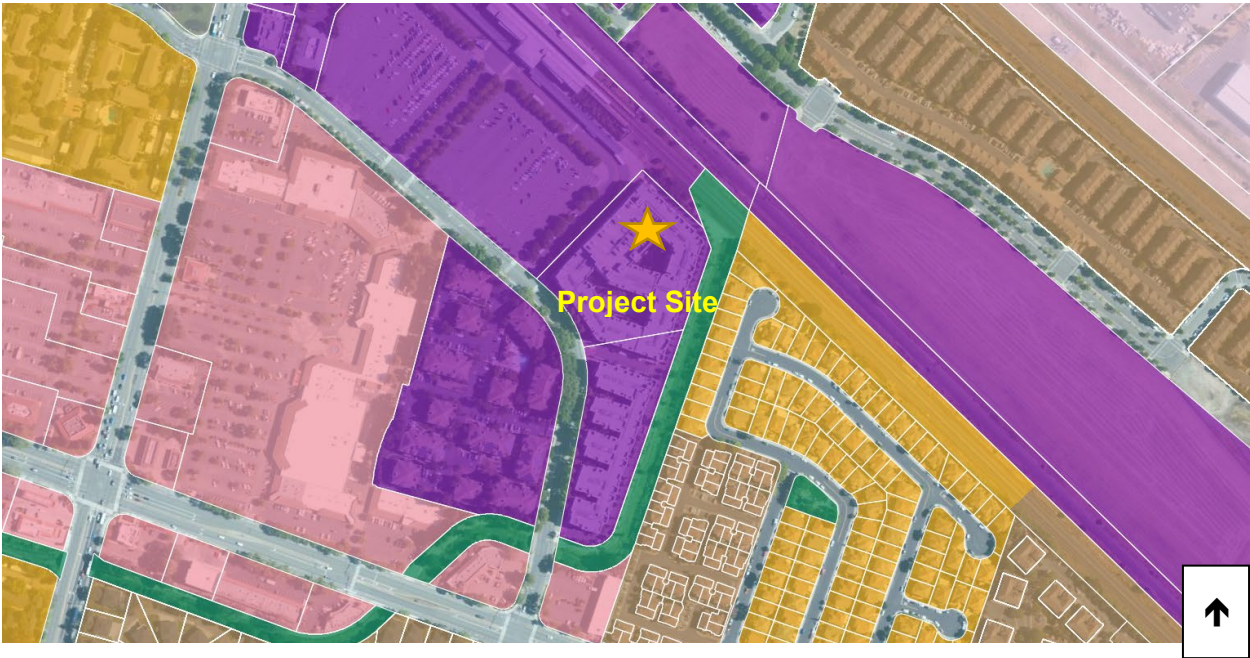


Figure 1 – Zoning Map of 14 Union Square



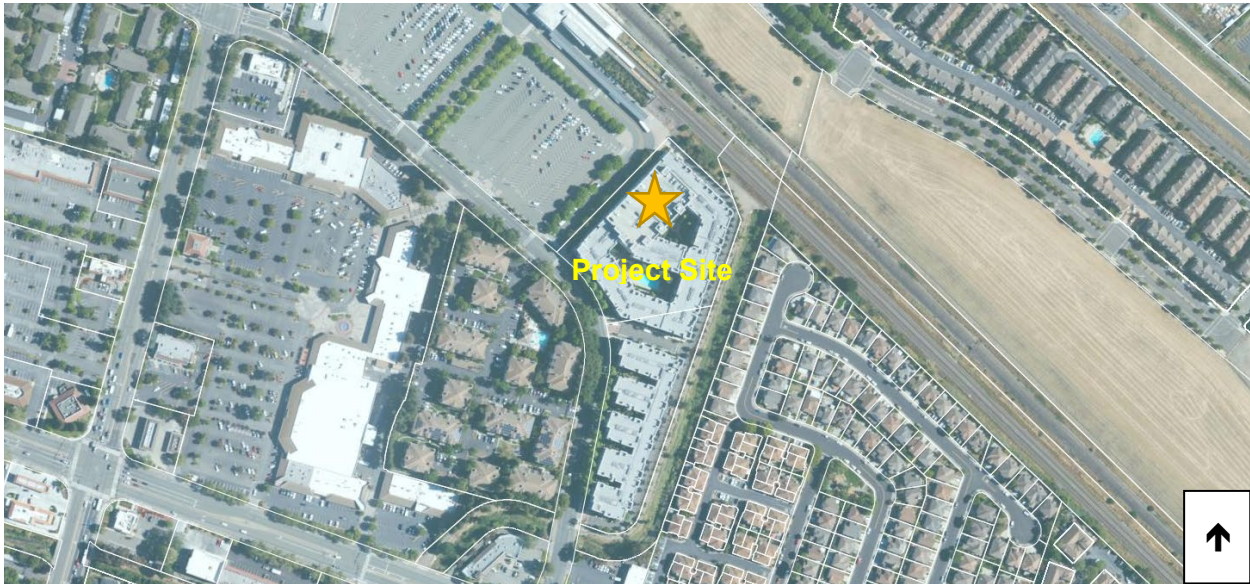


Figure 2 – Location Map of 14 Union Square

## I. BACKGROUND & PROPOSAL

The applicant, Peter Hilliard, on behalf of Verizon, is requesting Administrative Site Development Review approval (ASD-23-023) and Use Permit (UP-23-008) to install a new wireless facility on top of an existing, five-story, 315,077 square-foot multifamily residential building. The project includes construction of one, new 417 square-foot cupola, which will be built on top of an existing mechanical penthouse located on the top level of a parking structure bringing the total height of the building to approximately 86 feet. The cupola will house 16 new antennas with eight (8) new radio units. The plans, photo simulations, and Statement of Use are included as Exhibits A, B, and C, respectively.

The project site is located at 14 Union Square, a 438- unit multifamily residential building south and adjacent to the Union City Intermodal Station. The site was developed in 2006 and consists of two parcels, Lot 1 at 3.8 acres and Lot 2 at 2.2 acres. The proposed wireless facility would be located on the rooftop parking structure of Lot 1.

## II. PROJECT ANALYSIS

### A. Permit Requirements

New wireless facilities in the CSMU zoning district are subject to administrative use permit and administrative site development review, per Union City Municipal Code (UCMC) Section 18.114.040. Per UCMC Section 18.38.140, buildings higher than five stories or 65 feet require approval of a use permit. The current height of the buildings are +/- 64 feet, which was under the threshold for triggering a use permit. The building, where the wireless facility is proposed, includes several mechanical penthouses on the



roof measuring up to 79 feet. Please note that mechanical penthouses and elevator towers are excluded from the use permit requirement provided that they do not exceed 25% of the roof area of the building, which these do not. The wireless facility is proposed on top of one of the mechanical penthouses and increases the overall height of the building by 7 feet for a total building height of 86 feet. The installation on top of the mechanical penthouse is triggering the need for a use permit as the building height is being increased. In addition to the height allowance, the use permit request will address the administrative use permit requirement. Per 18.54.040, Limitations, of the Municipal Code, the Zoning Administrator can determine that an administrative use permit be reviewed by the Planning Commission pursuant to the provisions of Chapter 18.56, Use Permits, if an applicant submits an application for a use permit, which was done. Having the use permit addresses both the building height and the wireless facility use simplifies and streamlines the approval process.

Because the administrative site development review and use permit are being reviewed concurrently, under UCMC Section 18.56.070, the permits shall be approved, conditionally approved, or denied by the same decision maker, in this case, the Planning Commission.

## **B. Project Design and Development Standards Compliance**

The project is subject to Chapter 18.114 Wireless Telecommunications Facilities, the purpose of which is to provide standards for the development, location, siting, and installation of wireless telecommunication facilities. Per the wireless telecommunication facilities use table in Section 18.114.040, new wireless facilities are conditionally permitted in the CSMU District. Per Section 18.114.070, the antennas and equipment will be located so as not to be readily visible by the placement of the antennas; the fiber-reinforced polymer (FRP) screening will be designed and painted to match the existing cupola structures at the site, the equipment enclosure will be camouflaged, and the other ancillary electrical equipment will be located within the building's existing electrical room on the ground floor.

A separate 192 square foot lease area will be located adjacent to the wireless facility on the roof level of the parking structure and will enclose ancillary equipment for the wireless facility including wireless equipment cabinets and a generator. Non-exclusive access easements will allow Verizon to access the wireless facility on the roof and at the electrical room. The purpose of the installation is to help Verizon bring improved

wireless communication capacity and coverage, which would benefit residents, public services, and roadway safety in Union City.

As mentioned above, the proposed antenna facility will be housed in one FRP enclosure with a stealth design, as a cupola, to match the architecture of the existing cupolas on the top floor of the building. The cupola will measure 18 feet by 17 feet 11 inches, 10 feet in height, and will project seven (7) feet above the mechanical penthouse at an existing height of 79 feet one inch. The facility will be constructed directly above the mechanical penthouse bringing the height of the building to 86 feet one inch, which would not exceed the maximum height of 160 feet allowed for structures in the Station Mixed Use Commercial Zoning District. A standby generator will be installed in the equipment enclosure as well as within the existing electrical room.

To address potential visibility and aesthetic concerns, Condition #7 requires all visible conduits to be concealed and screened.

### ***Consistency with the General Plan***

The project is generally consistent with the subject property's General Plan designation of Station Mixed Use Commercial, which allows a mix of high-intensity retail, office, hotels, residential uses, and public plazas in the immediate vicinity of the Intermodal Station.

The Public Facilities and Services Element of the 2040 General Plan includes Policy PF-8.8 *Minimize Visual Impacts* concerning the siting and screening of wireless communications facilities. This policy requires that wireless facilities meet the following conditions:

To minimize the visual impact of wireless communication facilities, the City shall ensure that these facilities meet the following conditions:

1. Monopoles and large cellular infrastructure are located away from residential and open space areas;

*The proposed wireless facility would be located within a roof-mounted facility on the parking structure of an existing residential building.*

2. Small cell sites and supporting infrastructure are designed to minimize visibility in the public rights-of-way and residential areas;

*The proposed wireless facility would be located within a cupola structure on the roof of an existing parking garage and all conduit and supporting infrastructure would be enclosed and screened, minimizing potential visual impacts.*

3. When possible, are located on existing buildings, existing poles, or other existing support structures;

*The proposed wireless facility would be located on the parking structure located on the roof of an existing multi-family residential building.*

4. Are collocated with other compatible facilities whenever possible;

*Currently, there are no existing wireless facilities on the building.*

5. Are painted, camouflaged, textured, or disguised to resemble trees, flag poles, etc. to better blend with the surrounding environment; and

*All of the antennas would be entirely enclosed within the cupola and not visible. The cupola structure would be painted to match the existing building and would incorporate the use of materials consistent with the existing building.*

6. Include well-designed equipment enclosures that incorporate walls or fences and landscaping to provide screening and deter graffiti or are installed in underground vaults where feasible.

*The cabinets and equipment will be enclosed in a 192 square foot lease area that will project five feet above the height of the parapet but will be camouflaged to match the colors of the existing building so as not to be visible.*

The General Plan supports the ongoing expansion and enhancement of modern communication infrastructure in the City. The presence of the antennas will improve the coverage for Verizon by adding to the existing coverage in the City while meeting the intent of the telecommunication infrastructure objectives that the General Plan encourages in developing and maintaining modern communication infrastructure that supports the City's economy, businesses, and residents. Overall, this project is consistent with the applicable policies in the General Plan.

#### **D. Noticing & Communication**

Consistent with State law noticing requirements, public hearing notices were posted January 11, 2024, and were mailed to neighbors within 300 feet of the project site boundary. Staff have not received any public feedback regarding the project.

#### **E. Conclusion**

Based on the above analysis, staff has determined that the proposed wireless facility, as conditioned, would be consistent with all applicable Municipal Code provisions and 2040 General Plan goals and policies.

### III. REQUIRED FINDINGS

#### *Administrative Site Development Review*

Section 18.72.070 of the Zoning Ordinance requires that the Planning Commission make the following findings in granting Administrative Site Development Review approval. Below each finding is a discussion of how the project meets the required finding.

1. Approval of this application is consistent with the General Plan and any applicable specific plans; and

*Approval of this application is consistent with the General Plan, specifically Policy PF-8.8 Minimize Visual Impacts, as the proposed wireless facility will be located in an enclosed cupola structure on top of an existing mechanical penthouse on the roof of a parking structure, thereby minimizing any potential visual impacts when viewed from public right of ways and residential areas. The cupola structure will be painted to match the existing building, and proposed materials will be architecturally consistent with the building. Additionally, Condition #7 requires that all visible conduits be concealed and screened. There are no specific plans applicable to the site.*

2. Approval of this application is consistent with the purpose of Title 18 and the requirements of the CSMU Zoning District; and

*Approval of this application is consistent with the purpose of Title 18, which seeks to promote and protect the public health, safety, morals, comfort, convenience and the general welfare of the people and to promote the orderly and beneficial development of such areas. Approval of this application is also consistent with the requirements of the CSMU zoning district in which the site is located; and*

3. Approval of this application is consistent with the purpose of administrative site development review as outlined in Section 18.72.010; and

*The project will be a minor modification to an existing building and will promote orderly, attractive and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having undesirable qualities which are not properly related to their sites, or which would not meet the specific intent clause or performance standard requirement of the zoning title. The presence of the new antennas will improve the coverage for Verizon Wireless and improve service to customers in the vicinity and for the needs of residents, businesses, and first responders in the City of Union City.*

## **Use Permit**

Section 18.56.060 of the Zoning Ordinance requires that the Planning Commission make the following findings in granting Use Permit approval. Below each finding is a discussion of how the project meets the required finding.

1. That the proposed location of the conditional use is in accord with the purposes of this title and the purposes of the district in which the site is located;

*New wireless facility uses are allowed in the Station Mixed Use Commercial, CSMU District. Under Section 18.56.010, the project has been carefully considered, in terms of safety and design, so the facility is located properly and compatible with the surrounding area and uses; and*

2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;

*The location of the use, as conditioned, is not detrimental to the public health, safety, welfare, or materially injurious to properties within the vicinity. The project will adhere to all required conditions from the City and responsible agencies pertaining to public health, safety, and welfare. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements, as shown in Attachment 1 to Exhibit A. Further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site; and*

3. That the proposed conditional use is consistent with the general plan, any applicable specific plans, and will comply with each of the applicable provisions of Title 18; and

*The project is consistent with the general plan, which encourages the development and maintenance of state-of-the-art communication infrastructure and services to bolster the City's economic competitiveness and support businesses and residents; the new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. The project complies with Title 18 by providing a use that promotes and protect the public health, safety, morals, comfort, convenience and the general welfare of the people; and*

## **Wireless Telecommunication Facilities**

All of the following findings are required for approval of any use permit, administrative use permit, site development review, or administrative site development review under UCMC Section 18.114.130:

1. That the proposed project is consistent with the requirements of this chapter;

*Visual impacts of the project will be reduced by matching the existing building in colors and materials, including trims along the edges of the structures. The applicant has provided all documents that evidence compliance with requirements for design, safety, agency, and operation and maintenance standards; and*

2. That the proposed wireless telecommunication facility will not be readily visible, unless it is demonstrated that it is not technically feasible to incorporate additional measures that would make the facility not readily visible; and

*All equipment will be screened and set back from the right-of-way as much as feasible. the wireless facility will be enclosed in a cupola structure that is designed to match the architecture of the building and screen the antennas; and*

3. That the wireless telecommunication facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area and is the least intrusive means of doing so.

*The new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. Verizon will deploy a new coverage network to serve the wireless needs of residents, businesses, and first responders in the City of Union City. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements, as shown in Attachment 1 to Exhibit A. Further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site.*

#### **IV. ALTERNATIVES**

1. Approve ASD-23-023 and UP-23-008 as proposed;
2. Approval of ASD-23-023 and UP-23-008 with modified conditions;
3. Denial of ASD-23-023 and UP-23-008 with stated findings; or

4. Continue the matter for further consideration.

## **V. CONDITIONS OF APPROVAL**

### **PLANNING DIVISION**

#### *General*

1. All actual site improvements shall be made with adherence to the plans listed in Exhibit A, except as they may be modified by other conditions of approval listed below. Any variation or modification from the approved plans are subject to the review and approval of the Economic and Community Development Department.
2. This application shall expire one year from the date of Planning Commission approval unless building permits have been issued and construction diligently pursued.
3. The applicant and/or property owner shall include an annotated copy of the approved Planning Commission Resolution with each set of detailed construction plans submitted for plan check review. Notations to the plans shall be made to clearly indicate how all conditions of approval will be or have been complied with. Construction plans shall not be accepted without the annotated final conditions of approval included as a note sheet with each set of plans.
4. The applicant and/or property owner shall apply for and take out all required building and fire permits prior to beginning any on-site work. Plans submitted to the Building Division and Fire Department must demonstrate compliance with all applicable local and state requirements.
5. The applicant and/or property owner shall be responsible for ensuring that all contractors and subcontractors have obtained a valid City of Union City business license for the duration of the project.

