AGENDA
JOINT MEETING OF THE COTATI CITY COUNCIL AND THE SUCCESSOR AGENCY TO THE FORMER COTATI COMMUNITY REDEVELOPMENT AGENCY
City Council Chamber, City Hall 201 W. Sierra Avenue
Tuesday November 26, 2019
7:00 PM REGULAR MEETING

The Cotati City Council welcomes you to its meetings that are generally scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated.

City Council meeting agendas, minutes and recordings are posted on the City’s Meeting Portal at www.cotaticity.org. For questions about the agenda or to receive the City Council agenda by e-mail, contact the City Clerk at lberges@cotaticity.org or 707-665-3622.

Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda.

Any writings or documents provided to a majority of the Cotati City Council regarding any item on this agenda will be made available for inspection in the online Meeting Portal at www.cotaticity.org and in the City Manager’s office located at 201 West Sierra Avenue, Cotati, California, during the City’s posted business hours.

Disabled Accommodation: Upon request, this agenda will be made available in appropriate formats to persons with disabilities as required by Section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should contact the City Clerk at (707) 665-3622 at least 48 hours in advance of the meeting.

Rules of Decorum: To avoid distraction, the following meeting etiquette shall be enforced.
- Silence electronic devices, including cell phones.
- Audience members are advised to keep conversations to a minimum or conduct them outside the building.
- Photographs or video recordings using tri-pods or other means that would be distracting are to be taken only from the designated media area.
- The Presiding Officer shall request that the audience withhold expressions of support or opposition for speakers in the interest of time and to encourage the full expression of differing views. (City Council Policy 2017-02 III.B.1.)

Public Comment (Action items): Public comment on any one agenda item where the City Council will be taking some action is limited to no more than three (3) minutes per person. Action items are typically designated on the agenda title.

Public Comment (Non-Action items): Public comment on non-action agenda items shall be received during the designated portion of the agenda. Comments shall be limited to no more than three (3) minutes for all non-action agenda items.

Waiver Warning: If you challenge decisions/direction of the City Council of the City of Cotati in court, you may be limited to raising only those issues you or someone else raised at public hearing(s) described in this agenda, or in written correspondence delivered to the City of Cotati at, or prior to, the public hearing(s).

City Council meetings are conducted according to City Council Policy 2017-02: City Council Rules. This policy available for inspection in the online Meeting Portal at www.cotaticity.org and in the City Manager’s office located at 201 West Sierra Avenue, Cotati, California, during the City’s posted business hours.

Those wishing to address the Council are asked to complete a speaker card and give it to the City Clerk. When you are called, step to the podium and state your name and address for the record. Persons wishing to address the Council are not required to identify themselves or complete a speaker card; (Gov’t. Code § 54953.3); however, this information assists the Mayor by ensuring that all persons wishing to address the Council are recognized and it assists the City Clerk in preparing the City Council meeting minutes.
1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING OF ALL RESOLUTIONS AND ORDINANCES INTRODUCED AND/OR ADOPTED UNDER THIS AGENDA (ACTION)

A. COTATI CITY COUNCIL - REGULAR MEETING - NOV 12, 2019 7:00 PM

5. ANNOUNCEMENTS

A. Meeting Orientation for New Attendees/Viewers. In conformance with the Brown Act and the adopted City Council Rules, the meeting agenda includes items labeled as Action Items, where the City Council will consider the item and citizens are afforded the opportunity to provide comments relevant to the item being discussed. The meeting agenda also includes a Citizens Business item, which is the designated place on the agenda where citizens have the right to say whatever they wish. The City Council may, or may not, choose to respond to comments, as the Government Code allows. However, if the City Council declines to respond, it should not be perceived as giving credence to or agreeing with any statements that the City Council or its members believe are incorrect, misinformed or purposefully biased.

B. The City of Cotati has special open office hours on Monday evenings from 5:00 p.m. to 7:00 p.m. by appointment, in the Community Development Department at City Hall as part of its 'Cotati-Open for Business' program. This program provides personalized assistance and information to developers, current Cotati business owners, and those interested in starting a new business within the City.

C. The Rohnert Park-Cotati Regional library hosts events for all ages, including art exhibits, book clubs and children's programs. All events are free and open to the public. For more information, call the library at 584-9121 or visit www.sonomalibrary.org.

D. The Cotati Historical Society Museum is open regularly the 2nd Tuesday of each month from 5:00-7:00 p.m., Saturdays from 1:00 to 4:00 p.m., and by appointment. For more information call 707-794-0305.

E. Citizens interested in receiving City of Cotati community alerts via text or email are encouraged to sign up at nixle.com or by texting your zip code (94931) to 888777.

F. Measure G supports police services, a variety of recreation programs for all ages, and the maintenance of our streets, parks, and public buildings. See details on the web at cotaticity.org
G. The annual Holiday Food Drive sponsored by the City of Cotati and the California Homemakers Association will be taking place on Saturday December 21st. Food collection is from 10am to 1pm located behind City Hall.

H. Come join us for our Annual Holiday Tree Lighting in La Plaza Park! We will have food and craft vendors, horse and carriage and trackless train rides starting at 4:00pm. The night will be full of music, free coffee, hot cocoa, and cookies, and more!

6. HONORARY MAYOR
   A. AVA FRANZINI OF LAWRENCE JONES MIDDLE SCHOOL

7. PRESENTATIONS
   A. DISCUSSION OF CALIFORNIA SENATE BILLS 998
      It is recommended that the City Council of the City of Cotati receive information on the expected effects of State Senate Bill 998 to our utility customers and give direction to City Staff on proposed policy changes.