#### *Building Materials and Finishes*

6. Prior to the issuance of building permits, the applicant and/or property owner shall submit samples and details of color palettes and all exterior materials, for review and approval by the Economic & Community Development Department. The color samples shall be provided in a binder with paint and material schemes along with full-size brush-outs as opposed to paint chips. Color swatches shall also be painted on the cupola structure for review and approval by the Economic and Community Development Department prior to full painting. Any future amendments or changes to the approved painting schemes shall be submitted to

the Economic and Community Development Department for approval prior to the full painting of the proposed structure.

7. All visible conduits shall be concealed and screened.
8. Prior to issuance of building permits, the applicant/property owner shall pay all applicable fees (Capital Facilities Fee, Park Facilities Fee, etc.) that are in effect at the time of building permit issuance.
9. Prior to issuance of building permits, the applicant and/or property owner shall pay the General Plan Cost Recovery Fee in effect at the time of building permit issuance. The current fee is \$1.00 per \$1,000.00 of construction valuation per City Council Resolution Number 3379-07.

## **BUILDING DIVISION**

10. Any construction shall fully comply with the Building Standard Codes in effect at the time of building permit issuance.
11. The applicant/property owner shall provide detailed construction plans (working drawings) and calculations to the Building Division for plan review prior to issuance of a building permit. Plans and supporting documents shall be prepared by a state-licensed architect or engineer. Upon completion of the plan check, all applicable fees shall be paid and a building permit issued prior to commencement of any actual construction work on-site.
12. The applicant/property owner shall maintain the property to be free of litter, weeds, debris, etc., both before and after issuance of building permits. Daily litter and debris collection rounds shall be conducted on the site and an adequate number of trash receptacles shall be provided to minimize litter accumulation.
13. The applicant/property owner shall not locate construction debris boxes within the public right-of-way (ROW), driveways or on adjacent private properties.

## **FIRE DEPARTMENT**

14. It shall be noted on plans for building permits that the applicant/property owner shall ensure there are posted signage on the walls indicating wireless antennas located on roof of facility.
15. The existing parapet shall remain in its current position and there shall not be an increase in height.
16. It shall be noted on plans for building permits that the applicant/property owner will ensure any roof access will not be impeded and or be obstructed to direct access to the antennas.



17. It shall be noted on plans for building permits that should there be an enclosure built around the base of the antennas, an access door (at least 36 inches wide) shall be required with no locking apertures needed on the door.
18. The applicant/property owner shall apply for a hot work permit for all welding and or cutting operations.

#### **PUBLIC WORKS DEPARTMENT**

19. The applicant/property owner shall install 'No Dumping – Drains to Bay' stencils at all storm drain inlets on site.

#### **ENVIRONMENTAL PROGRAMS**

20. The applicant/property owner is hereby advised that unauthorized discharge of any kind to the storm water system, which includes the streets and gutters, is prohibited, and that such discharges, whether intentional or not, are subject to penalties up to \$20,000 per violation per day. This applies both to the construction phase and to routine facility operations.
21. The applicant/property owner shall note on plans for building permit submittal indicating the total volume of battery electrolyte in the equipment cabinets under Verizon's control at this site at project completion.

#### **VI. RECOMMENDATION**

The DRC recommends that the Planning Commission approve Administrative Site Development Review (ASD-23-023) and a Use Permit (UP-23-008), subject to conditions, making the following specific findings in support of this approval:

- a. That this project is categorically exempt under Section 15303 New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA) Guidelines; and
- b. That approval of this application is consistent with the General Plan, specifically Policy PF-8.8 Minimize Visual Impacts, as the proposed wireless facility will be located in an enclosed cupola structure on top of an existing mechanical penthouse on the roof of a parking structure, thereby minimizing any potential visual impacts when viewed from public right of ways and residential areas. The cupola structure will be painted to match the existing building, and proposed materials will be architecturally consistent with the building. Additionally, Condition #7 requires that all visible conduits be concealed and screened. There are no specific plans applicable to the site.; and

- c. That approval of this application is consistent with the purpose of Title 18, which seeks to promote and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people and to promote the orderly and beneficial development of such areas. Approval of this application is also consistent with the requirements of the CSMU zoning district in which the site is located; and
- d. That the project will be a minor modification to an existing building and will promote orderly, attractive and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having undesirable qualities which are not properly related to their sites, or which would not meet the specific intent clause or performance standard requirement of the zoning title. Furthermore, the presence of the new antennas will improve the coverage for Verizon Wireless and improve service to customers in the vicinity and for the needs of residents, businesses, and first responders in the City of Union City; and
- e. That new wireless facility uses are currently allowed in the Station Mixed Use Commercial, CSMU District. Under 18.56.010, applicant's project has been carefully considered, in terms of safety and design, so the facility if located properly and compatible with the surrounding area and uses; and
- f. That the location of the use, as conditioned, is not detrimental to the public health, safety, welfare, or materially injurious to properties within the vicinity. The project will adhere to all required conditions from the City and responsible agencies pertaining to public health, safety, and welfare. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements, as shown in Attachment 1 to Exhibit A; further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site; and

- g. The project is consistent with the general plan, which encourages the development and maintenance of state-of-the-art communication infrastructure and services to bolster the City's economic competitiveness and support businesses and residents; the new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. The project complies with Title 18 by providing a use that promotes and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people; and
- h. That visual impacts of the project will be reduced by matching the existing building in colors and materials, including trims along the edges of the structures. The applicant has provided all documents that evidence compliance with requirements for design, safety, agency, and Operation and maintenance standards; and
- i. That all equipment will be screened and set back from the right-of-way as much as feasible. The wireless facility will be enclosed in a cupola structure that is designed to match the architecture of the building and screen the antennas; and
- j. The new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. Verizon will deploy a new coverage network to serve the wireless needs of residents, businesses, and first responders in the City of Union City. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements, as shown in Attachment 1 to Exhibit A. Further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site.

It is further recommended that the Planning Commission adopt a Resolution confirming this action.

**Prepared by**

Natalie Dean, Associate Planner

**Attachments**

Exhibit A:	Project Plans ( <i>See CC Resolution - Exhibit A</i> )
Attachment 1 to Exhibit A:	Radio Frequency Emissions Compliance Report
Exhibit B:	Photo Simulations
Exhibit C:	Statement of Use



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## Radio Frequency Emissions Compliance Report for Verizon Wireless

Site Name:	Niles Decoto - E	Site Structure Type:	Rooftop
Address:	24 Union Square	Latitude:	37.589085
	Union City, CA 94587	Longitude:	-122.016526
Report Date:	August 22, 2023	Project:	New Build

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### Compliance Statement

Based on information provided by Verizon Wireless and predictive modeling, the Niles Decoto - E installation proposed by Verizon Wireless will be compliant with Radiofrequency Radiation Exposure Limits of 47 C.F.R. §§ 1.1307(b)(3) and 1.1310. At the rooftop of 24 Union Square, RF alerting signage and restricting access to these areas to authorized personnel that have completed RF safety training is required for Occupational environment compliance. The proposed operation will not expose members of the General Public to hazardous levels of RF energy at ground level or in adjacent structures.

### Certification

I, David C. Cotton, Jr., am the reviewer and approver of this report and am fully aware of and familiar with the Rules and Regulations of both the Federal Communications Commissions (FCC) and the Occupational Safety and Health Administration (OSHA) with regard to Human Exposure to Radio Frequency Radiation, specifically in accordance with FCC's OET Bulletin 65. I have reviewed this Radio Frequency Exposure Assessment report and believe it to be both true and accurate to the best of my knowledge.

### General Summary

The compliance framework is derived from the Federal Communications Commission (FCC) Rules and Regulations for preventing human exposure in excess of the applicable Maximum Permissible Exposure ("MPE") limits. At any location at this site, the power density resulting from each transmitter may be expressed as a percentage of the frequency-specific limits and added to determine if 100% of the exposure limit has been exceeded. The FCC Rules define two tiers of permissible exposure differentiated by the situation in which the exposure takes place and/or the status of the individuals who are subject to exposure. General Population / Uncontrolled exposure limits apply to those situations in which persons may not be aware of the presence of electromagnetic energy, where exposure is not employment-related, or where persons cannot exercise control over their exposure. Occupational / Controlled exposure limits apply to situations in which persons are exposed as a consequence of their employment, have been made fully aware of the potential for exposure, and can exercise control over their exposure. Based on the criteria for these classifications, the FCC General Population limit is considered to be a level that is safe for continuous exposure time. The FCC General Population limit is 5 times more restrictive than the Occupational limits.

In situations where the predicted MPE exceeds the General Population threshold in an accessible area as a result of emissions from multiple transmitters, FCC licensees that contribute greater than 5% of the aggregate MPE share responsibility for mitigation.

Table 1: FCC Limits

Frequency (MHz)	<i>Limits for General Population/ Uncontrolled Exposure</i>		<i>Limits for Occupational/ Controlled Exposure</i>	
	Power Density (mW/cm <sup>2</sup> )	Averaging Time (minutes)	Power Density (mW/cm <sup>2</sup> )	Averaging Time (minutes)
30-300	0.2	30	1	6
300-1500	f/1500	30	f/300	6
1500-100,000	1.0	30	5.0	6

f=Frequency (MHz)

Based on the computational guidelines set forth in FCC OET Bulletin 65, Waterford Consultants, LLC has developed software to predict the overall Maximum Permissible Exposure possible at any location given the spatial orientation and operating parameters of multiple RF sources. The power density in the Far Field of an RF source is specified by OET-65 Equation 5 as follows:

$$S = \frac{EIRP}{4 \cdot \pi \cdot R^2} \text{ (mW/cm}^2\text{)}$$

where EIRP is the Effective Radiated Power relative to an isotropic antenna and R is the distance between the antenna and point of study. Additionally, consideration is given to the manufacturers' horizontal and vertical antenna patterns as well as radiation reflection. At any location, the predicted power density in the Far Field is the spatial average of points within a 0 to 6-foot vertical profile that a person would occupy. Near field power density is based on OET-65 Equation 20 stated as

$$S = \left( \frac{180}{\theta_{BW}} \right) \cdot \frac{100 \cdot P_{in}}{\pi \cdot R \cdot h} \text{ (mW/cm}^2\text{)}$$

where  $P_{in}$  is the power input to the antenna,  $\theta_{BW}$  is the horizontal pattern beamwidth and h is the aperture length.

Some antennas employ beamforming technology where RF energy allocated to each customer device is dynamically directed toward their location. In the analysis presented herein, predicted exposure levels are based on all beams at full utilization (i.e. full power) simultaneously focused in any direction. As this condition is unlikely to occur, the actual power density levels at ground and at adjacent structures are expected to be less than the levels reported below. These theoretical results represent maximum-case predictions as all RF emitters are assumed to be operating at 100% duty cycle.

For any area in excess of 100% General Population MPE, access controls with appropriate RF alerting signage must be put in place and maintained to restrict access to authorized personnel. Signage must be posted to be visible upon approach from any direction to provide notification of potential conditions within these areas. Subject to other site security requirements, occupational personnel should be trained in RF safety and equipped with personal protective equipment (e.g. RF personal monitor) designed for safe work in the vicinity of RF emitters. Controls such as physical barriers to entry imposed by locked doors, hatches and ladders or other access control mechanisms may be supplemented by alarms that alert the individual and notify site management of a breach in access control. Waterford Consultants, LLC recommends that any work activity in these designated areas or in front of any transmitting antennas be coordinated with all wireless tenants.



## Analysis

Verizon Wireless proposes the following installation at this location:

- (16) (N) ANTENNAS
- (8) (N) RADIO UNITS @ ANTENNAS

The antennas will be mounted on a 79.08-foot Rooftop with centerlines 82 & 84 feet above ground level. Proposed antenna operating parameters are listed in Appendix A. Other appurtenances such as GPS antennas, RRUs and hybrid cable below the antennas are not sources of RF emissions. No other antennas are known to be operating in the vicinity of this site.

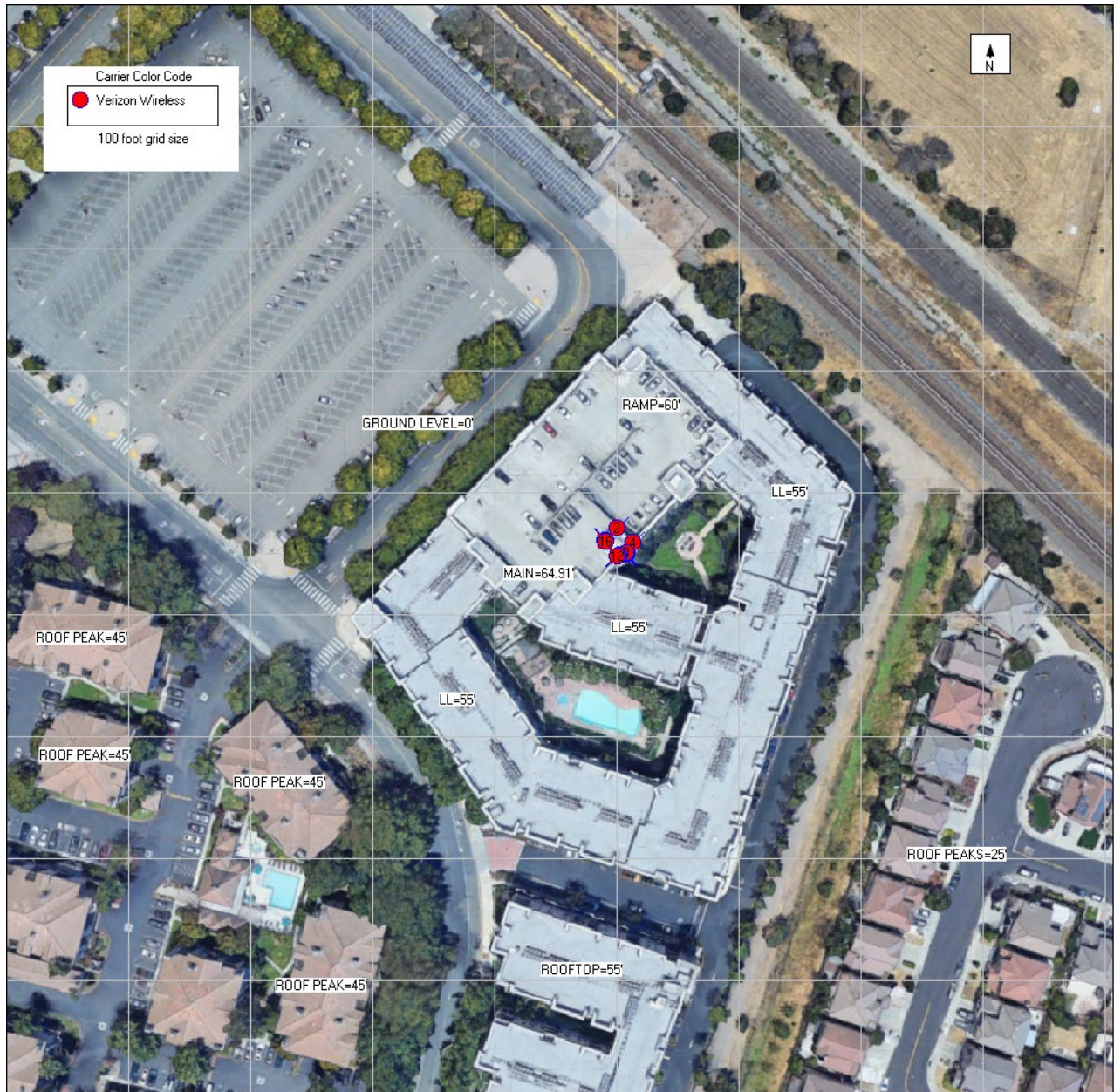


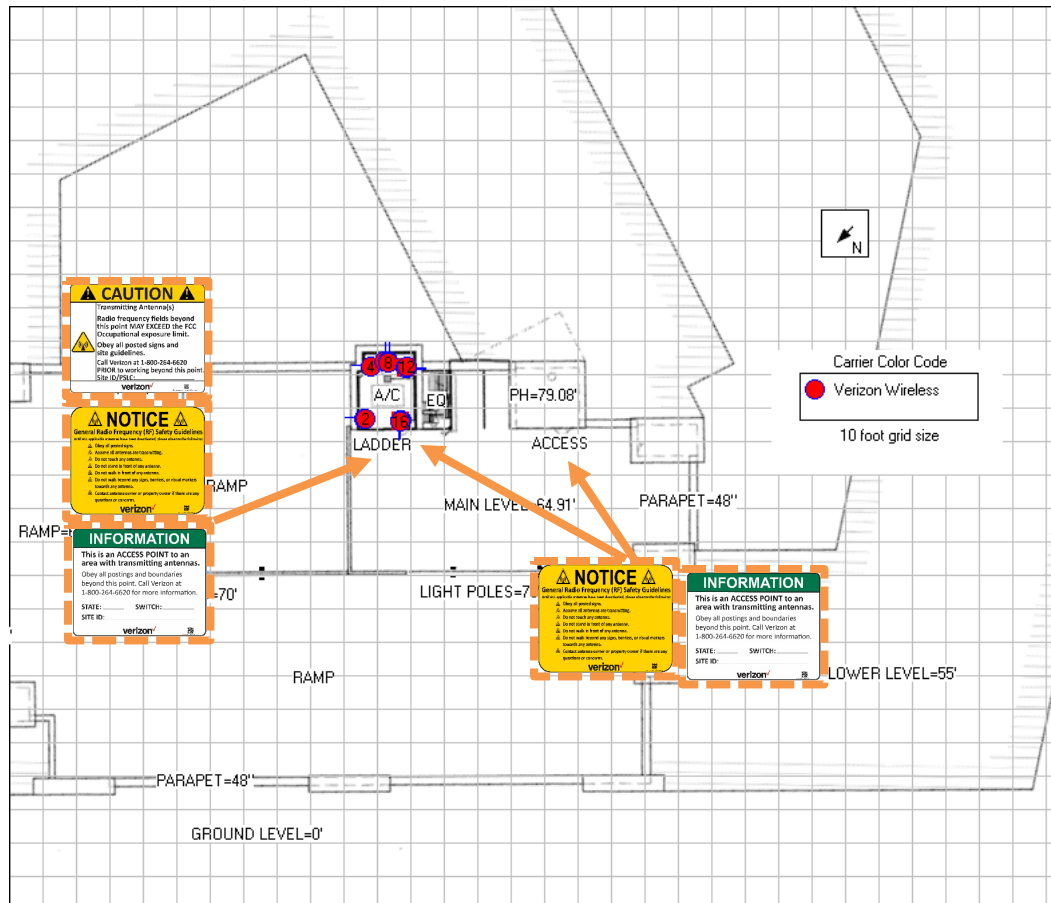
Figure 1: Antenna Locations

Power density decreases significantly with distance from any antenna. The panel-type antennas to be employed at this site are highly directional by design and the orientation in azimuth and mounting elevation, as documented, serves to reduce the potential to exceed MPE limits at any location other than directly in front of the antennas. For accessible areas at ground level, the maximum predicted power density level resulting from all Verizon Wireless operations is 5.4463% of the FCC General Population limits. Incident at adjacent structures depicted in Figure 1, the maximum predicted power density level resulting from all Verizon Wireless operations is 12.5955% of the FCC General Population limits. The proposed operation will not expose members of the General Public to hazardous levels of RF energy at ground level or in adjacent structures.

For accessible areas at the roof level of 24 Union Square, the maximum predicted power density level resulting from all Verizon Wireless operations is 69.95184% of the FCC Occupational limits (349.7592% of the FCC General Population limits). Based on the operating parameters in Appendix A, the maximum cumulative predicted power density level from all antennas on the interior top floor is 5.3581% of the FCC General Population limits. Waterford Consultants, LLC recommends posting contact information and RF Guidelines signage that informs personnel entering the site of basic precautions to be followed when working around antennas. For areas near the antennas that are predicted to exceed the General Population limits, RF alerting signs (Caution) should be posted to be visible upon approach to provide notification of potential conditions at these areas. These recommendations are depicted in Figure 2. Any work activity in front of transmitting antennas should be coordinated with Verizon Wireless.



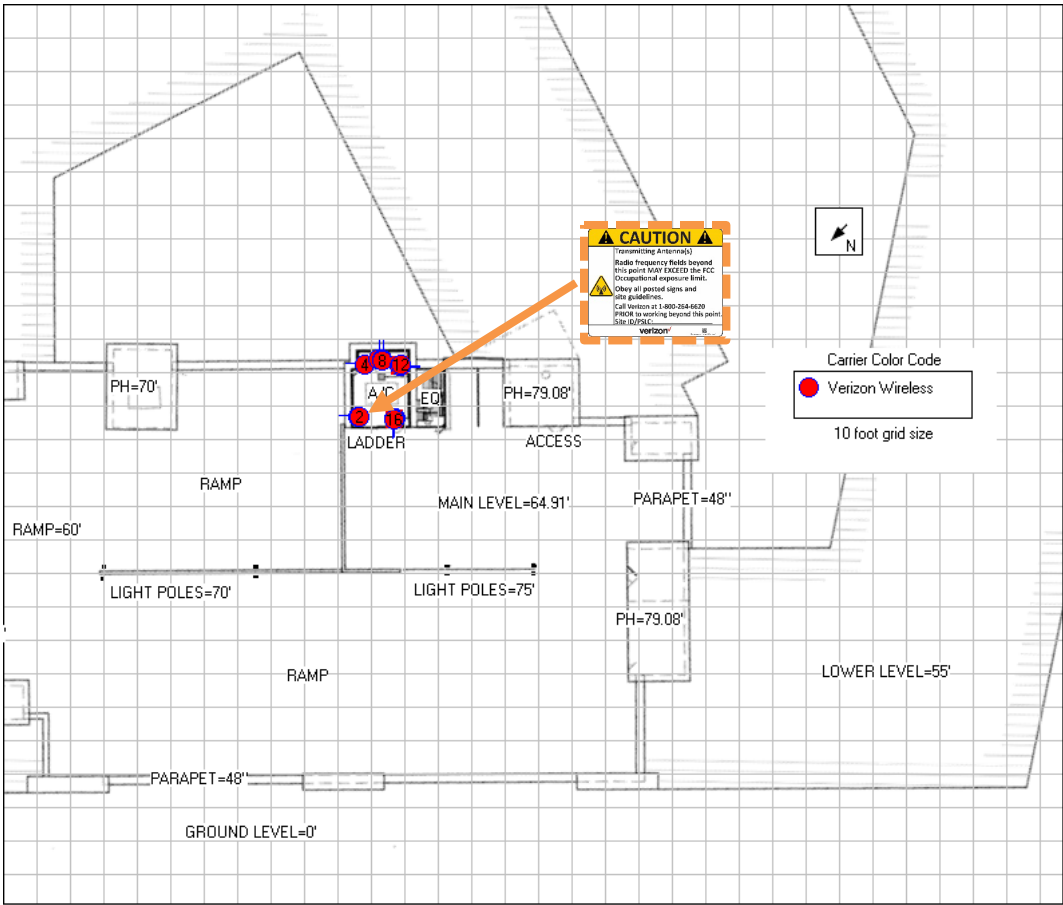
### Compliance Requirement Diagram (Access Location)



<h2>Final Compliant Configuration</h2>						
	<b>GUIDELINES</b>	<b>NOTICE</b>	<b>CAUTION</b>	<b>WARNING</b>	<b>NOC INFO</b>	<b>BARRIER/MARKER</b>
Access Point(s)	<input checked="" type="checkbox"/> [3]	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [1]	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [3]	<input type="checkbox"/> N/A

Figure 2.1: Mitigation Recommendations

Compliance Requirement Diagram (Alpha Sector)




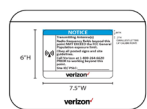
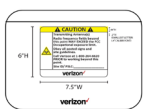



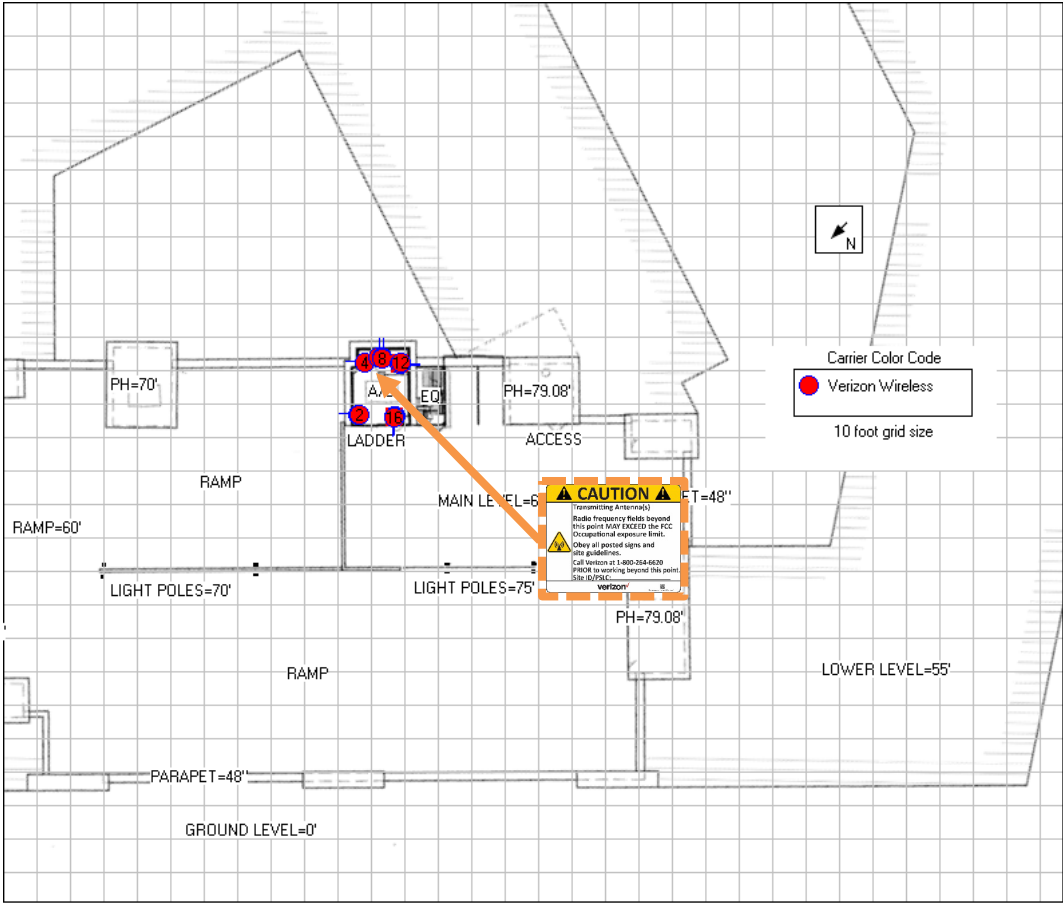
Final Compliant Configuration						
	GUIDELINES	NOTICE	CAUTION	WARNING	NOC INFO	BARRIER/MARKER
Alpha	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [1]	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input type="checkbox"/> N/A

Figure 2.2: Mitigation Recommendations

Compliance Requirement Diagram (Beta Sector)





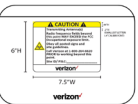



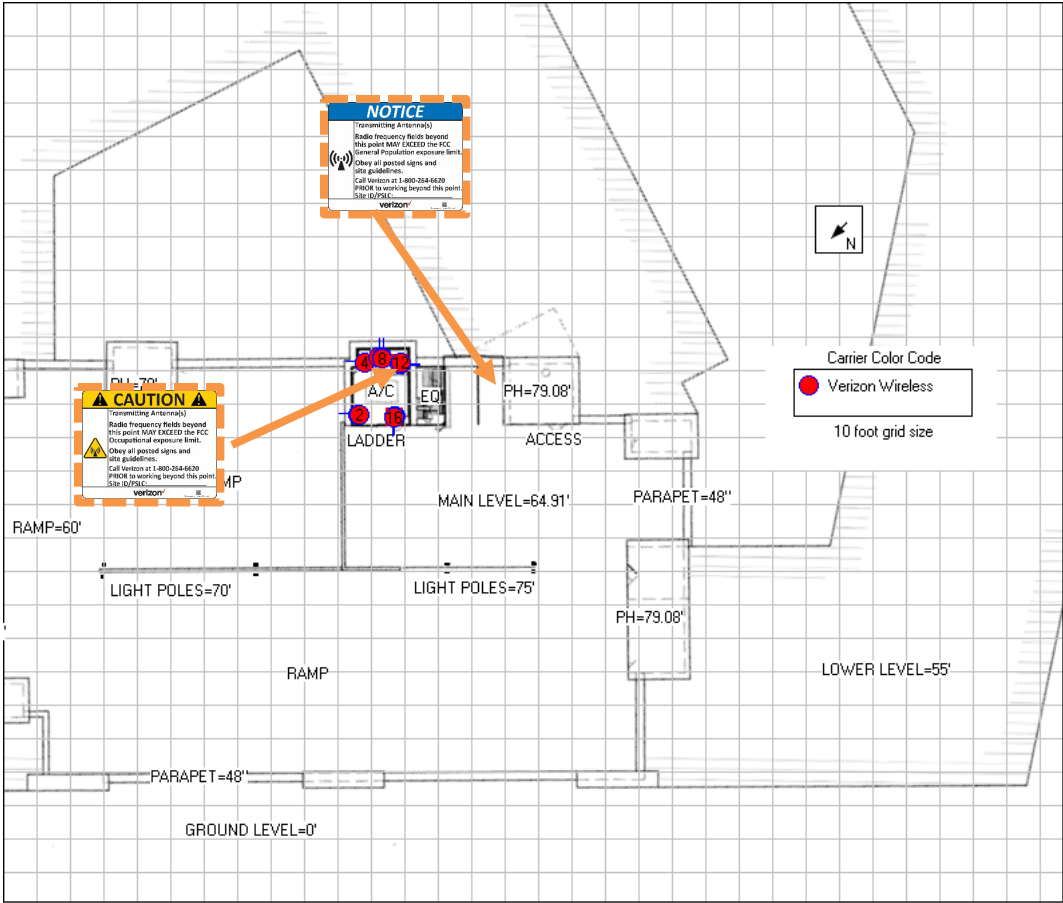
Final Compliant Configuration						
	GUIDELINES	NOTICE	CAUTION	WARNING	NOC INFO	BARRIER/MARKER
Beta	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [1]	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input type="checkbox"/> N/A

Figure 2.3: Mitigation Recommendations

Compliance Requirement Diagram (Gamma Sector)