8. APPROVAL OF FINAL AGENDA (ACTION)

9. CITIZEN BUSINESS AND PUBLIC COMMENT FOR CONSENT CALENDAR ITEMS
   Any member of the public wishing to speak to the Council on any item(s) listed on the Consent Calendar or any matter(s) not listed on the agenda that are within the subject matter jurisdiction of the Council may do so at this time. Pursuant to the Brown Act, the Council is not allowed to consider issues or take action on any item not listed on the agenda during this period. Pursuant to City Council Policy 2017-02, comments of any member of the public are normally restricted to a total of three (3) minutes in length per person for matters not on the agenda and a total of three (3) minutes per person in length for any and all items on the Consent Calendar. The Mayor may extend the time limit for a reasonable time where a disability accommodation has been requested.

10. CONSENT CALENDAR (ACTION)
   A. REVIEW AND ADOPTION OF A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A SUBORDINATION AGREEMENT BETWEEN THE CITY OF COTATI AND BERKADIA COMMERCIAL MORTGAGE LLC, MAKING SUBORDINATION FINDINGS, AND APPROVING AND AUTHORIZING EXECUTION OF A LOAN AMENDMENT TO ALLOW THE EXISTING (CITY) $397,000 LOAN FROM THE AFFORDABLE HOUSING TRUST FUND TO BE SUBORDINATED TO A NEW LOAN RESULTING FROM A RE-FINANCE OF THE PROPERTY AT 160 WILFORD LANE, A BURBANK HOUSING DEVELOPMENT.

   It is recommended that the City Council adopt a resolution approving and authorizing execution of a Subordination Agreement and accompanying loan amendment to the existing $397,000 loan made from the Affordable Housing Trust Fund to Burbank Housing in 2002, for the Wilford Lane Village affordable housing development and making subordination findings to allow the City's loan to subordinate to the (new)
primary mortgage on the property, and authorizing the City Manager to execute said Subordination Agreement and loan amendment.

B. ADOPTION OF AN ORDINANCE AMENDING SECTION 1.08.010 OF THE COTATI MUNICIPAL CODE TO UPDATE THE LOCATIONS FOR POSTING PUBLIC NOTICES

It is recommended that the City Council of the City of Cotati adopt an ordinance amending section 1.08.010 of the Cotati municipal code updating the locations for posting public notices.

C. EMERGENCY ORGANIZATION ORDINANCE

It is recommended that the City Council of the City of Cotati adopt an ordinance amending Chapter 2.24 of the Cotati Municipal Code regarding Emergency Organization and Functions.

11. DIRECTION ON FUTURE AGENDA ITEMS

12. PUBLIC HEARINGS (ACTION)

13. REGULAR AGENDA (ACTION)

A. DECLARATION OF CLIMATE EMERGENCY AND SUPPORT OF A 2030 CLIMATE EMERGENCY MOBILIZATION STRATEGY

It is recommended that the City Council of the City of Cotati adopt a resolution declaring a climate emergency and supporting creation of a 2030 Climate Emergency Mobilization Strategy.

B. APPROVAL OF INTEGRATED PEST MANAGEMENT PLAN

It is recommended that the City Council approve a resolution adopting an Integrated Pest Management Plan for municipal landscape maintenance.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COTATI APPROVING AN INTEGRATED PEST MANAGEMENT PLAN FOR MUNICIPAL LANDSCAPE MAINTENANCE.

C. LANDSCAPE AGREEMENT FOR MAINTENANCE OF PUBLIC LANDSCAPE AREAS

It is recommended the City Council adopt a resolution authorizing the City Manager to execute a five (5) year agreement with PJM Yard Maintenance Inc. to maintain public landscaping.

14. CITY MANAGER'S REPORT

15. CITY COUNCIL MEMBER REPORTS

16. PUBLIC COMMENT ON NON-ACTION AGENDA ITEMS
17. INFORMATION RECEIVED AFTER THE AGENDA WAS POSTED

A. SUPPLEMENTAL INFORMATION RECEIVED AFTER THE AGENDA WAS POSTED.

It is recommended that the City Council receive supplemental information pertaining to this meeting, and which was received after the agenda was posted.

18. ANNOUNCEMENT OF CLOSED SESSION TOPICS/ADJOURNMENT TO CLOSED SESSION

1. CONFERENCE WITH CITY LABOR NEGOTIATORS (GOVERNMENT CODE SECTION 54957.6) CITY DESIGNATED REPRESENTATIVE: CITY MANAGER OR DESIGNEE. EMPLOYEE ORGANIZATION: COTATI EMPLOYEE ASSOCIATION (CEA)

19. REPORT OUT OF CLOSED SESSION

20. ADJOURNMENT

Certification of Posting of the Notice: I declare under penalty of perjury that I am employed by the City of Cotati and that I posted this notice on the City's website, bulletin boards of City Hall, Veterans' Memorial Building and the U.S. Post Office on or before November 23, 2019.

/s/ Lauren Berges, City Clerk
CITY OF COTATI

MINUTES

JOINT MEETING OF THE COTATI CITY COUNCIL AND THE SUCCESSOR AGENCY TO THE FORMER COTATI COMMUNITY REDEVELOPMENT AGENCY

City Council Chamber, City Hall 201 W. Sierra Avenue
Tuesday November 12, 2019
7:00 PM REGULAR MEETING

1. CALL TO ORDER

2. ROLL CALL

<table>
<thead>
<tr>
<th>Attendee Name</th>
<th>Title</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>John A. Dell’Osso</td>
<td>Mayor</td>
<td>Absent</td>
</tr>
<tr>
<td>Wendy Skillman</td>
<td>Vice Mayor</td>
<td>Present</td>
</tr>
<tr>
<td>John C. Moore</td>
<td>Councilmember</td>
<td>Present</td>
</tr>
<tr>
<td>Susan Harvey</td>
<td>Councilmember</td>
<td>Present</td>
</tr>
<tr>
<td>Mark Landman</td>
<td>Councilmember</td>
<td>Present</td>
</tr>
</tbody>
</table>