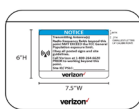




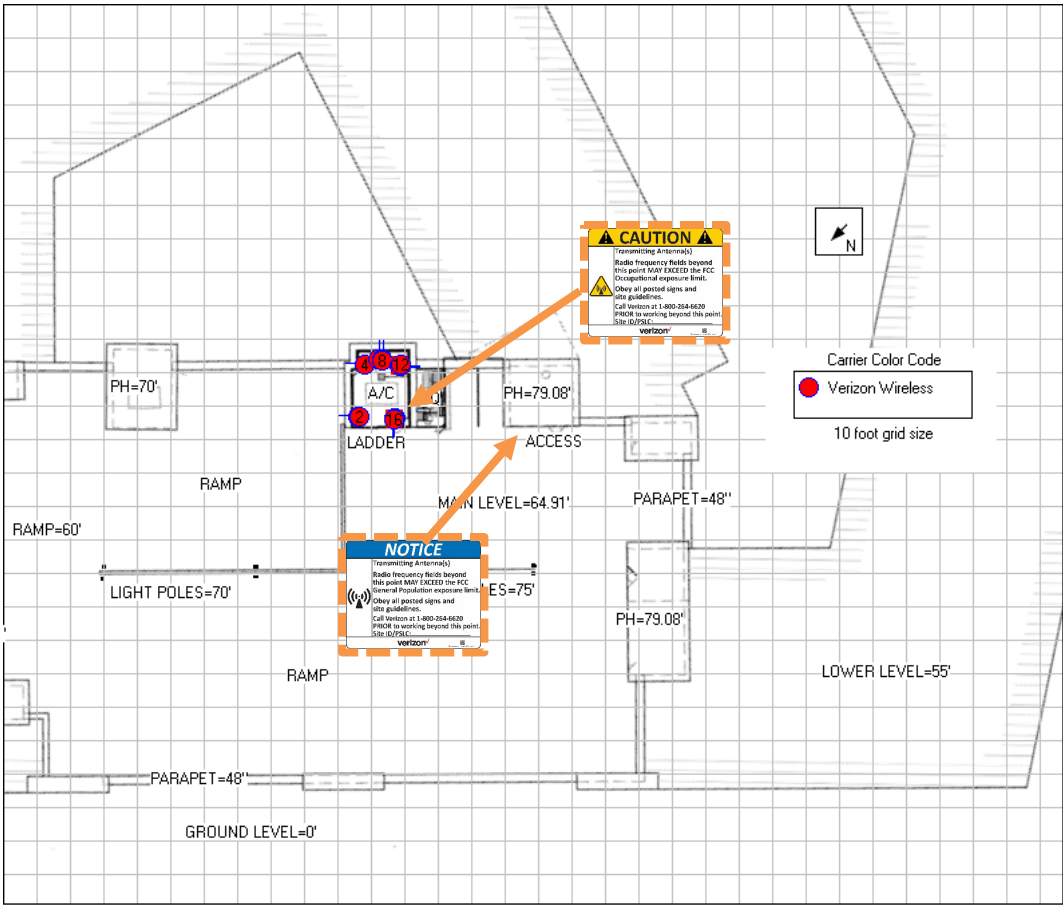
Final Compliant Configuration						
	GUIDELINES	NOTICE	CAUTION	WARNING	NOC INFO	BARRIER/MARKER
Gamma	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [1]	<input checked="" type="checkbox"/> [1]	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input type="checkbox"/> N/A

Figure 2.4: Mitigation Recommendations

Compliance Requirement Diagram (Delta Sector)




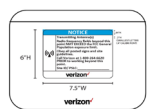
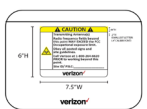



Final Compliant Configuration						
	GUIDELINES	NOTICE	CAUTION	WARNING	NOC INFO	BARRIER/MARKER
Delta	<input type="checkbox"/> [#]	<input checked="" type="checkbox"/> [1]	<input checked="" type="checkbox"/> [1]	<input type="checkbox"/> [#]	<input type="checkbox"/> [#]	<input type="checkbox"/> N/A

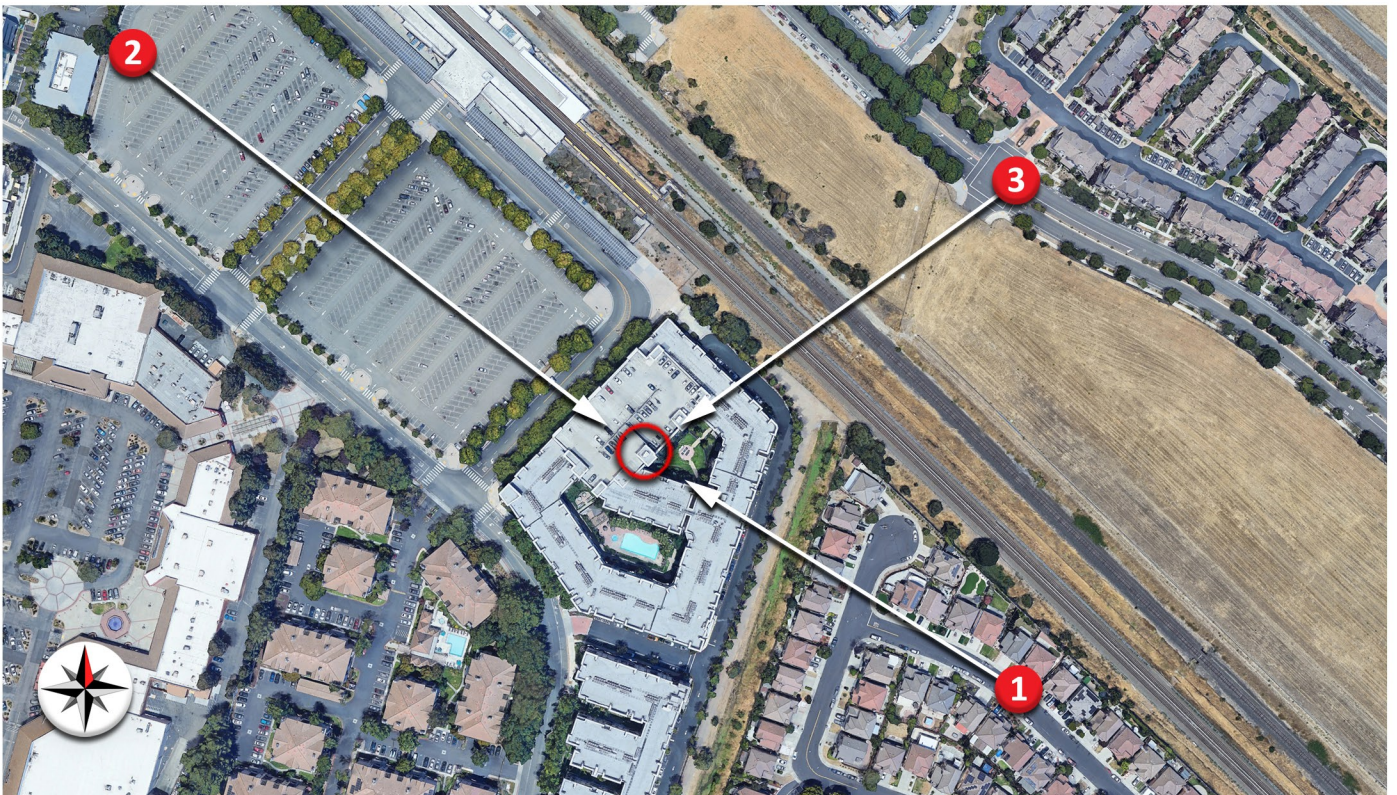
Figure 2.5: Mitigation Recommendations

**Appendix A: Operating Parameters Considered in this Analysis**

Antenna #:	Carrier:	Manufacturer	Pattern:	Band (MHz):	Mech Az (deg):	Mech DT (deg):	H BW (deg):	Length (ft):	TPO (W):	Channels:	Loss (dB):	Gain (dBi):	ERP (W):	EIRP (W):	Rad Center (ft):
1	Verizon	JMA	MX06FRO660-02 04DT	700	50	0	60	5.9	40	2	0	12.45	1406	2307	82
1	Verizon	JMA	MX06FRO660-02 04DT	850	50	0	53	5.9	40	2	0	12.35	1374	2255	82
1	Verizon	JMA	MX06FRO660-02 00DT	1900	50	0	57	5.9	20	4	0	15.85	3077	5048	82
2	Verizon	JMA	MX06FRO660-02 04DT	700	50	0	60	5.9	40	2	0	12.45	1406	2307	82
2	Verizon	JMA	MX06FRO660-02 04DT	850	50	0	53	5.9	40	2	0	12.35	1374	2255	82
2	Verizon	JMA	MX06FRO660-02 00DT	2100	50	0	53	5.9	40	4	0	15.45	5612	9207	82
2	Verizon	JMA	MX06FRO660-02 00DT	2100	50	0	53	5.9	20	4	0	15.45	2806	4604	82
3	Verizon	ERICSSON	KRE105281-1	3500	50	0	64	0.7	5	4	0	9.36	173	283	84
4	Verizon	ERICSSON	SON_AIR6449 NR TB 03.24.21 3700 VZW	3700	50	0	11	2.8	320	1	6	23.55	18203	29864	84
5	Verizon	JMA	MX06FRO660-02 04DT	700	140	0	60	5.9	40	2	0	12.45	1406	2307	82
5	Verizon	JMA	MX06FRO660-02 04DT	850	140	0	53	5.9	40	2	0	12.35	1374	2255	82
5	Verizon	JMA	MX06FRO660-02 00DT	1900	140	0	57	5.9	20	4	0	15.85	3077	5048	82
6	Verizon	JMA	MX06FRO660-02 04DT	700	140	0	60	5.9	40	2	0	12.45	1406	2307	82
6	Verizon	JMA	MX06FRO660-02 04DT	850	140	0	53	5.9	40	2	0	12.35	1374	2255	82
6	Verizon	JMA	MX06FRO660-02 00DT	2100	140	0	53	5.9	40	4	0	15.45	5612	9207	82
6	Verizon	JMA	MX06FRO660-02 00DT	2100	140	0	53	5.9	20	4	0	15.45	2806	4604	82
7	Verizon	ERICSSON	KRE105281-1	3500	140	0	64	0.7	5	4	0	9.36	173	283	84
8	Verizon	ERICSSON	SON_AIR6449 NR TB 03.24.21 3700 VZW	3700	140	0	11	2.8	320	1	3	23.55	36320	59587	84
9	Verizon	JMA	MX06FRO660-02 04DT	700	230	0	60	5.9	40	2	0	12.45	1406	2307	82
9	Verizon	JMA	MX06FRO660-02 04DT	850	230	0	53	5.9	40	2	0	12.35	1374	2255	82
9	Verizon	JMA	MX06FRO660-02 00DT	1900	230	0	57	5.9	20	4	0	15.85	3077	5048	82
10	Verizon	JMA	MX06FRO660-02 04DT	700	230	0	60	5.9	40	2	0	12.45	1406	2307	82
10	Verizon	JMA	MX06FRO660-02 04DT	850	230	0	53	5.9	40	2	0	12.35	1374	2255	82
10	Verizon	JMA	MX06FRO660-02 00DT	2100	230	0	53	5.9	40	4	0	15.45	5612	9207	82
10	Verizon	JMA	MX06FRO660-02 00DT	2100	230	0	53	5.9	20	4	0	15.45	2806	4604	82
11	Verizon	ERICSSON	KRE105281-1	3500	230	0	64	0.7	5	4	0	9.36	173	283	84
12	Verizon	ERICSSON	SON_AIR6449 NR TB 03.24.21 3700 VZW	3700	230	0	11	2.8	320	1	6	23.55	18203	29864	84
13	Verizon	JMA	MX06FRO660-02 04DT	700	320	0	60	5.9	40	2	0	12.45	1406	2307	82
13	Verizon	JMA	MX06FRO660-02 04DT	850	320	0	53	5.9	40	2	0	12.35	1374	2255	82
13	Verizon	JMA	MX06FRO660-02 00DT	1900	320	0	57	5.9	20	4	0	15.85	3077	5048	82
14	Verizon	JMA	MX06FRO660-02 04DT	700	320	0	60	5.9	40	2	0	12.45	1406	2307	82
14	Verizon	JMA	MX06FRO660-02 04DT	850	320	0	53	5.9	40	2	0	12.35	1374	2255	82
14	Verizon	JMA	MX06FRO660-02 00DT	2100	320	0	53	5.9	40	4	0	15.45	5612	9207	82
14	Verizon	JMA	MX06FRO660-02 00DT	2100	320	0	53	5.9	20	4	0	15.45	2806	4604	82
15	Verizon	ERICSSON	KRE105281-1	3500	320	0	64	0.7	5	4	0	9.36	173	283	84
16	Verizon	ERICSSON	SON_AIR6449 NR TB 03.24.21 3700 VZW	3700	320	0	11	2.8	320	1	12	23.55	4572	7502	84

Notes: Table depicts recommended operating parameters for Verizon Wireless proposed operations. Signal propagation loss due to rooftop building material assumed to be 6 dB.









Existing



proposed antennas behind screen

Proposed









Existing



proposed antennas behind screen

Proposed

## Statement of Use

### Description of Services

The company offers voice, data and video services and solutions on its award-winning networks and platforms, delivering on customers' demand for mobility, reliable network connectivity, security and control. Verizon was the first company in the world to launch commercial 5G for mobility, fixed wireless and mobile edge computing. The company's operating structure focuses on two customer-facing areas: Consumer and Business. Citizen Verizon is the company's responsible business plan for economic, environmental and social advancement.

Verizon provides 5G, 4G LTE, Fiber Optic and Multi Edge Compute (MEC) services. This facility will have all LTE bands in addition to the 5G C band.

The network also serves Local Police, Fire and Emergency Services.

The Consumer segment provides consumer-focused wireless and wireline communications services and products, as well as FWA broadband and Fios.

## Desk Item

**DATE:** FEBRUARY 1, 2024  
**TO:** PLANNING COMMISSION  
**FROM:** CARMELA CAMPBELL, ECONOMIC AND COMMUNITY  
DEVELOPMENT DIRECTOR  
**SUBJECT:** ADMINISTRATIVE SITE DEVELOPMENT REVIEW (ASD-23-023),  
USE PERMIT (UP-23-008)

Staff received questions/comments from Planning Commissioner Jo Ann Lew regarding the project. The following are the questions received and staff's responses (in *red italics*)

### Commissioner Lew Comments

1. Staff Agenda item 5.B.1 contains a recommendation from the director for approval of Administrative Site Development Review ASD-23-023 and Use Permit UP-23-008 for a proposed wireless facility in the Station Mixed Use Commercial (CSMU) district. According to the City's Municipal Code, Title 18, Chapter 18.56, Section 18.56.020, use permits require City Council approval in the CSMU district. Please clarify the staff report and confirm the planning commission has the authority to approve this use permit application. By the way, I based the aforementioned on the online copy of Title 18?

*Per the requirements in UCMC Section 18.56.070, the City Council is the decision maker for all Use Permits in the CSMU District. Accordingly, the recommendation has been amended as follows:*

*"Staff recommends the Planning Commission Approval and the City Council approve ASD-23-023 and UP-23-008, making the specific findings listed in Section VI of the staff report, subject to the amended Conditions of Approval, and adopt a resolution confirming this action."*

2. Staff report, page 4, Section B states "the project is subject to Chapter 18.114, Wireless Telecommunications Facilities." According to Section 18.114.020B.E, an "antenna...installed in a location where it is not readily visible from the public right-of-way" is exempt from the requirements of Chapter 18.114. Please clarify the City's



interpretation of this exemption and its decision to apply Chapter 18.114 requirements to this project.

*Regarding UCMC Sec. 18.114.020B.E, "To the extent feasible, the antenna is installed in a location where it is not readily visible from the public right-of-way," staff made the interpretation that without proper screening the antennas would clearly be visible from the public rights-of-way at several prominent locations. Staff must review the project to ensure that it is properly screened pursuant to UCMC Chapter 18.114.*

3. Staff report, page 8, I recommend restating the first finding for the use permit as follows: "That the proposed location of the conditional use is in accord with the purposes of Title 18 and the purposes of the CSMU district in which the site is located." Specifying the title number and name of the district adds clarity to the finding.

*Duly noted. The first finding for the Use Permit will be changed to read "That the proposed location of the conditional use is in accord with the purposes of Title 18 and the purposes of the CSMU district in which the site is located."*

4. Staff report, page 8, the City's proposed text in support of the first finding appears to lack a connection between the proposed location of the wireless facility and the applicable purposes of Title 18 (as listed in 18.04.020) and those of the CSMU district (as listed in 18.38.10). I recommend the following revision or something similar be made on page 8 and page 13 (Item e).

*The location of the new wireless facility will protect the character of the CSMU district by installing and screening all equipment within a new rooftop cupola and equipment enclosure; ancillary electrical equipment will be located in the building's existing electrical room on the ground floor. This new facility will promote orderly and beneficial development by improving the availability and quality of wireless service for residents and businesses. The new facility is compatible with the character of development in the CSMU district with the remodeling of the rooftop to enclose and screen the antennas and equipment. The new facility will enhance opportunities in the district for a variety of uses, such as research and development, office, and commercial, because it will provide a full array of communication services.*

*The intention of the first finding in the staff report was to convey the purpose of Title 18 and the CSMU district. The finding shall be updated with the revision Commissioner Lew has provided herein.*

5. Staff report, page 11, Condition of Approval (COA) #14 – is this COA related to the recommendation by Waterford Consultants, LLC (Waterford) contained in Attachment 1 to Exhibit A, page 4, last paragraph? Please clarify.

*Condition of Approval (COA) #14 was a requirement from the Fire Marshall to ensure that there was proper signage to note the locations and potential safety conditions of the proposed wireless facility and supporting equipment cabinets. Upon further discussion, the Fire Marshal has determined that the signage requirements as stated in the General Summary and Analysis of the RF report prepared by Waterford Consultants, LLC is sufficient and consistent with the requirements of the Fire Marshal's Office. Therefore, per agreement with the Fire Marshal, this Condition has been deleted.*

6. Staff report, page 12, COA #17 requires an access door “with no locking apertures...on the door.” Please explain this requirement and whether an example of this access door is contained in Exhibit A.

*This requirement from the Fire Marshal is meant to ensure access to the facility for emergency response personnel. This access door is not included in Exhibit A. This condition will be revised as follows per discussion with the Fire Marshal:*

*“Plans submitted for Building Permit review and approval shall include an enclosure constructed around the base of the antennas, containing an access door at least 36 inches in width and incorporating a Knox Box locking system to ensure security for the facility and access for emergency response personnel.”*

7. Attachment 1 to Exhibit A, page 2, last paragraph, last sentence contains a recommendation that appears to have been overlooked by the City. It states “Waterford Consultants, LLC recommends that any work activity in these designated areas (where there is potential for exposure to radiofrequency radiation) or in front of any transmitting antennas be coordinated with all wireless tenants.” Please clarify whether the reference to “tenants” is in regards to the residents of the Avalon property and whether a condition of approval (COA) will be provided to address this recommendation.

*Staff has been advised by the City's legal counsel that staff may include a condition of approval that the wireless facility complies with applicable FCC Regulations regarding radio frequency, and the safety requirements listed in the RF report (regarding identification and warning signage on the roof). The City may not impose other conditions or establish its own threshold for radio frequency. To clarify, “tenant” is referring to the tenant of a wireless facility, meaning the service provider that leases a space for the facility. “Tenant” is not referring to the residential tenants of Avalon.*



8. Attachment 1 to Exhibit A, page 4, last paragraph, Waterford provides signage recommendations and examples to be used for this project. Is this addressed in COA #14 (see #5 above)? If not, will a COA be provided to address these recommendations?

*As mentioned in #5 above, upon further discussion with the Fire Marshal, staff is deleting COA #14 since the signage has already been discussed in the RF report and the Fire Marshal will defer to those requirements.*

9. Will the new wireless services cause any interference to existing communications services provided by other carriers? Please explain.

*Staff have been informed by the applicant that it is commonplace for Verizon Wireless and the other wireless carriers to collocate on the same tower or rooftop. Their frequencies typically do not interfere with each other because the FCC licenses to each carrier frequency bands do not overlap. There are no other wireless carriers currently installed on the subject building so there will be no interference.*

10. Can the roof and penthouse bear the additional load of the cupola, equipment enclosure, and all associated rooftop equipment? Does Exhibit A provide any information in this regard? Please provide any information you may have.

*Per the applicant, as part of the building permit process, a structural analysis will be done by a licensed structural engineer as a part of that application. Support for the weight of the proposed installation will be confirmed prior to building permit issuance.*

11. How will the applicant, property owner and/or equipment owner ensure the facility and equipment are secure and protected from theft, destruction, or malfunctions/failures? Please explain what security measures are planned.

*The antenna enclosure/cupola extension can only be accessed by climbing a ladder on the northwest side of the mechanical penthouse. The bottom 10' of the ladder will be covered and locked. The equipment enclosure is surrounded by a 9'3", vinyl coated, anti-climb chain link fence painted to match the existing penthouse. These are considered to be reasonable security measures by Verizon's design teams. Additionally, COA #17 requires an enclosure constructed around the base of the antennas, containing an access door at least 36 inches in width and incorporating a Knox Box locking system to ensure security for the facility.*

**ATTACHMENT 4**  
**CITY OF UNION CITY**  
**DRAFT**  
**MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING**  
**ON THURSDAY, FEBRUARY 1, 2024, AT 7:00 P.M.**  
**IN THE COUNCIL CHAMBERS OF CITY HALL**  
**34009 ALVARADO-NILES ROAD**  
**UNION CITY, CA 94587**  
**AND VIA TELECONFERENCE**

**1. CALL TO ORDER**

**A. PLEDGE OF ALLEGIANCE**

**B. ROLL CALL:**

**PRESENT:** Vice Chairperson Seyi Mclelland and Commissioners Jo Ann Lew, Ignacio Romero and Alternate Commissioner Praina Gupta Garg

**ABSENT:** Chairperson Lee Guio, Commissioner Amandeep Sandhu and Alternate Commissioner Kevin Finnerty

**STAFF:** Carmela Campbell (Economic & Community Development Director); Natalie Dean (Associate Planner); Derek Farmer (Planning Manager); Juliet Vaughn (on behalf of Deputy City Attorney); Denisse Anzoategui Homen (Administrative Assistant III) and Tracey Barragan (Administrative Assistant)

**2. APPROVAL OF MINUTES**

1. The regular Planning Commission minutes for December 7, 2023

The minutes for the December 7, 2023, Planning Commission meeting were approved as submitted.

**3. ORAL COMMUNICATIONS: None**

**4. WRITTEN COMMUNICATIONS: None**

**5. PUBLIC HEARINGS**

**A. CONTINUED HEARINGS: None**

**B. NEW HEARINGS**

1. **PETER HILLIARD, ON AIR LLC FOR VERIZON WIRELESS; AVALON UNION CITY, LP, ADMINISTRATIVE SITE DEVELOPMENT REVIEW (ASD-23-023) AND USE PERMIT (UP-23-008); Peter Hilliard, On Air, LLC for Verizon Wireless, on behalf of Avalon Union City, LP, is seeking Administrative Site Development Review and Use Permit approval for a new enclosed wireless facility on top of an existing, five-story 315,077 square-foot multifamily residential building and to increase the height of the building from 79 to 86 feet. The project includes construction of one, new 417 square-foot cupola on the top of an attached parking structure bringing the total height of the building to approximately 86 feet. The cupola**

**will house 16 new antennas with eight (8) new radio units. The project is located at 14 Union Square: (APN: 87-19-1-25). Staff recommends that the project be categorically exempt under Section 15303 (e), New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA) Guidelines.**

Natalie Dean, Associate Planner provided a PowerPoint presentation for Peter Hilliard, On Air LLC for Verizon Wireless, Avalon Union City, LP, Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008). She reported a Desk Item had been prepared which clarified that the Use Permit would require the approval of the City Council, the findings would be amended per recommendations, Conditions of Approval had been amended and updated in response to the Desk Item, clarification the application involved no interference with other providers, and the supportive structure for the facility would be confirmed and addressed prior to the issuance of building permits.

Ms. Dean recommended the Planning Commission recommend City Council approval of ASD-23-023 and UP-23-008, making the specific findings listed in Section VI of the staff report, subject to the amended Conditions of Approval, and adopt a resolution confirming this action.

Commissioner Romero asked about the project design and whether environmental impacts had been considered to ensure wildlife and fauna would not be impacted by the project design.

Ms. Dean explained that the project was categorically exempt from the CEQA Guidelines since it involved the construction of a small structure and staff had used that categorical exemption and had not conducted more environmental review. CEQA listed categorical exemptions for projects that qualified, which staff had used to determine whether CEQA review would be required.

Commissioner Romero asked whether or not the general public or emergency services would experience any outages during installation of the proposed equipment.

Ms. Dean suggested the applicant provide clarification.

Carmela Campbell, Economic & Community Development Director stated first responders worked off of a different network to ensure minimal disruptions, but the applicant should provide further clarification.

Commissioner Gupta Garg asked whether more antennas would be considered in the future to cover gaps in coverage for the entire zone from a Verizon standpoint. She asked if moving the antennas, a bit down south or on another property, would result in better coverage.

Ms. Campbell suggested that question be deferred to the applicant.

Commissioner Gupta Garg understood that FRP windows would be considered with no finish and asked the purpose of the windows. Also, pursuant to the plans it appeared that louvers would be painted black and may stand out to the public and create too much of a contrast. If they matched something existing that would be fine, but she did not want it to be out of language with the design intent of what currently existed.

Ms. Dean deferred to the applicant in terms of siting but clarified that photo simulations had been provided to show the proposed colors. The windows were intended to match a cupola on the building with the windows to have openings. She commented there was a shadow line on the plans. She also clarified Image 3 of the plans and noted there was no black color on the building other than the shadow line.

Ms. Campbell suggested the applicant provide feedback on the louvers as proposed.

Vice Chair Mclelland also commented on the coverage area as depicted on Slide 14 of the PowerPoint presentation. She understood while there was a gap in coverage from Verizon, there would be coverage from other network providers.

Ms. Dean confirmed that the coverage area represented Verizon only. She added that she was not aware if there was a coverage gap for other wireless companies.

Ms. Campbell suggested the applicant provide clarification since information on coverage from Verizon only had been provided.

Vice Chair Mclelland asked whether or not other locations for the proposed wireless facility had been considered and more detail of how the applicant had decided this location was the most appropriate since it was a residential rather than a commercial building.

Ms. Dean understood the applicant had attempted to secure a facility within the New Haven Unified School District (NHUSD) at Logan High School, but the wireless facility had not been allowed for some reason. She understood the subject location was not the only location that had been considered. She also clarified the coverage map and the areas of coverage in-building, in-car and on the street.

#### PUBLIC HEARING OPENED

Aaron Delao, Centerline Communications, representing Peter Hilliard, responded to the questions from the Planning Commission and clarified the finish of the louvers with the goal for the FRP of the structure to match the existing color of the buildings, which would be radio transparent to allow signals to go through the material. The three windows as shown on the photo simulations were on a pop-up on the building with the windows added by Planning to match the architectural features. The coverage map was again clarified with reliable coverage as depicted on the map for in-building, in-car and on the street, with spotty coverage towards the Safeway Shopping Center. Between that area and the freeway in between there was mostly residential with little commercial sites to locate the equipment.

Mr. Delao clarified the equipment would cover part of the zone that currently had no coverage, as depicted on the coverage map. The existing site was a tall structure and advantageous to allow wider coverage. The area of south of Decoto Road was comprised of mostly one-story buildings and if the antennas had to be placed on a lower structure there would be a need for more antennas and no one wanted a proliferation of antenna structures, whereas the structure where the antennas had been proposed to be placed was 81-feet in height at the top of the parking structure, one of the reasons the subject site had been chosen.

Mr. Delao also clarified the existing network would remain in place during installation of the new antennas; coverage would not change until the new site had been brought on-air to fill the gaps in coverage; the public would be safe during installation; and the Federal Communications Commission (FCC) required information be provided to the public on the work to be performed on the building including contact information and a number for the Verizon network operations center in the event of an emergency for the public to be informed of any issues. In addition, battery cabinets had been planned to supply energy with battery backup to be provided in the event of a power outage.

Mr. Delao stated a standby generator had also been planned, and in the event of a natural or other disaster and if a power outage occurred for an extended period of time the site could still operate. While the generators would generate noise, the batteries would not. The generators would only operate in the event of an extended outage or up to an approximate twenty-minute test cycle once per month, but the noise would not be that loud. The location of the generator was clarified and since the building was a parking structure meant to hold a lot of weight, if the

generators were placed at a lower level there may be a lot of echoes. Also, if placed on the ground floor there would be people to hear it and its proposed location, enclosed by a fence and next to the existing architecture, was the quietest place to be.

Mr. Delao further clarified the generator would be diesel driven, which was common practice at cell sites, encouraged by the State of California, out in the open air and seven stories off the ground and would seldom operate.

Mr. Delao explained that electric battery generated generators had not been considered since electric batteries only operated for a short period of time. Having a cellular network up and running in the event of an outage was of paramount importance and the reason why generators had been planned for all cell sites, where possible.

Mr. Delao clarified that alternative sites had been considered. Verizon had started looking for sites in 2020 and Logan High School had been a perfect location given it had tall light standards, but the NHUSD had rejected the proposal. A search ring had been expanded with sites explored to the east and north, including some PG&E lattice towers across from the railroad tracks but they had been too close to existing cellular sites to the north on Mission Boulevard. The proposed site had been chosen given the building height and a willing landlord. Again, the generator would seldom operate, the noise sounded like a muffled lawn mower, was not on top of the residences but the parking structure and while it may be heard it would not be overly disruptive.

#### PUBLIC HEARING CLOSED

Commissioner Lew liked the project, had no issues with the project and all questions she had had been clarified in advance.

Derek Farmer, Planning Manager, requested an amendment to the language in the staff recommended motion as follows:

*Planning Commission recommend City Council approve ASD-23-023 and UP-23-008, making the specific findings listed in Section VI of the staff report, subject to the amended Findings and Conditions of Approval, included in the Desk Item and adopt a resolution confirming this action.*

Commissioner Lew moved that the Planning Commission recommend City Council approve ASD-23-023 and UP-23-008, making the specific findings listed in Section VI of the staff report, subject to the amended Findings and modified Conditions of Approval, included in the Desk Item and adopt a resolution confirming this action. Commissioner Romero seconded. The motion was carried by the following roll call vote:

AYES: (GUPTA GARG, LEW, MCLELLAND, ROMERO)  
NOES: (NONE)  
ABSTAIN: (NONE)  
ABSENT: (GUI, FINNERTY, SANDHU)

The motion passed 4-0.

#### **6. SUPPLEMENTAL STAFF REPORTS: None**

##### **A. CONTINUED REPORTS: None**

##### **B. NEW REPORTS: None**

#### **7. ECONOMIC DEVELOPMENT REPORTS: None**

**8. COMMISSION MATTERS:**

**A. Follow-Up on Planning Commission Referrals to the City Council**

There was no report.

**B. Upcoming Applications for the Regular Planning Commission Meeting on February 15, 2024.**

Ms. Campbell reported the Planning Commission meeting scheduled for February 15, 2024, would include a new industrial building in Central Industrial Park and expansion of an existing preschool on the west side of Union City.

**9. GOOD OF THE ORDER**

Commissioner Lew reported that February 2, 2024, would be Groundhog Day, and stated she did not have to be copied on any emails from legal staff since legal communications were proprietary and confidential.

Commissioner Romero urged everyone to be safe throughout the rainy season.