Staff present: City Attorney John Bakker, City Manager Damien O’Bid, City Clerk Lauren Berges, Police Chief Michael Parish, Director of Public Works/City Engineer Craig Scott, Director of Administrative Services Angela Courter, Director of Community Development Noah Housh

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING OF ALL RESOLUTIONS AND ORDINANCES INTRODUCED AND/OR ADOPTED UNDER THIS AGENDA (ACTION)

A. COTATI CITY COUNCIL - SPECIAL MEETING - AUG 16, 2019 1:00 PM

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Susan Harvey, Councilmember
SECONDER: Mark Landman, Councilmember
AYES: Skillman, Moore, Harvey, Landman
ABSENT: Dell’Osso

B. COTATI CITY COUNCIL - REGULAR MEETING - OCT 22, 2019 7:00 PM
RESULT: ACCEPTED [3 TO 0]
MOVER: John C. Moore, Councilmember
SECONDER: Mark Landman, Councilmember
AYES: Skillman, Moore, Landman
ABSTAIN: Harvey
ABSENT: Dell'Osso

5. ANNOUNCEMENTS

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B. The City of Cotati has special open office hours on Monday evenings from 5:00 p.m. to 7:00 p.m. by appointment, in the Community Development Department at City Hall as part of its 'Cotati-Open for Business' program. This program provides personalized assistance and information to developers, current Cotati business owners, and those interested in starting a new business within the City.

C. The Rohnert Park-Cotati Regional library hosts events for all ages, including art exhibits, book clubs and children's programs. All events are free and open to the public. For more information, call the library at 584-9121 or visit www.sonomalibrary.org.

D. The Cotati Historical Society Museum is open regularly the 2nd Tuesday of each month from 5:00-7:00 p.m., Saturdays from 1:00 to 4:00 p.m., and by appointment. For more information call 707-794-0305.

E. Citizens interested in receiving City of Cotati community alerts via text or email are encouraged to sign up at nixle.com or by texting your zip code (94931) to 888777.

F. Measure G supports police services, a variety of recreation programs for all ages, and the maintenance of our streets, parks, and public buildings. See details on the web at cotaticity.org

Vice Mayor Skillman announces the annual Holiday Food Drive sponsored by the City of Cotati and the California Homemakers Association. Food collection will be held on Saturday December 21st, from 10am to 1pm located behind City Hall.

6. HONORARY MAYOR
A. AVA FRANZINI OF LAWRENCE JONES MIDDLE SCHOOL

7. APPROVAL OF FINAL AGENDA (ACTION)

8. CITIZEN BUSINESS AND PUBLIC COMMENT FOR CONSENT CALENDAR ITEMS

   Public comment:
   George Barich of Cotati
   Jennifer Barrett of Cotati

9. CONSENT CALENDAR (ACTION)

   Councilmember Harvey comments on item B regarding her concerns about the limit of one elevator planned for the residential care facility. Councilmember Harvey requests that staff work with the applicant to ensure adequate elevator capacity.

   RESULT: ADOPTED [UNANIMOUS]
   MOVER: Mark Landman, Councilmember
   SECONDER: John C. Moore, Councilmember
   AYES: Skillman, Moore, Harvey, Landman
   ABSENT: Dell'Osso

A. 2019 CALIFORNIA BUILDING CODE ORDINANCE UPDATE

B. AN ORDINANCE TO AMEND THE ZONING CODE TO ALLOW A RESIDENTIAL CARE FACILITY FOR THE ELDERLY IN THE COMMERCIAL, GRAVENSTEIN CORRIDOR (CG) ZONING DISTRICT ALLOWING THE CONSTRUCTION OF A NEW TOWNSEND/STERLING ASSISTED LIVING PROJECT, A 77,000-SQUARE-FOOT ASSISTED LIVING FACILITY WITH 88 UNITS, A 24,100-SQUARE-FOOT MEMORY CARE FACILITY WITH 34 UNITS, AND A 4,000-SQUARE-FOOT COMMERCIAL BUILDING LOCATED IN THE COMMERCIAL, GRAVENSTEIN CORRIDOR (CG) ZONING DISTRICT, ON TWO UN-ADDRESSED PARCELS LOCATED AT THE NORTHWEST CORNER OF ALDER AVENUE AND STATE ROUTE 116

C. UPDATE OF THE CITY OF COTATI’S CONFLICT OF INTEREST CODE

D. AMEND BAIL SCHEDULE TO INCLUDE ADMINISTRATIVE CITATIONS AND UPDATE PARKING CITATIONS

10. DIRECTION ON FUTURE AGENDA ITEMS

11. PUBLIC HEARINGS (ACTION)

   A. COTATI STATION APARTMENT PROJECT SECOND ONE-YEAR TIME EXTENSION
Presentation by Director of Community Development Noah Housh

Public comment:
Sky Mattula of Cotati
George Barich of Cotati

Councilmembers and staff comment

RESULT: ADOPTED [UNANIMOUS]
MOVER: Mark Landman, Councilmember
SECONDER: Susan Harvey, Councilmember
AYES: Skillman, Moore, Harvey, Landman
ABSENT: Dell’Osso

B. EMERGENCY ORGANIZATION ORDINANCE

Presentation by City Manager O’Bid

No public comment

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Susan Harvey, Councilmember
SECONDER: John C. Moore, Councilmember
AYES: Skillman, Moore, Harvey, Landman
ABSENT: Dell’Osso

C. ADOPTION OF AN ORDINANCE AMENDING SECTION 1.08.010 OF THE COTATI MUNICIPAL CODE TO UPDATE THE LOCATIONS FOR POSTING PUBLIC NOTICES