**10. ADJOURNMENT: 7:55 P.M.**



## ATTACHMENT 5

### DRAFT

#### PLANNING COMMISSION RESOLUTION NUMBER 01-24

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UNION CITY  
RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ADMINISTRATIVE SITE  
DEVELOPMENT REVIEW (ASD-23-023) AND USE PERMIT (UP-23-008) FOR A NEW  
ENCLOSED WIRELESS FACILITY ON TOP OF AN EXISTING, FIVE-STORY, 315,077  
SQUARE-FOOT MULTIFAMILY RESIDENTIAL BUILDING AT 24 UNION SQUARE (APN  
87-19-1-25), WITHIN THE STATION MIXED USE COMMERCIAL (CSMU) ZONING  
DISTRICT**

**WHEREAS**, the applicant Peter Hilliard, On Air, LLC, for Verizon Wireless, on behalf of Avalon Union City, LP, is seeking Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) approval for a new enclosed wireless facility on top of an existing, five-story, 315,077 square-foot multifamily residential building and to increase the height of the building from 79 to 86 feet. The project includes construction of one, new 417 square-foot cupola on the top of a mechanical penthouse located on an attached parking structure bringing the total height of the building to approximately 86 feet. The cupola will house 16 new antennas with eight (8) new radio units; and

**WHEREAS**, the 3.8-acre project site is located at 14 Union Square (APN 87-19-1-25); and

**WHEREAS**, the project site has a General Plan designation of Station Mixed Use Commercial and a Zoning designation of CSMU (Station Mixed Use Commercial); and

**WHEREAS**, pursuant to Section 18.76.050 of the Union City Municipal Code, the Planning Commission held a duly noticed public hearing on the Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) applications on February 1, 2024, at which time all interested parties had the opportunity to be heard. The Planning Commission considered the staff report dated February 1, 2024, and all written and oral testimony; and

**WHEREAS**, the project plans, photo simulations, and Statement of Use are labeled Exhibits A, B, and C, respectively, attached hereto and made a part hereof.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the City of Union City does hereby find as follows:

**California Environmental Quality Act**

- A. That this project is categorically exempt under Section 15303 New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA) Guidelines; and

**Administrative Site Development Review**

- B. That approval of this application is consistent with the General Plan, specifically Policy PF-8.8 Minimize Visual Impacts, as the proposed wireless facility will be located in an enclosed cupola structure on top of an existing mechanical penthouse on the roof of a parking structure, thereby minimizing any potential visual impacts when viewed from

public right of ways and residential areas. The cupola structure will be painted to match the existing building, and proposed materials will be architecturally consistent with the building. Additionally, Condition #7 requires that all visible conduits be concealed and screened. There are no specific plans applicable to the site; and

- C. That approval of this application is consistent with the purpose of Title 18, which seeks to promote and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people and to promote the orderly and beneficial development of such areas. Approval of this application is also consistent with the requirements of the CSMU zoning district in which the site is located; and
- D. That the project will be a minor modification to an existing building and will promote orderly, attractive, and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having undesirable qualities which are not properly related to their sites, or which would not meet the specific intent clause or performance standard requirement of the zoning title. Furthermore, the presence of the new antennas will improve the coverage for Verizon Wireless and improve service to customers in the vicinity and for the needs of residents, businesses, and first responders in the City of Union City; and

#### **Use Permit**

- E. That the proposed location of the conditional use is in accord with the purposes of Title 18 and the purposes of the CSMU district in which the site is located. The location of the new wireless facility will protect the character of the CSMU district by installing and screening all equipment within a new rooftop cupola and equipment enclosure; ancillary electrical equipment will be located in the building's existing electrical room on the ground floor. This new facility will promote orderly and beneficial development by improving the availability and quality of wireless service for residents and businesses. The new facility is compatible with the character of development in the CSMU district with the remodeling of the rooftop to enclose and screen the antennas and equipment. The new facility will enhance opportunities in the district for a variety of uses, such as research and development, office, and commercial, because it will provide a full array of communication services; and
- F. That the location of the use, as conditioned, is not detrimental to the public health, safety, welfare, or materially injurious to properties within the vicinity. The project will adhere to all required conditions from the City and responsible agencies pertaining to public health, safety, and welfare. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and

requirements, as shown in Attachment 1 to Exhibit A; further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site; and

- G. The project is consistent with the general plan, which encourages the development and maintenance of state-of-the-art communication infrastructure and services to bolster the City's economic competitiveness and support businesses and residents; the new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. The project complies with Title 18 by providing a use that promotes and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people; and

**Wireless Telecommunication Facilities**

- H. That visual impacts of the project will be reduced by matching the existing building in colors and materials, including trims along the edges of the structures. The applicant has provided all documents that evidence compliance with requirements for design, safety, agency, and Operation and maintenance standards; and
- I. That all equipment will be screened and set back from the right-of-way as much as feasible. The wireless facility will be enclosed in a cupola structure that is designed to match the architecture of the building and screen the antennas; and
- J. The new wireless facility will improve the coverage for Verizon Wireless and improve service to customers in the vicinity. Verizon will deploy a new coverage network to serve the wireless needs of residents, businesses, and first responders in the City of Union City. Under 18.114.100, wireless telecommunication facilities must meet standards and regulations of the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any agency with the authority to regulate radio frequency emissions of wireless telecommunication facilities. The applicant has submitted documentation, the Radio Frequency Emissions Compliance Report, which attests that the project meets said standards and requirements, as shown in Attachment 1 to Exhibit A. Further, the height is only increasing by seven (7) feet, the minimum required to accommodate the antennas and will be constructed upon an existing mechanical room that is located on the roof's parking lot. The new facility will also be in a location more interior to the overall site.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Union City hereby recommends that the City Council approve Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008), as set forth in Exhibits A, B and C, respectively, and subject to the following Conditions of Approval.

## **Planning Division**

### ***General***

1. All actual site improvements shall be made with adherence to the plans listed in Exhibit A, except as they may be modified by other conditions of approval listed below. Any variation or modification from the approved plans are subject to the review and approval of the Economic and Community Development Department.
2. This application shall expire one year from the date of Planning Commission approval unless building permits have been issued and construction diligently pursued.
3. The applicant and/or property owner shall include an annotated copy of the approved Planning Commission Resolution with each set of detailed construction plans submitted for plan check review. Notations to the plans shall be made to clearly indicate how all conditions of approval will be or have been complied with. Construction plans shall not be accepted without the annotated final conditions of approval included as a note sheet with each set of plans.
4. The applicant and/or property owner shall apply for and take out all required building and fire permits prior to beginning any on-site work. Plans submitted to the Building Division and Fire Department must demonstrate compliance with all applicable local and state requirements.
5. The applicant and/or property owner shall be responsible for ensuring that all contractors and subcontractors have obtained a valid City of Union City business license for the duration of the project.
6. The applicant and/or property owner shall ensure the wireless facility complies with applicable FCC Regulations regarding radio frequency and any and all recommendations for safety requirements including but not limited to those safety recommendations listed in Attachment 1 to Exhibit A, the radio frequency report.

### ***Building Materials and Finishes***

7. Prior to the issuance of building permits, the applicant and/or property owner shall submit samples and details of color palettes and all exterior materials, for review and approval by the Economic & Community Development Department. The color samples shall be provided in a binder with paint and material schemes along with full-size brush-outs as opposed to paint chips. Color swatches shall also be painted on the cupola structure for review and approval by the Economic and Community Development Department prior to full painting. Any future amendments or changes to the approved painting schemes shall be submitted to the Economic and Community Development Department for approval prior to the full painting of the proposed structure.
8. All visible conduits shall be concealed and screened.

9. Prior to issuance of building permits, the applicant/property owner shall pay all applicable fees (Capital Facilities Fee, Park Facilities Fee, etc.) that are in effect at the time of building permit issuance.
10. Prior to issuance of building permits, the applicant and/or property owner shall pay the General Plan Cost Recovery Fee in effect at the time of building permit issuance. The current fee is \$1.00 per \$1,000.00 of construction valuation per City Council Resolution Number 3379-07.

### **Building Division**

11. Any construction shall fully comply with the Building Standard Codes in effect at the time of building permit issuance.
12. The applicant/property owner shall provide detailed construction plans (working drawings) and calculations to the Building Division for plan review prior to issuance of a building permit. Plans and supporting documents shall be prepared by a state-licensed architect or engineer. Upon completion of the plan check, all applicable fees shall be paid, and a building permit issued prior to commencement of any actual construction work on-site.
13. The applicant/property owner shall maintain the property to be free of litter, weeds, debris, etc., both before and after issuance of building permits. Daily litter and debris collection rounds shall be conducted on the site and an adequate number of trash receptacles shall be provided to minimize litter accumulation.
14. The applicant/property owner shall not locate construction debris boxes within the public right-of-way (ROW), driveways or on adjacent private properties.

### **Fire Department**

15. The existing parapet shall remain in its current position and there shall not be an increase in height.
16. It shall be noted on plans for building permits that the applicant/property owner will ensure any roof access will not be impeded and or be obstructed to direct access to the antennas.
17. Plans submitted for Building Permit review and approval shall include an enclosure constructed around the base of the antennas, containing an access door at least 36 inches in width and incorporating a Knox Box locking system to ensure security for the facility and access for emergency response personnel.
18. The applicant/property owner shall apply for a hot work permit for all welding and or cutting operations.

### **Public Works Department**

19. The applicant/property owner shall install 'No Dumping – Drains to Bay' stencils at all storm drain inlets on site.

### **Environmental Programs**

20. The applicant/property owner is hereby advised that unauthorized discharge of any kind to the storm water system, which includes the streets and gutters, is prohibited, and that such discharges, whether intentional or not, are subject to penalties up to \$20,000 per violation per day. This applies both to the construction phase and to routine facility operations.
21. The applicant/property owner shall note on plans for building permit submittal indicating the total volume of battery electrolyte in the equipment cabinets under Verizon's control at this site at project completion.

**I HEREBY CERTIFY** that the foregoing resolution was introduced and adopted at a regular meeting of the Planning Commission of the City of Union City held on February 1, 2024, by the following vote:

AYES: (MCLELLAND, LEW, ROMERO, GUPTA)  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: (SANDHU AND GUIO)  
MOVED: (LEW)  
SECONDED: (ROMERO)

**APPROVED:**

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**SEYI MCLELLAND, VICE-CHAIRPERSON**

**ATTEST:**

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**CARMELA CAMPBELL, SECRETARY**





## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** JOAN MALLOY, CITY MANAGER

**SUBJECT:** RECEIVE REPORT ON POTENTIAL PUBLIC SAFETY PARCEL TAX AND UTILITY USERS' TAX REVENUE MEASURES FOR THE NOVEMBER 2024 ELECTION AND PROVIDE POLICY DIRECTION

Staff recommends that the City Council receive a report on potential revenue measures for the November 2024 election. The purpose of any potential revenue measure would be to close the ongoing operating budget deficit of approximately \$3 million per year. This is the first in a series of reports that the City Council may receive on revenue measure approaches that could be considered. No final decision is necessary at this time; however, feedback and policy direction would be helpful to help guide staff on next steps.

### **STRATEGIC PLAN ALIGNMENT**

This item is in alignment with **Goal A. Financial Stability and Sustainability** of the City Council Strategic Plan. Under Goal A, it is specifically related to the following strategies:

- **Strategy 1:** Develop a comprehensive fiscal sustainability model to address the General Fund's long-term structural deficit.
- **Strategy 8:** Determine the feasibility of a revenue ballot measure for November 2024 and/or November 2026 to address critical facilities and infrastructure needs.
- **Strategy 9:** Pursue the placement of a voter-approved revenue measure on a ballot to address the funding gap between revenues and expenditures for fundamental public safety and other city services.

### **BACKGROUND**

At the June 13, 2023 study session and public hearing for the FY 2023-2024 and FY 2024-2025 Biennial Budget and Five-Year Capital Improvement Plan, and review of the long-range financial forecast, the City Council expressed an interest in exploring possible voter-approved revenue measures to address anticipated future budget deficits of approximately \$3 million per year in funding City services, in particular public safety services. While the City currently maintains a healthy General Fund reserve, the rising costs of supplies, equipment, contracts, and employee salaries, and

retirement obligations, are projected to adversely impact the General Fund. The rise in expenditures is growing faster than City revenues. The General Fund is projected to fall to the minimum reserve fund balance of twenty percent of its annual operating expenditures by 2028, which is equivalent to approximately ten weeks of operations. The City Council

has prudently adopted Financial Principles to maintain a minimum twenty percent General Fund reserve. In addition, the City Council has identified fiscal stability and sustainability as its primary goal in the Strategic Plan.

As a result of the City Council's direction in June 2023, staff engaged TeamCivX to evaluate community support for a renewal of the Public Safety Parcel Tax (PSPT) in either the March 2024 primary election or in November 2024 general election, which included a statistically reliable opinion survey of local voters conducted by Godbe Research. The results of the community survey were presented to the City Council on November 14, 2023 and are summarized later in this report. The survey concluded that a PSPT in March 2024 did not likely have the community support to succeed, in part because the high voter threshold of 66.67% would be necessary for a parcel tax to pass.

At the November 14, 2023 meeting, the City Council directed staff to not proceed with the PSPT for the March 2024 primary election, and instead to focus on other possible revenue measures that could be considered for the November 2024 general election. This included a possible increase to the Utility Users' Tax (UUT), amendments to the Business License Tax (BLT), and options for a possible renewal of the PSPT.

Since the November 14, 2023 meeting, the City Attorney submitted a request for advice from the Fair Political Practices Commission (FPPC) on behalf of Mayor Dutra-Vernaci and Councilmember Singh as a result of their business operations in Union City that could be impacted by an amendment to the BLT. Mayor Dutra-Vernaci and Councilmember Singh are still awaiting the advice letter from the FPPC. As such, this report will only discuss the possible consideration of a renewal to the PSPT and an increase and extension to the existing Utility Users' Tax.

## **DISCUSSION**

### ***Public Safety Parcel Tax (PSPT)***

Historically, Union City voters supported and approved a PSPT as a dedicated source of funding to keep Union City safe. The PSPT was first approved by voters in 2004, followed by a renewal in 2008 and a subsequent renewal in 2016. In all instances, a four-year duration was tied to the tax. The most recent PSPT renewal effort in 2020 failed to meet the required two-thirds vote threshold, and it expired on June 30, 2021.

The most recent community survey that was conducted by Godbe Research assessed voter attitudes and potential support specifically for a parcel tax measure to restore and protect public safety services. The survey of likely 2024 voters occurred between September 6-18, 2023 and had a sample size of 448 respondents with a margin of error of  $\pm 4.60\%$ . The community survey results are further detailed in the Presentation attached to the November 14, 2023 staff report (link: November 14, 2023 Staff Report), which covers how a PSPT would perform in March 2024 versus November 2024. This staff report will focus on the survey results that look to the November 2024 election and beyond.

Table 1 below summarizes the survey results for the three scenarios that were tested for the PSPT to determine how support may change when going from \$0.18 per building square foot, to \$0.12 per building square foot, and to \$0.06 per building square foot. Beyond that, the parcel tax measure was then presented in terms of an annual dollar amount rather than by cents per building square foot.

The purpose of testing a wide range of rates was to provide the City Council with options that would increase revenues to allow for the expansion of staffing and enhanced services. As a **special tax**, the revenues could only be spent on what is identified in the tax measure; this is not a **general tax**, which can be spent on any government operations. The first \$3 million, however, would be needed to close the **existing** operating budget deficit and would not go towards new public safety services.

***Table 1***

	<b>NOVEMBER 2024</b>		
	<b>\$0.18/ft<sup>2</sup></b>	<b>\$0.12/ft<sup>2</sup></b>	<b>\$0.06/ft<sup>2</sup></b>
<b><i>Support</i></b>	52.1%	54.4%	59.0%
<b><i>Oppose</i></b>	31.9%	33.9%	30.9%

<b>Don't Know</b>	16.1%	11.7%	10.0%
	<b>\$324/year</b>	<b>\$216/year</b>	<b>\$108/year</b>
<b>Support</b>	44.4%	54.0%	63.7%
<b>Oppose</b>	46.4%	36.1%	28.4%
<b>Don't Know</b>	9.3%	10.0%	7.8%
<b>Anticipated Revenue</b>	<b>\$9.4M</b>	<b>\$6.26M</b>	<b>\$3.1M</b>

Table 1 illustrates that none of the options were successful in reaching the required 66.67% voter threshold needed to pass, though the lowest rate of \$0.06 per square foot surveyed the best. When voters understood the average annual cost per household unit, the support shifted, going lower to 44.4% support at \$0.18 per square foot (average \$324 per household unit), and increasing to 63.7% support at \$0.06 per square foot (average \$106 per household unit). However, it should be noted that the ballot language would be based on the **per building square foot cost** and not the average expected payment per household unit. Knowing the average cost per unit though could be a public education component should the City Council desire to pursue this option.

Should the City Council desire to continue exploring a renewal of the PSPT, TeamCivX suggests that a tax rate of \$0.05 per square foot of limited duration be tested. This rate would have an annual revenue stream of approximately \$2.6 million per year and average annual cost of \$90 per household unit.

With regards to the duration of the parcel tax, the City Council will need to weigh appropriate sunset dates, keeping in mind that the UUT sunsets on December 31, 2028 and the One-Half Cent Sales Tax sunsets on March 31, 2034. The most recent community survey by Godbe Research revealed that a PSPT with a 12-year duration that would expire in 2036 had a support rate of 56.4% of likely voters, short by 10.27 percentage points of passing. Lastly, short-term durations of four years, similar to the past PSPT, limit the City's ability to reinvest in public safety and hire and train staff for the long-term given the uncertainty of the future of the revenue stream.

### **Utility Users' Tax (UUT)**

Union City voters approved a 5% UUT in November 2020 with 56.9% voter approval. The UUT was placed on the ballot after the renewal of the PSPT failed to receive the 66.67% threshold that was required for the special tax in the March 2020 primary election.