Presentation by City Manager O’Bid

Councilmembers comment

Public comment:
Sky Mattula of Cotati
George Barich of Cotati

Councilmember and staff comment
12. **REGULAR AGENDA (ACTION)**

A. **APPROVAL OF THE PARKS CAPITAL PLAN**

   Presentation by City Manager O'Bid and Recreation Manager Ashley Wilson

   Councilmembers comment

   Public comment:
   Jennifer Barrett of Cotati
   George Barich of Cotati

   **RESULT:** ADOPTED [UNANIMOUS]
   **MOVER:** John C. Moore, Councilmember
   **SECONDER:** Mark Landman, Councilmember
   **AYES:** Skillman, Moore, Harvey, Landman
   **ABSENT:** Dell'Osso

13. **CITY MANAGER'S REPORT**

   Report by City Manager O'Bid

   Councilmembers comment

   Public Comment:
   Dr. Keith Harlan of Cotati Large Animal Hospital
   Jennifer Barrett of Cotati
   George Barich of Cotati

14. **CITY COUNCIL MEMBER REPORTS**

   Councilmembers report out on local and regional meetings and events

15. **PUBLIC COMMENT ON NON-ACTION AGENDA ITEMS**

   Public comment:
   George Barich of Cotati
   Dr. Keith Harlan of Cotati Large Animal Hospital

   Councilmembers comment
16. INFORMATION RECEIVED AFTER THE AGENDA WAS POSTED

A. SUPPLEMENTAL INFORMATION RECEIVED AFTER THE AGENDA WAS POSTED.

17. ADJOURNMENT

Vice Mayor Skillman adjourns meeting at 8:42 pm
Cotati City Council
Agenda Staff Report

Item type: PRESENTATIONS
To: City Council
Subject: Discussion of California Senate Bills 998
Date: November 26, 2019
Written by: Angela Courter, Director of Administrative Services

Recommendation
It is recommended that the City Council of the City of Cotati receive information on the expected effects of State Senate Bill 998 to our utility customers and give direction to City Staff on proposed policy changes.

Background

On May 22, 2019, the City staff provided a presentation and recommended action to the City Council in opposition to State Senate Bill 998 (SB 998). On September 28, 2018, the Governor approved the bill, signing it into state law as an addition of Chapter 6 to Part 12 of the Health and Safety Code relating to Water. Due to the passing of this bill, City staff are providing an update on the effects of the bill and requesting policy guidance.

Analysis/Discussion

Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. With the passing of the SB 998, there are specific restrictions and requirements that are now mandated regarding the policy and procedures of providing such services to the end users.

SB 998 requires water systems with more than 200 service connections to meet the following summary of mandates no later than April 1, 2020:
SB 998 mandates:

- Must adopt written discontinuation policies that are available in English, Spanish, Chinese, Tagalog, Vietnamese, Korean and any other language spoken by 10 percent or more people within the system’s service area. The policies must contain certain information, and be posted on the water system’s website.

- May not discontinue residential water service due to delinquent payment until payments are delinquent for at least 60 days. During that time, the water system must attempt to provide notice to customers by telephone or in writing, and provide information about appeals, extensions and alternative repayment options. These instructions for customers also must be available in all the same languages as the policies.

- Water systems may not discontinue residential water service during the customers appeal process or if they are a customer with all three of the following conditions:

  1.) A primary care provider certifies that the discontinuation of water service will pose a serious or potentially fatal threat to a resident,

  2.) demonstration of a financial hardship by declaring they earn income below the Federal Poverty Level by more than 200% by proof of receipt of other government assistance such as Cal Fresh, CalWORKs, or Medi-Cal, and

  3.) The customer has willing entered into an alternative payment arrangement in advance of the 60 day grace period.

- Low-income customers’ reconnection fees are to be limited to no more than $50 during regular business hours, and $150 during non-regular hours.

- Water systems must attempt to provide notice to renters and mobile home residents that their service may be discontinued due to delinquent payments by their landlords, and that the residents have the right to become customers of the water system without paying the past-due amounts on the landlords’ accounts.
Further, SB 998 also now requires mandated reporting to the State Water Resources Control Board (Board) and to the public via the water suppliers website. The City must provide its’ policy which shows conformance with the bill, as well as the number of annual discontinuations of residential service for inability to pay.

To cover the costs of the Board in managing the new requirements imposed on water suppliers, SB 998 has included an enforcement element whereby a violation of these provisions is punishable by a civil penalty issued by the Board to the water supplier in an amount not to exceed $1,000 for each day in which the violation occurs. SB 998 also provides authority to the State Attorney General to take enforcement action, as well as a private right of action.

In light of SB 998, we are carefully evaluating our existing policies and procedures relating to delinquent accounts and discontinuation of water service, and update any necessary policies, procedures, ordinances or administrative codes to ensure compliance with the new requirements.

**Financial Considerations**

**Billing/Shut-off Cycle:**

Currently, the City processes water bills on a bi-monthly (every two months) cycle. This means larger bills for customers, a longer cycle where the City is carrying the cost of the water service, and in cases of default, often insufficient deposits to cover the cost of the bad debt on that account. Below is a summary of the utility service cycles comparing the current bi-monthly billing cycle with the same bi-monthly billing cycle under SB998 and an example monthly billing cycle under SB998:
## Utility Service Cycle Summary

<table>
<thead>
<tr>
<th></th>
<th>Current Bi-Monthly Utility Service Cycle</th>
<th>Current Bi-Monthly Utility Service Cycle Under SB998</th>
<th>Monthly Utility Service Cycle Under SB998</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start of Service</td>
<td>Saturday, June 15, 2019</td>
<td>Saturday, June 15, 2019</td>
<td>Monday, July 15, 2019</td>
</tr>
<tr>
<td>End Billing Cycle</td>
<td>Thursday, August 15, 2019</td>
<td>Thursday, August 15, 2019</td>
<td>Thursday, August 15, 2019</td>
</tr>
<tr>
<td>Bills Issued and Due on Receipt</td>
<td>Monday, September 2, 2019</td>
<td>Monday, September 2, 2019</td>
<td>Monday, September 2, 2019</td>
</tr>
<tr>
<td>Past Due Date</td>
<td>Tuesday, October 8, 2019</td>
<td>Tuesday, October 8, 2019</td>
<td>Tuesday, October 8, 2019</td>
</tr>
<tr>
<td>Shutoff Date</td>
<td>Tuesday, October 22, 2019</td>
<td>Friday, November 1, 2019</td>
<td>Friday, November 1, 2019</td>
</tr>
</tbody>
</table>

|                        |                                      |                                                    |                                           |
|------------------------|                                      |                                                    |                                           |
| Total Service Carrying Days Before Past Due | 115                                  | 115                                                 | 85                                  |
| Total Service Carrying Days | 129                                  | 139                                                 | 109                                 |
| Total Days From Due Date to Shutoff | 50                                   | 60                                                   | 60                                   |

* Items in red are the changes for each cycle

As summarized above, the current bi-monthly billing cycle and the current cycle causes a significant delay between when service is used and when charges are paid by customers. This means that customers are evaluating their billed use in October for their usage over June through August. While we continue to promote WaterSmart services, which allows customers can go online and see day by day what their usage is and sign up for leak alerts, customers often do not evaluate usage until the bill arrives. This delay can cause leaks to go unremedied and bills to escalate for longer periods of time and cause a larger hardship for customers with lower income.

Given these changes, we recommend considering moving to a monthly billing cycle. For the customer, a monthly billing cycle would:

1. Put the City utility bills on the same schedule as most other bills, making it easier to remember the payment dates, and reduce late payments and associated charges.
2. Reduce the bill amounts, by halving the service period, the bills will also be half of the current 2 month bill, potentially making the payments easier to budget for, and reduce delinquency and non-payment.
3. If customers are put on payment plans, the total outstanding amounts will be less, resulting in more manageable repayment terms.
4. Decrease the bad debt balances for closed accounts that are never paid.

For the City, monthly billing would cost slightly more per year in printing and mailing costs (estimated at less than $5,000 per year), but would provide the following advantages:
1. Provide more stable revenue throughout the year, over 12 periods rather than 6 bi-monthly periods.

2. Reduce carrying costs associated with current billing cycle and delinquent bills and bad debt.

3. Allow the City to work with customers struggling to pay earlier, rather than waiting for 90 or more days when the delinquency becomes apparent and the customer bills are larger.

The City currently requires a $100 and $200 refundable deposit from homeowners and renters respectively. With the current billing rates and base charges these deposits for renters would not cover the average bill for 2 persons (estimated at $234.04). If there were a transition to a monthly billing cycle, it is recommended that we retain the same deposit requirements to minimize the risk of non-payment (bad debt) to the City. If we continued to bill using a bi-monthly cycle, then this would have to be evaluated further to make sure we are minimizing the risk of excess bad debt to the City.

Cost of Additional Administration:

With the implementation of the remote read meter system, the City has reduced the time requirements from the Public Works department to perform physical meter reads. This also allows customers to monitor usage, or set up usage alerts, in near real time. Additionally, the City also has e-billing and electronic bill notifications, which have reduced the number of shutoffs across the City. These measures allow for a more customer friendly and cost-efficient system, which also reduces Public Works time performing physical meter shutoffs.

The implementation of a new ordinance to address the requirements of SB998 will create additional labor demands to develop program materials, processes customer appeals and managing alternative payment schedules as needed. The cost of this is not fully known at this time, as it will be dependent on the average number of customer appeals and payment plans.

Environmental Issues

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.
Attachments:
SB 998 - Chapter 981 (PDF)
SB998 Presentation   (PDF)
Senate Bill No. 998

CHAPTER 891

An act to add Chapter 6 (commencing with Section 116900) to Part 12 of Division 104 of the Health and Safety Code, relating to water.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL’S DIGEST

SB 998, Dodd. Discontinuation of residential water service: urban and community water systems.

Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations. Existing law requires certain notice to be given before a water corporation, public utility district, municipal utility district, or a municipally owned or operated public utility furnishing water may terminate residential service for nonpayment of a delinquent account, as prescribed.

This bill would require an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, to have a written policy on discontinuation of water service to certain types of residences for nonpayment available in prescribed languages. The bill would require the policy to include certain components, be available on the system’s Internet Web site, and be provided to customers in writing, upon request. The bill would provide for enforcement of these provisions, including making a violation of these provisions punishable by a civil penalty issued by the board in an amount not to exceed $1,000 for each day in which the violation occurs, and would require the enforcement moneys collected by the board to be deposited in the Safe Drinking Water Account. The bill would prohibit an urban and community water system from discontinuing residential service for nonpayment until a payment by a customer has been delinquent for at least 60 days. The bill would require an urban and community water system to contact the customer named on the account and provide the customer with the urban and community water system’s policy on discontinuation of residential service for nonpayment no less than 7 business days before discontinuation of residential service, as prescribed.