The new UUT successfully replaced the revenue that was lost when the PSPT expired on June 31, 2021. For FY 2022-2023, the UUT revenues were \$6.3 million. Should the City Council wish to explore increasing the UUT, which is a general tax and only requires a vote >50%, the expected **additional** revenue increments are as follows in Table 2:

**Table 2**

<b>New UUT Rate</b>	<b>Increase Over Current</b>	<b>Additional Annual Revenue</b>
5.5%	.5%	\$640,000
6%	1%	\$1,280,000
6.5%	1.5%	\$1,920,000
7%	2%	\$2,560,000
7.5%	2.5%	<b>\$3,200,000</b>
8%	3%	\$3,840,000
8.5%	3.5%	\$4,480,000
9%	4%	\$5,120,000
9.5%	4.5%	\$5,760,000
10%	5%	\$6,400,000

To reach the \$3 million threshold to close the operating budget deficit, the UUT would need to be increased from the current rate of 5% to 7.5%. Nearby cities with UUT rates above 5% are shown in **Table 3**:

**Table 3**

City	UUT Rate
Alameda	7.5%
Oakland	7.5%
Berkeley	7.5%
San Leandro	6%
Hayward	5.5%
Unincorporated Alameda Co.	6.5%

The existing UUT will expire in December 2028. Should the City Council seek voter approval to increase the UUT, staff would recommend that the City Council also seek to extend the UUT at the same time. Otherwise, the City Council would likely need to seek an extension in the November 2026 general election at the latest to avoid a possible fiscal cliff in 2028 when the current UUT would expire.

### Conclusions

Based on analysis of the November 2023 survey results, pursuing a PSPT measure in the November 2024 general election could be challenging because of the high voter approval of 66.67% that is needed to pass the measure. As noted, should the City Council desire to further explore this option, it is recommended that a tax rate of \$0.05 per square foot (averaging \$90 per household unit) for a limited duration be tested in a future community survey. This rate would have an annual revenue stream of approximately \$2.6 million per year and would not cover the operating budget deficit.

Pursuing an increase in the UUT rate has not yet been tested among likely voters; however, the voter threshold to pass the general tax is >50%, a significantly lower threshold than the supermajority required for a special tax. To cover the \$3 million operating budget deficits, the City would need to seek a UUT rate of 7.5%, an increase of 2.5% though other rates could be considered. Additionally, TeamCivX recommends that the City Council explore **extending** the UUT as part of any possible increase.

Lastly, to not overload the ballot, the City Council will need to consider the timing of all voter-approved initiatives in the election cycles. As a reminder, the current UUT expires in December 2028, and so it should be place on the ballot for voter consideration in either 2024 or 2026. The extension of the One-half Cent Sales Tax should be place on the ballot in either 2030 or 2032. A renewal of the PSPT could be placed on any ballot, and the BLT can be amended at any general election. **Table 4** illustrates these potential revenue measures and the election cycle.

**Table 4**

Election Cycle/Year															
	Nov 2024	Mar 2026	Nov 2026	Mar 2028	Nov 2028	Mar 2030	Nov 2030	Mar 2032	Nov 2032	Mar 2034	Nov 2034	Mar 2036	Nov 2036	Mar 2038	Nov 2038
<b>UUT</b>	*		*		Expire Dec 31										
<b>PSPT</b>	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
<b>Sales Tax</b>							*		*	Expire Mar 31					
<b>BLT</b>	*		*		*		*		*		*		*		*

\*Denotes election cycles for renewing/amending/extending voter-approved revenue measures.

Staff members are seeking initial feedback on these two possible revenue measures for the November 2024 ballot: the UUT and/or the PSPT. Additional information will be forthcoming on the BLT in March and is not part of the discussion for this item.

Staff members are working towards a timeline to have the City Council narrow the possible revenue measure(s) by April 2024 so that a second community survey can be undertaken in May 2024. Based on results from that survey and with City Council consideration, a final decision on the placement of a revenue measure or measures would be made in July 2024 to submit to the Registrar of Voters by August 9, 2024.

The City Council may also decide not to pursue any revenue measures and plan to cut \$3 million annually from the General Fund in the next two-year budget cycle FY 2025-2026 and 2026-2027.

## FISCAL IMPACT

There is no immediate impact associated with consideration of this item. Fiscal impact on the General Fund would be dependent on the direction received by the City Council and the outcome of any potential revenue measure.

The City's long-term financial forecast indicates a shortfall averaging \$3.0 million from FY 2025 to FY 2035. As previously stated, the General Fund is projected to fall below the minimum reserve fund balance goal of twenty percent of its annual operating expenditures by 2028 and would be depleted by 2035 if no corrective action is taken.

## RECOMMENDATION

Staff recommends that the City Council receive this report and provide feedback on policy direction for these two possible revenue measures. As noted, a final determination to place a revenue measure or measures on the November 2024 ballot is anticipated to be made by April 2024.

**Prepared by:**

Joan Malloy, City Manager

**Submitted by:**

Joan Malloy, City Manager



## Agenda Item

**DATE:** 2/27/2024

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** KRISTOPHER J. KOKOTAYLO, CITY ATTORNEY

**SUBJECT:** WAIVE FURTHER READING AND ADOPT AN ORDINANCE AMENDING UNION CITY MUNICIPAL CODE CHAPTER 5.42 "TOBACCO RETAILERS"

The City Council previously introduced an ordinance amending Chapter 5.42, "Tobacco Retailers", of the Union City Municipal Code ("UCMC") (the "Tobacco Retailers Ordinance"). After considering potential text amendments at meetings on July 25, 2023, January 9, 2024, and January 23, 2024, the City Council introduced an ordinance amending the Tobacco Retailers Ordinance on February 13, 2024. The City Attorneys Office has now prepared this item for adoption of the ordinance amending the Tobacco Retailers Ordinance.

### **STRATEGIC PLAN ALIGNMENT**

There are no Strategic Plan goals associated with this agenda item.

### **BACKGROUND**

The City Council previously considered the proposed ordinance amending the Tobacco Retailers Ordinance as follows: 1) during a study session on July 25, 2023; 2) as an item at the regular City Council meeting on January 9, 2024; and 3) as an item at the regular City Council meeting on January 23, 2024.

At the regular City Council meeting on January 23, 2024, the City Council provided direction to return with a proposed ordinance amending the Tobacco Retailers Ordinance with the following notable amendments:

- 1) Prohibit the sale of vape products.
- 2) Prohibit the sale of flavored tobacco products, consistent with state law.
- 3) Prohibit the sale of tobacco products in pharmacies.
- 4) Amend the minimum single cigar price from \$5 to \$8 with an annual increase by the Consumer Price Index (CPI) by City Council resolution.
- 5) Amend the minimum pack size for cigars (unless sold at the single cigar price identified above) from 5 to 10



with a \$15 per pack minimum.

6) Prohibit the issuance of tobacco retail licenses within 500 feet of each other but allow the transfer of a tobacco retailers license with the transfer of a business by revising the definition of “arm’s length transaction”.

7) Increase the amount for fines related to violations.

8) Provide an enforcement date of June 1, 2024.

9) Prohibit the redemption and use of coupons by tobacco retailers and prohibit certain discounts.

The City Council also referred a number of additional items to the Legislation and Policy Committee for consideration.

The proposed Ordinance was introduced at the February 13, 2024 meeting of the City Council by a 4-1 vote.

## **DISCUSSION**

The City Council voted 4-1 to waive full reading and introduce an ordinance amending the Tobacco Retailers Ordinance at its February 13, 2024 regular meeting.

If adopted, the ordinance will not be enforced until June 1, 2024.

## **FISCAL IMPACT**

There is no direct fiscal impact as a result of adopting the proposed ordinance.

## **RECOMMENDATION**

Staff and the City Attorney’s Office recommend that the City Council waive further reading and adopt the proposed ordinance amending the Tobacco Retailers Ordinance or provide further direction.

### **Prepared by:**

Juliet Vaughn, Attorney

### **Submitted by:**

Kristopher J. Kokotaylo, City Attorney

### **ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Draft Tobacco Retailer Ordinance	Ordinance
<input type="checkbox"/> Exhibit A - Amendment to Tobacco Retailer Regulations	Exhibit
<input type="checkbox"/> Item 7.b Powerpoint	Attachment

## ORDINANCE NO. XXX-24

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY AMENDING CHAPTER 5.42, “TOBACCO RETAILERS”, OF THE UNION CITY MUNICIPAL CODE

**WHEREAS**, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

**WHEREAS**, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation’s leading cause of preventable death;<sup>1</sup> and

**WHEREAS**, the World Health Organization (WHO) estimates that tobacco kills 98 million people and causes over 1.4 trillion dollars in economic damage each year;<sup>2</sup> and

**WHEREAS**, 5.6 million of today’s Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;<sup>3</sup> and

**WHEREAS**, tobacco use is the number one cause of preventable death in California<sup>4</sup> and continues to be an urgent public health issue; and

**WHEREAS**, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity;<sup>5</sup> and

**WHEREAS**, despite the State’s efforts to limit youth access to tobacco, youth are still able to access tobacco products in California;<sup>6</sup> and

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<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: [https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf\\_NBK179276.pdf](https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf)

<sup>2</sup> World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2019: Offer Help to Quit Tobacco Use*. 2019. Available at: <https://apps.who.int/iris/handle/10665/326043>.

<sup>3</sup> *Supra*, Note 1.

<sup>4</sup> California Department of Public Health, California Tobacco Control Program. The #1 Preventable Cause of Death. <http://tobaccofreeca.com/other-tobacco-products/the-number-1-preventable-cause-of-death>. Accessed May 12, 2020.

<sup>5</sup> California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019.

<sup>6</sup> California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016. California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019. California Student Tobacco Survey, 2017-18. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California, San Diego; April 2019; Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014; Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2019.

**WHEREAS**, the federal Family Smoking Prevention and Tobacco Control Act, enacted in 2009, prohibited candy and fruit flavored cigarettes<sup>7</sup> largely because these flavored products are marketed toward youth and young adults,<sup>8</sup> and younger smokers and more likely than older smokers to have tried these products;<sup>9</sup> and

**WHEREAS**, in a 2019 observation survey of 36 tobacco retailers within Union City conducted by the Alameda County Public Health Department, 86% of stores surveyed sold flavored tobacco products; and

**WHEREAS**, according to the California Department of Public Health, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%) in California;<sup>10</sup> and

**WHEREAS**, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco<sup>11</sup> and that these products help establish tobacco habits that can lead to long-term addiction;<sup>12</sup> and

**WHEREAS**, research indicates that the FDA ban in 2009 on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker;<sup>13</sup> and

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California: Tobacco Use. 2019. Available at: <https://nccd.cdc.gov/youthonline/app/Results.aspx?LID=CA>. Accessed August 31, 2023; Lin C, Baiocchi M, Halpern-Felsher B. Longitudinal trends in e-cigarette devices used by Californian youth, 2014–2018. *Addict Behav.* 2020;108:106459. doi: 10.1016/j.addbeh.2020.106459.

<sup>7</sup> 21 U.S.C. § 387g(a)(1)(A).

<sup>8</sup> U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: [https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf\\_NBK99237.pdf](https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf); Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health.* 2017;17(1):983. doi: 10.1186/s12889-017-4987-z; Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>9</sup> U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: [https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf\\_NBK99237.pdf](https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf).

<sup>10</sup> California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019.

<sup>11</sup> U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: [https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf\\_NBK99237.pdf](https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.

**WHEREAS**, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use;<sup>14</sup> and

**WHEREAS**, in 2020, California passed SB 793, which amended California Health and Safety Code Section 104559.5 to prohibit the sale of most types of flavored tobacco products, including flavored electronic cigarettes, non-premium flavored cigars, as well as flavored enhancers;<sup>15</sup> and

**WHEREAS**, in 2022, California voters passed Proposition 31, which upheld SB 793;<sup>16</sup> and

**WHEREAS**, 75.64 percent of voters in Alameda County voted yes to uphold SB 793;<sup>17</sup> and

**WHEREAS**, California Health and Safety Code Section 104559.5 still allows the sale of flavored loose-leaf pipe tobacco and premium cigars with a wholesale price of twelve dollars (\$12.00 or more), as well as flavored shisha/hookah tobacco if sold in licensed stores that only allow people twenty-one (21) years of age on the premises at any time;<sup>18</sup> and

**WHEREAS**, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;<sup>19</sup> and

**WHEREAS**, unlike cigarette use that has steadily declined among youth, the U.S. has seen a surge in teen e-cigarette use, and youth e-cigarette use remains a serious public health concern;<sup>20</sup> and

**WHEREAS**, research has consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;<sup>21</sup> and

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Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418; Pearlman DN, Arnold JA, Guardino GA, Boles Welsh E. Advancing Tobacco Control Through Point of Sale Policies, Providence, Rhode Island. *Prev Chronic Dis*. 2019;16:E129. doi: 10.5888/pcd16.180614.

<sup>15</sup> California Health and Safety Code (HSC) Section 104559.5.

<sup>16</sup> Statement of the Vote Summary Pages. November 8, 2022, General Election. State of California. <https://elections.cdn.sos.ca.gov/sov/2022-general/sov/06-summary.pdf>.

<sup>17</sup> Official Election Site of Alameda County. General Election (Certified Final Results) – November 08, 2022. Last Updated: Thursday, December 08, 2022. <https://www.acgov.org/rovresults/248/>.

<sup>18</sup> California Health and Safety Code (HSC) Section 104559.5.

<sup>19</sup> Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*. National Cancer Institute; 1998.

<sup>20</sup> Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. National Youth Tobacco Survey (NYTS). [https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?s\\_cid=mm7145a1\\_w](https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?s_cid=mm7145a1_w).

<sup>21</sup> Yao T, Ong MK, Max W, et al. Responsiveness to cigarette prices by different racial/ethnic groups of US adults. *Tob Control*. 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.

**WHEREAS**, a systematic review by the U.S. Community Preventive Services Task Force found that a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;<sup>22</sup> and

**WHEREAS**, youth are particularly responsive to changes in tobacco prices and evidence suggests that tobacco companies deliberately target youth with price reductions;<sup>23</sup> and

**WHEREAS**, although federal and state law ban the sale of individual cigarettes, neither federal nor California state laws restrict the sale of individual little cigars and cigars;<sup>24</sup> and

**WHEREAS**, neither federal nor California law set a minimum price for tobacco products; and

**WHEREAS**, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;<sup>25</sup> and

**WHEREAS**, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;<sup>26</sup> and

**WHEREAS**, the City Council of the City of Union City has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

**WHEREAS**, the City Council of the City of Union City finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City of Union City in order to protect the health, safety, and welfare of its residents.

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<sup>22</sup> Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012.

<sup>23</sup> U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: [https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf\\_NBK99237.pdf](https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf)

<sup>24</sup> 21 C.F.R. § 1140.16(b); Cal. Penal Code § 308.3(a).

<sup>25</sup> Huang J, Chiqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. *Tob Control*. 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocon-trol-2016-053093.

<sup>26</sup> Hudmon KS, Fenlon CM, Corelli RL, Prokhorov AV, Schroeder SA. Tobacco sales in pharmacies: time to quit. *Tob Control*. 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION CITY DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.**

The above recitals (“Recitals”) are true and correct and made a part of this Ordinance.

**SECTION 2. CEQA.** Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

**SECTION 3. Municipal Code Amendment Chapter 5.42.**

Section 5.42 “Tobacco Retailers,” of the Union City Municipal Code is hereby amended to read as displayed in Exhibit A, incorporated and made a part of this Ordinance.

**SECTION 4. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 5. Publication and effective date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect thirty (30) days after its adoption and shall not be enforced until June 1, 2024.



**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Union City at a regular meeting held on this 27<sup>th</sup> day of February 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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CAROL DUTRA-VERNACI  
Mayor

ATTESTED:

APPROVED AS TO FORM:

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THAI NAM N. PHAM  
City Clerk

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KRISTOPHER J. KOKOTAYLO  
City Attorney

**Attachments:**

1. Exhibit A - Amendment to Tobacco Retailer Regulations in Union City Municipal Code

## EXHIBIT A

### 5.42.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

“Administrator” means the ~~Administrative Services~~ Finance Director or designee.

“Arm’s length transaction” means a sale or transfer, in good faith and for valuable consideration ~~that reflects the fair market value in the open market~~ between two informed and willing parties, as determined by the parties, neither of which is under any compulsion to participate in the transaction. A sale or transfer ~~between relatives, related companies or partners, or a sale~~ for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm’s length transaction.

“Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price. ~~means anything that can be exchanged for or used to acquire an electronic cigarette, electronic cigarette paraphernalia, electronic cigarette or tobacco product, such as a printed piece of paper, voucher, ticket, rebate, rebate offer, check, credit, token, code, password, or anything labeled “coupon” or “coupon offer.”~~

“Department” means the ~~Administrative Services~~ Finance Department.