This bill would prohibit residential service from being discontinued under specified circumstances. The bill would require an urban and community
water system that discontinues residential service to provide the customer with information on how to restore service. The bill would require an urban and community water system to waive interest charges on delinquent bills for, and would limit the amount of a reconnection of service fee imposed on, a residential customer who demonstrates, as prescribed, to the urban and community water system household income below 200% of the federal poverty line. The bill would require an urban and community water system that furnishes individually metered residential service to residential occupants of a detached single-family dwelling, a multiunit structure, mobilehome park, or permanent residential structure in a labor camp, and that the owner, manager, or operator of the dwelling, structure, or park is the customer of record, to make every good faith effort to inform the residential occupants by written notice that service will be terminated and that the residential occupants have the right to become customers, as specified. The bill would require an urban and community water system to report the number of annual discontinuations of residential service for inability to pay on its Internet Web site and to the board, and the bill would require the board to post on its Internet Web site the information reported. The bill would require an urban water supplier, as defined, or an urban and community water system regulated by the commission, to comply with the bill’s provisions on and after February 1, 2020, and any other urban and community water system to comply with the bill’s provisions on and after April 1, 2020. The bill would provide that the provisions of the bill are in addition to the provisions in existing law duplicative of the bill and that where the provisions are inconsistent, the provisions described in the bill apply.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:
(a) All Californians have the right to safe, accessible, and affordable water as declared by Section 106.3 of the Water Code.
(b) It is the intent of the Legislature to minimize the number of Californians who lose access to water service due to inability to pay.
(c) Water service discontinuations threaten human health and well-being, and have disproportionate impact on infants, children, the elderly, low-income families, communities of color, people for whom English is a second language, physically disabled persons, and persons with life-threatening medical conditions.
(d) When there is a delinquent bill, all Californians, regardless of whether they pay a water bill directly, should be treated fairly, and fair treatment includes the ability to contest a bill, seek alternative payment schedules, and demonstrate medical need and severe economic hardship.
(e) The loss of water service causes tremendous hardship and undue stress, including increased health risks to vulnerable populations.
(f) It is the intent of the Legislature that this act provide additional procedural protections and expand upon the procedural safeguards contained

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Packet Pg. 19
in the Public Utilities Code and Government Code as of January 1, 2018, relating to utility service disconnections.

SEC. 2. Chapter 6 (commencing with Section 116900) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 6. DISCONTINUATION OF RESIDENTIAL WATER SERVICE

116900. This chapter shall be known, and may be cited, as the Water Shutoff Protection Act.

116902. For the purposes of this chapter, the following definitions apply:
(a) “Board” means the State Water Resources Control Board.
(b) “Public water system” has the same meaning as defined in Section 116275.
(c) “Residential service” means water service to a residential connection that includes single-family residences, multifamily residences, mobilehomes, including, but not limited to, mobilehomes in mobilehome parks, or farmworker housing.
(d) “Urban and community water system” means a public water system that supplies water to more than 200 service connections.
(e) “Urban water supplier” has the same meaning as defined in Section 10617 of the Water Code.

116904. (a) An urban water supplier not regulated by the Public Utilities Commission shall comply with this chapter on and after February 1, 2020.
(b) An urban and community water system regulated by the Public Utilities Commission shall comply with this chapter on and after February 1, 2020. The urban and community water system regulated by the Public Utilities Commission shall file advice letters with the commission to conform with this chapter.
(c) An urban and community water system not described in subdivision (a) or (b) shall comply with this chapter on and after April 1, 2020.

116906. (a) An urban and community water system shall have a written policy on discontinuation of residential service for nonpayment available in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by at least 10 percent of the people residing in its service area. The policy shall include all of the following:
(1) A plan for deferred or reduced payments.
(2) Alternative payment schedules.
(3) A formal mechanism for a customer to contest or appeal a bill.
(4) A telephone number for a customer to contact to discuss options for averting discontinuation of residential service for nonpayment.
(b) The policy shall be available on the urban and community water system’s Internet Web site, if an Internet Web site exists. If an Internet Web site does not exist, the urban and community water system shall provide the policy to customers in writing, upon request.
(c) The board may enforce the requirements of this section pursuant to Sections 116577, 116650, and 116655. The provisions of Section 116585
and Article 10 (commencing with Section 116700) of Chapter 4 apply to enforcement undertaken for a violation of this section.

(2) All moneys collected pursuant to this subdivision shall be deposited in the Safe Drinking Water Account established pursuant to Section 116590.

116908. (a) (1) (A) An urban and community water system shall not discontinue residential service for nonpayment until a payment by a customer has been delinquent for at least 60 days. No less than seven business days before discontinuation of residential service for nonpayment, an urban and community water system shall contact the customer named on the account by telephone or written notice.

(B) When the urban and community water system contacts the customer named on the account by telephone pursuant to subparagraph (A), it shall offer to provide in writing to the customer the urban and community water system’s policy on discontinuation of residential service for nonpayment. An urban and community water system shall offer to discuss options to avert discontinuation of residential service for nonpayment, including, but not limited to, alternative payment schedules, deferred payments, minimum payments, procedures for requesting amortization of the unpaid balance, and petition for bill review and appeal.

(C) When the urban and community water system contacts the customer named on the account by written notice pursuant to subparagraph (A), the written notice of payment delinquency and impending discontinuation shall be mailed to the customer of the residence to which the residential service is provided. If the customer’s address is not the address of the property to which residential service is provided, the notice also shall be sent to the address of the property to which residential service is provided, addressed to “Occupant.” The notice shall include, but is not limited to, all of the following information in a clear and legible format:

(i) The customer’s name and address.
(ii) The amount of the delinquency.
(iii) The date by which payment or arrangement for payment is required in order to avoid discontinuation of residential service.
(iv) A description of the process to apply for an extension of time to pay the delinquent charges.
(v) A description of the procedure to petition for bill review and appeal.
(vi) A description of the procedure by which the customer may request a deferred, reduced, or alternative payment schedule, including an amortization of the delinquent residential service charges, consistent with the written policies provided pursuant to subdivision (a) of Section 116906.

(2) If the urban and community water system is unable to make contact with the customer or an adult occupying the residence by telephone, and written notice is returned through the mail as undeliverable, the urban and community water system shall make a good faith effort to visit the residence and leave, or make other arrangements for placement in a conspicuous place of, a notice of imminent discontinuation of residential service for nonpayment and the urban and community water system’s policy for discontinuation of residential service for nonpayment.
If an adult at the residence appeals the water bill to the urban and community water system or any other administrative or legal body to which such an appeal may be lawfully taken, the urban and community water system shall not discontinue residential service while the appeal is pending.

116910. (a) An urban and community water system shall not discontinue residential service for nonpayment if all of the following conditions are met:

(1) The customer, or a tenant of the customer, submits to the urban and community water system the certification of a primary care provider, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 14088 of the Welfare and Institutions Code, that discontinuation of residential service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided.

(2) The customer demonstrates that he or she is financially unable to pay for residential service within the urban and community water system’s normal billing cycle. The customer shall be deemed financially unable to pay for residential service within the urban and community water system’s normal billing cycle if any member of the customer’s household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household’s annual income is less than 200 percent of the federal poverty level.

(3) The customer is willing to enter into an amortization agreement, alternative payment schedule, or a plan for deferred or reduced payment, consistent with the written policies provided pursuant to subdivision (a) of Section 116906, with respect to all delinquent charges.

(b) (1) If the conditions listed in subdivision (a) are met, the urban and community water system shall offer the customer one or more of the following options:

(A) Amortization of the unpaid balance.

(B) Participation in an alternative payment schedule.

(C) A partial or full reduction of the unpaid balance financed without additional charges to other ratepayers.

(D) Temporary deferral of payment.

(2) The urban and community water system may choose which of the payment options described in paragraph (1) the customer undertakes and may set the parameters of that payment option. Ordinarily, the repayment option offered should result in repayment of any remaining outstanding balance within 12 months. An urban and community water system may grant a longer repayment period if it finds the longer period is necessary to avoid undue hardship to the customer based on the circumstances of the individual case.

(3) Residential service may be discontinued no sooner than 5 business days after the urban and community water system posts a final notice of intent to disconnect service in a prominent and conspicuous location at the property under either of the following circumstances:
(A) The customer fails to comply with an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges for 60 days or more.

(B) While undertaking an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges, the customer does not pay his or her current residential service charges for 60 days or more.

116912. An urban and community water system that discontinues residential service for nonpayment shall provide the customer with information on how to restore residential service.

116914. (a) For a residential customer who demonstrates to an urban and community water system household income below 200 percent of the federal poverty line, the urban and community water system shall do both of the following:

(1) Set a reconnection of service fee for reconnection during normal operating hours at fifty dollars ($50), but not to exceed the actual cost of reconnection if it is less. Reconnection fees shall be subject to an annual adjustment for changes in the Consumer Price Index beginning January 1, 2021. For the reconnection of residential service during nonoperational hours, an urban and community water system shall set a reconnection of service fee at one hundred fifty dollars ($150), but not to exceed the actual cost of reconnection if it is less. Reconnection fees shall be subject to an annual adjustment for changes in the Consumer Price Index beginning January 1, 2021.

(2) Waive interest charges on delinquent bills once every 12 months.

(b) An urban and community water system shall deem a residential customer to have a household income below 200 percent of the federal poverty line if any member of the household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or the customer declares that the household’s annual income is less than 200 percent of the federal poverty level.

116916. (a) This section applies if there is a landlord-tenant relationship between the residential occupants and the owner, manager, or operator of the dwelling.

(b) If an urban and community water system furnishes individually metered residential service to residential occupants of a detached single-family dwelling, a multiunit residential structure, mobilehome park, or permanent residential structure in a labor camp as defined in Section 17008, and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the urban and community water system shall make every good faith effort to inform the residential occupants, by means of written notice, when the account is in arrears that service will be terminated at least 10 days prior to the termination. The written notice shall further inform the residential occupants that they have the right to become
customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account.

(c) The urban and community water system is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service and meets the requirements of law and the urban and community water system’s rules and tariffs. However, if one or more of the residential occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the urban and community water system, or if there is a physical means legally available to the urban and community water system of selectively terminating service to those residential occupants who have not met the requirements of the urban and community water system’s rules and tariffs, the urban and community water system shall make service available to those residential occupants who have met those requirements.

(d) If prior service for a period of time is a condition for establishing credit with the urban and community water system, residence and proof of prompt payment of rent or other credit obligation acceptable to the urban and community water system for that period of time is a satisfactory equivalent.

(e) Any residential occupant who becomes a customer of the urban and community water system pursuant to this section whose periodic payments, such as rental payments, include charges for residential water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the urban and community water system for those services during the preceding payment period.

(f) In the case of a detached single-family dwelling, the urban and community water system may do any of the following:

(1) Give notice of termination at least seven days prior to the proposed termination.

(2) In order for the amount due on the delinquent account to be waived, require an occupant who becomes a customer to verify that the delinquent account customer of record is or was the landlord, manager, or agent of the dwelling. Verification may include, but is not limited to, a lease or rental agreement, rent receipts, a government document indicating that the occupant is renting the property, or information disclosed pursuant to Section 1962 of the Civil Code.

116918. An urban and community water system shall report the number of annual discontinuations of residential service for inability to pay on the urban and community water system’s Internet Web site, if an Internet Web site exists, and to the board. The board shall post on its Internet Web site the information reported.

116920. (a) The Attorney General, at the request of the board or upon his or her own motion, may bring an action in state court to restrain by temporary or permanent injunction the use of any method, act, or practice declared in this chapter to be unlawful.
(b) For an urban and community water system regulated by the Public Utilities Commission, the commission may bring an action in state court to restrain by temporary or permanent injunction the use by an urban and community water system regulated by the commission of any method, act, or practice declared in this chapter to be unlawful.

116922. All written notices required under this chapter shall be provided in English, the languages listed in Section 1632 of the Civil Code, and any other language spoken by 10 percent or more of the customers in the urban and community water system’s service area.