“Drug paraphernalia” shall have the definition set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. ~~“Electronic cigarette” means “a device that can provide an inhalable dose of nicotine by delivering a vaporized solution” as defined in California Health and Safety Code Section 119405(b), as that section may be amended from time to time, or any device designed to vaporize a liquid solution that releases flavored vapor.~~

~~“Electronic cigarette paraphernalia” means any device designed to provide an inhalable dose of nicotine or a flavored liquid solution through vaporization, nicotine-based or flavored solution-based cartridges for use with electronic cigarettes, and any other item designed for the vaporization, preparation, storing, or consumption of electronic cigarette products.~~

~~“Electronic cigarette product” means any substance containing nicotine or a flavored liquid solution for vaporization, including any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.~~

“Flavored Tobacco Product” means any tobacco product that imparts:

1. a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product,

including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or

2. a heating, cooling, or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

-“License” means a tobacco retailer’s license as defined below.

-“Licensee” means a tobacco retailer with a tobacco retailer’s license.

“Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

“Nominal cost” means the cost of any item that is transferred from one person to another for less than the total of: (1) twenty-five percent of the full retail value of the item exclusive of taxes and fees; plus (2) all taxes and fees previously paid and all taxes and fees still due on the item at the time of transfer.

“Nonsale distribution” means to give, within the jurisdictional limits of the City, a tobacco product or coupon at no cost or at nominal cost to a person who is not a tobacco seller.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“Public place” means any place within the City, public or private, that is open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses.

“Retailer” means tobacco retailer as defined herein.

“Self-service display” means the open display or storage of ~~electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia,~~ tobacco products ~~or tobacco paraphernalia~~ in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

~~“Tobacco” means leaves of the tobacco plant dried and prepared for smoking or ingestion.~~

~~“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.~~

~~“Tobacco product” means tobacco and any substance containing tobacco, including, but not limited to, cigarettes, cigars, cigarillos, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or~~

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~~formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.~~

1. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

"Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange., electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia.

"Tobacco retailing" shall mean means engaging in the activities of a tobacco retailer. the doing of any of these things. This definition is without regard to the quantity of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

"Tobacco retailer's license" means the license issued pursuant to Section 5.42.050 this chapter that authorizes electronic cigarette or tobacco retailing at a certain location and by a certain tobacco retailer.

#### **5.42.020 Requirements and prohibitions.**

A. Tobacco Retailer License Required. It is unlawful for any person to act as a tobacco retailer in the City without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.

B. Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, State, or Federal law applicable to ~~electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products, tobacco paraphernalia, or tobacco retailing~~ the sale of tobacco products.

C. Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

D. Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer a ~~n electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia~~ to another person who appears to be under the age of

twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law ~~to purchase and possess the electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia.~~

E. Minimum Age for Persons Selling Tobacco. Persons employed by a tobacco retailer under this chapter that sell tobacco products must be at least the minimum legal sales age established by state law. ~~No person who is younger than the minimum age established by State law for the purchase or possession of electronic cigarette products or tobacco products shall engage in tobacco retailing.~~

F. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.

G. False and Misleading Advertising Prohibited. A tobacco retailer or proprietor without a valid tobacco retailer license, including, for example, a person whose license has been revoked:

1. Shall keep all ~~electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia,~~ tobacco products ~~and tobacco paraphernalia~~ out of public view. The public display of ~~electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia,~~ tobacco products ~~or tobacco paraphernalia~~ in violation of this provision shall constitute tobacco retailing without a license; and

2. Shall not display any advertisement relating to ~~electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia,~~ tobacco products ~~or tobacco paraphernalia~~ that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

H. Signage Violations. It is a violation of this chapter for any licensee to violate any local, State, or Federal law regulating exterior, storefront, window, or door signage.

I. Drug Paraphernalia. It is a violation of this chapter for any licensee or any of the licensee's agents or employees, to violate any local, State, or Federal law regulating controlled substances or drug paraphernalia.

J. Nonsale Distribution of Tobacco Products Prohibited.

1. No tobacco retailer nor any agent or employee of a tobacco retailer shall engage in the nonsale distribution of any ~~electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product,~~ tobacco product or coupon in any public place.

2. No person, motivated by an economic or a business purpose, shall knowingly permit the nonsale distribution of any ~~electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product,~~ tobacco product or coupon: (a) anywhere in any public place under the legal or de facto control of the person; or (b) through any agent or employee of the person. This provision shall not apply to coupons incidentally distributed in connection with a printed or electronic publication, such as, for example, magazines, newspapers, and websites, so long as that person's distribution of a publication containing coupons is not primarily motivated by an economic or a business purpose to distribute coupons.

3. No tobacco retailer may honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price.

4. No tobacco retailer may sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or other item.

5. No tobacco retailer may provide any free or discounted item to a consumer in exchange for the purchase of any tobacco product.

K. Minimum Pack Size for Cigars.

1. Notwithstanding any other provision of this chapter, no tobacco retailer shall sell, offer for sale, or exchange for any form of consideration:

a. Any single cigar, whether or not packaged for individual sale;

b. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or

c. Any package of cigars containing fewer than ~~ten~~five cigars.

d. Cigars at a price of less than fifteen dollars per package of ten cigars, including all applicable taxes and fees.

2. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either ~~eight~~five dollars, including all applicable taxes and fees. This or the dollar amount may be increased annually by the Consumer Price Index, as determined by the City Council and adopted by resolution of the City Council and adjusted from time to time, whichever is higher. The public shall be given notice of any such resolution in the manner notice is given of ordinances of the City.

3. This subsection shall apply to cigars, cigarillos and any other cigar product regardless of the terminology used for the product.

L. Sale of Electronic Smoking Devices. No person may sell or possess with the intent to sell any electronic smoking device within the city.

M. Flavored Tobacco Products. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

1. Presumptive flavored tobacco product. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product is a flavored tobacco product. Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a heating, cooling, or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product is flavored, such as describing the product as "chill," "ice," "fresh," "arctic," "sweet," "spicy," or "frost."

#### **5.42.030 Limits on eligibility for a tobacco retailer license.**

A. No license shall be issued to authorize tobacco retailing at other than a fixed location.

B. No license shall be issued to authorize tobacco retailing at a location where ~~electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or~~ tobacco products are prohibited from being distributed pursuant to Title 18.

C. No license shall be issued to a location or a tobacco retailer where prohibited pursuant to Section 5.42.110.

D. Proximity to other tobacco retailers. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within 500 feet of a tobacco retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of



the property line of the parcel on which an existing licensee's business is located. This restriction does not apply to an applicant who has been licensed to sell tobacco products as of March 1, 2024.

E. Pharmacies. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

#### **5.42.040 Application procedure.**

A. Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof.

It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No proprietor may rely on the issuance of a license as a determination by the City that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.42.110(D) of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license;
  2. The business name, address, and telephone number of the single fixed location for which a license is sought;
  3. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (A)(2);
  4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California ~~Board of Equalization~~ Department of Tax and Fee Administration;
  5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years;
  6. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought;
  7. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- B. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.
- C. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

#### **5.42.050 Issuance of license.**

Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the Administrator shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

A. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;

B. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of tobacco retailer licenses. However, this subsection shall not constitute a basis for denial of a license if the applicant provides the City with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction;

C. The application seeks authorization for tobacco retailing for a proprietor or location for which this chapter prohibits a license to be issued, including the provisions of Section [5.42.110](#);

D. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), that is unlawful pursuant to this Code or that is unlawful pursuant to any other law;

E. The location for which a tobacco retailer's license is sought lacks a valid state tobacco retailer's license by the California [Department of Tax and Fee Administration](#) ~~Board of Equalization~~.

#### **5.42.060 License renewal and expiration.**

A. Term and Renewal of License. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

B. Expiration of License. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subsection A, the proprietor must:

1. Submit the license fee and application renewal form; and
2. Submit a signed affidavit affirming that the proprietor:

a. Has not sold and will not sell any ~~electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia,~~ tobacco product ~~or tobacco paraphernalia~~ after the license expiration date and before the license is renewed; or

b. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section [5.42.110](#)(A) of this chapter, before seeking renewal of the license.

#### **5.42.070 Licenses nontransferable.**

A. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s).

B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and
2. The new proprietor(s) provide the City with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

**5.42.080 License conveys a limited, conditional privilege.**

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the City identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California [Labor Code](#) Section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California [Labor Code](#) Section 6404.5.

**5.42.090 Fee for license.**

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the City Council and shall be included within the City's Master Fee Schedule. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering this chapter, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

**5.42.100 Compliance monitoring.**

A. Compliance with this chapter shall be monitored by the Police Department. The City may designate any number of additional persons to monitor compliance with this chapter.

B. Compliance checks shall be conducted so as to allow the Police Department to determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with laws regulating youth access to ~~electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or~~ tobacco products. When the Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.

~~C. The City shall not enforce any law establishing a minimum age for electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product or tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:~~

~~1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;~~

~~2. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this chapter; or~~

~~3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services.~~

**5.42.110 ~~Violations~~ Suspension and revocation of license.**

A. ~~Violations~~ Suspension or revocation of tobacco retailer license for violation. In addition to any other penalty authorized by law, a Tobacco Retailer License shall be suspended or revoked if the Department finds or a court of competent jurisdiction determines, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any provision of this Chapter. ~~If the Administrator has reasonable cause to believe a violation of this chapter exists, or if any court of competent jurisdiction determines the same, the Administrator may issue a notice of violation and begin the revocation process as follows:~~

1. Upon a finding of a first violation of this Chapter at a location within any 5 year period, the License shall be suspended for 30 days. ~~First Violation. After a first violation of this chapter at a location within any sixty-month period, the Administrator shall:~~

~~a. Issue a written warning to the licensee, which includes: the facts supporting the finding of a violation, the penalties for further violations of this chapter, and provides thirty days within which the licensee may cure the violation and advise employees of applicable regulations or contact the Administrator to challenge the finding of a violation.~~

~~b. If the licensee contacts the Administrator to challenge the finding of a violation, the Administrator shall provide written notice of a hearing, not less than five business days after the notice, at which the tobacco retailer may show cause, at a time and place specified in the notice, why a violation does not exist. Should the tobacco retailer fail to present evidence at such hearing establishing, in the reasonable determination of the Administrator, that a violation does not exist, the Administrator shall provide written notice to the tobacco retailer that the notice of violation is upheld.~~

2. Upon a finding of a second violation of this Chapter at a location within any 5 year period, the License shall be suspended for 90 days. ~~Second Violation. After a second violation of this chapter at a location within any sixty-month period, the license shall be revoked and no new license shall be issued for the location or the tobacco retailer until thirty days have passed from the date of revocation.~~

3. Upon a finding of a third violation of this Chapter at a location within any 5 year period, the License shall be suspended for 1 year. ~~Third Violation. After a third violation of this chapter at a location within any sixty-month period, the license shall be revoked and no new license shall be issued for the location or the tobacco retailer until ninety days have passed from the date of revocation.~~

4. Upon a finding of four or more violations of this Chapter at a location within any 5 year period, the License shall be revoked with no new license issued for a five year period. ~~Fourth Violation and Additional Violations. After four or more violations of this chapter at a location within any sixty-month period, the license shall be revoked and no new license may issue for the location or tobacco retailer until five years have passed from the date of revocation.~~

B. ~~Revocation Procedures. If the licensee contacts the Administrator to challenge the finding of a violation, the Administrator shall provide written notice of a hearing, not less than five business days after the notice, at which the tobacco retailer may show cause, at a time and place specified in the notice, why a violation does not exist. Should the tobacco retailer fail to present evidence at such hearing establishing, in the reasonable determination of the Administrator, that a violation does not exist, the Administrator shall provide written notice to the tobacco retailer that the notice of violation is upheld.~~ If a license is subject to revocation, the

Administrator shall provide written notice of revocation along with the reasons for revocation, facts suggesting violation, the penalties for violation, and ability to appeal pursuant to subsection C. Within five days of the mailing of notice of revocation, the tobacco retailer shall cease the operation of the business for which the license was issued.

C. **Appeal of Revocation.** A decision of the Administrator to revoke a license is appealable to the City Manager and must be filed with the City Clerk within ten days of mailing of the Administrator's notice of revocation. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the City Manager is not available for a revocation made pursuant to subsection D. The date, time, and place of appeal hearings shall be provided in writing to the tobacco retailer with at least ten days' notice and copies of hearing rules. If the tobacco retailer fails to present evidence establishing that tobacco retailer is entitled to retain the license, the City Manager shall uphold the revocation and give written notice to the tobacco retailer. Within five days of the mailing of the notice of upheld revocation, the tobacco retailer shall cease operation of the business for which the license was issued.

D. **Revocation of License Wrongly Issued.** A tobacco retailer's license shall be revoked if the Administrator finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 5.42.050 existed at the time application was made or at any time before the license issued. The decision by the Administrator shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new license application.

#### **5.42.120 Enforcement.**

A. ~~Criminal Prosecution.~~ Each incident of violation of this chapter is a misdemeanor. The Department may impose administrative penalties as follows:

1. For a first violation of this Chapter within any 5 year period, two hundred fifty dollars (\$250);
2. For a second violation of this Chapter within any 5 year period, five hundred dollars (\$500); and
3. For a third or subsequent violation of this Chapter within any 5 year period, one thousand dollars (\$1,000).

~~n infraction subject to a one hundred dollar fine or otherwise punishable pursuant to Section 1-16-030 of this Code. Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the Police Chief or designee. In addition, any peace officer or code enforcement official also may enforce this chapter.~~

B. **Civil Enforcement by the City.**

1. **Fines.** Violations of this chapter are subject to a civil action brought by the City of Union City, punishable by a civil fine not less than two hundred fifty dollars and not exceeding one thousand dollars per violation.

2. **Injunctions, Nuisance Abatement, and Code Enforcement.** In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. Where the City pursues a civil action to remedy a violation of this chapter, the prevailing party shall be entitled to recovery of attorneys fees if the City elects, at the beginning

of that action, to seek recovery of its own attorneys' fees pursuant to [Government Code](#) Section 38773.5 as currently drafted or as amended.

C. General Provisions.

1. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

2. Violations. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter. A violation exists for each day on which ~~an electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia,~~ a tobacco product ~~or tobacco paraphernalia~~ is offered for sale in violation of this chapter. A violation also exists for each individual retail ~~electronic cigarette, electronic cigarette product or~~ tobacco product ~~and each individual retail item of electronic cigarette paraphernalia tobacco paraphernalia~~ that is distributed, sold, or offered for sale in violation of this chapter.

3. Nuisances. Violations of this chapter are hereby declared to be public nuisances.

4. No Testimony for Persons Under Eighteen. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.





# CITY COUNCIL MEETING

February 27, 2024



## **ITEM 7.B ORDINANCE AMENDING CHAPTER 5.42 “TOBACCO RETAILERS”**

City Council  
February 27, 2024



## | Background

- July 25, 2023: The City Council held a study session regarding possible amendments to the Tobacco Retailers License Ordinance.
- January 9 and January 23, 2024: The City Council held meetings on both dates to consider possible amendments and provided direction to return with a first reading of an ordinance and referred a number of items to the Legislation and Policy Committee for further consideration.
- February 13, 2024: City Council held a first reading and introduced the Ordinance.



## | Highlights of proposed Ordinance

Key aspects of the Tobacco Retailers License Ordinance include:

- Prohibition on the sale of vape products.
- Prohibition on the sale of flavored tobacco products.
- Prohibition on the sale of tobacco products in pharmacies.
- Minimum single cigar price of \$8 (increase from \$5) with possible annual increases by the Consumer Price Index (CPI).
- Minimum pack size of 10 (increase from 5) for cigars with a minimum price of \$15.
- Increase the amount for fines related to violations.
- Prohibit the issuance of tobacco retail licenses within 500 feet of each other.
- Allow the transfer of a tobacco retailers license with the transfer of a business and revising the definition of “arm’s length transaction”. This will allow existing tobacco retailers within 500 feet of each other to continue being a tobacco retailer despite a change in business ownership.
- Prohibition on discounts.
- Enforcement date of June 1, 2024.



## Recommendation

Staff and the City Attorney’s Office recommends that the City Council waive further reading and adopt, the proposed ordinance amending Union City Municipal Code Chapter 5.42, “Tobacco Retailers” or provide any further direction as necessary.



## **Agenda Item**