116924. Where provisions of existing law are duplicative of this chapter, compliance with one shall be deemed compliance with the other. Where those provisions are inconsistent, the provisions of this chapter shall apply. Nothing in this chapter shall be construed to limit or restrict the procedural safeguards against the disconnection of residential water service existing as of December 31, 2018.

116926. This chapter does not apply to the termination of a service connection by an urban and community water system due to an unauthorized action of a customer.
SB998 (Dodd) Implementation for City of Cotati

Genesis of SB998

- Builds on Existing Law
  - AB401 (Dodd) - low-income rate assistance program due February 2018

- No State-Wide Utility Assistance Program implemented from AB401
  - estimated cost $600 Million (about $6/ month per connection)

- Introduced SB998 (Dodd) due to lack of AB401 implementation
Reasoning behind SB998

Water service discontinuations threaten health and well-being

Goals

- To minimize the number of Californians who lose access to water service due to inability to pay
- Ensure all are treated equitably
Implementation Deadlines

✓ Public Utility Commission (PUC) Regulated Utilities by Feb 1, 2020

✓ All other suppliers with more than 200 connections by April 1, 2020

Summary of Requirements

✓ Development of Service Discontinuation Policy
✓ Translation in 5 languages in addition to English
✓ Include a plan for deferred or reduced payments
✓ Provide alternative payment schedules
✓ Formal appeals process
✓ Telephone number customers can call to discuss options
What Customers Does This Apply To?

- Applies to individually metered residential service to:
  - Detached single-family dwellings
  - Multi-unit residential structures
  - Mobile home parks
  - Where property owner or manager is the customer of record
- Supplier may have different policies that apply to commercial or other non-residential accounts

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Prohibition on Shut-offs

If ALL three of the following conditions are met:

- During appeal process
- Health Condition
- Government Assistance
- Agreement to a payment option before 60 days expire
Low-Income Certification & Payment Plans

- Low-Income Certification
  - Must take customers at their word regarding their low income status
  - Must allow for acceptance of any of the public assistance programs listed in SB998

- Payment plans
  - The repayment option offered should result in repayment of any remaining outstanding balance within 12 months

Discontinuation Process Under SB998

- 60 day waiting period during delinquency
- 7 days notice before shut-off
Current Discontinuation Process Example

- Bi-monthly usage calculated (June 15\textsuperscript{th} – Aug. 15\textsuperscript{th})
- Invoices sent Sept. 1\textsuperscript{st} are due upon receipt
- Digital notifications via text or phone are sent out a week before the bills are late (Oct. 3\textsuperscript{rd})
- A grace period is given until the first Monday of the subsequent month (Oct. 7\textsuperscript{th})
- Late fees are then assessed ($15) and late notices are sent the next day on Tuesdays (October 8\textsuperscript{th}) via US Mail or e-mail
- Additional digital notifications and paper notices for upcoming shut off are sent the following Tuesday (October 15\textsuperscript{th})
- Shut-offs are the following Tuesday (October 22\textsuperscript{nd})
  Shutoff Fee is $25

Current Discontinuation Process cont.

- Total number of days to shutoff
  - From first day of use = 129
  - From bill/due date = 50

Change in Current process due to SB 998

- Shutoffs postponed to Nov. 1
- Total number of days to shutoff
  - From first day of use = 139
  - From bill/due date = 60

NOVEMBER 1st
Sample Monthly Cycle Under SB998

- Monthly usage calculated (July 15th – Aug. 15th)
- Invoices sent Sept. 1st are due upon receipt
- Digital notifications via text or phone are sent out a week before the bills are late (Oct. 3rd)
- A grace period is given until the first Monday of the subsequent month (Oct. 7th)
- Late fees are then assessed ($15) and paper notices & e-mail notices are sent the next day on Tuesday (October 8th)
- Additional digital notifications and paper notices for upcoming shut off sent after 14 days (October 22nd)
- Shut-offs starting November 1st.

Sample Monthly Billing Under SB998

- Total number of days to shutoff
  - From first day of use = 109
  - From bill/due date = 60

Change in Current process due to SB998

- Shutoffs postponed to Nov. 1
- Total number of days to shutoff
  - From first day of use = 139
  - From bill/due date = 60

Same November 1st
**Restoration of Service**

- Customers must be provided with written instructions for restoration of service
- Limits on restoration fees for low-income residents

**Reporting**

- Annually report number of shut-offs for inability to pay
  - State Water Resources Control Board
  - Water supplier’s website

Attachment: SB998 Presentation (SB 998 - Regulation Update and Report)
State Enforcement on Utility

• Potential fines of $1,000 per day
• California Attorney General may be called upon to take action
• Private citizens can sue

Next Steps

✓ Draft Policy and Update City Code
✓ Public Hearing
✓ Notification to utility customers
✓ Implementation before April 1, 2020
Cotati City Council
Agenda Staff Report

Item type: CONSENT CALENDAR (ACTION)
To: City Council
Subject: Review and adoption of a resolution approving and authorizing execution of a Subordination Agreement between the City of Cotati and Berkadia Commercial Mortgage LLC, making subordination findings, and approving and authorizing execution of a loan amendment to allow the existing (City) $397,000 loan from the Affordable Housing Trust Fund to be subordinated to a new loan resulting from a re-finance of the property at 160 Wilford Lane, a Burbank Housing development.

Date: November 26, 2019
Written by: Noah Housh, Director of Community Development

Recommendation

It is recommended that the City Council adopt a resolution approving and authorizing execution of a Subordination Agreement and accompanying loan amendment to the existing $397,000 loan made from the Affordable Housing Trust Fund to Burbank Housing in 2002, for the Wilford Lane Village affordable housing development and making subordination findings to allow the City's loan to subordinate to the (new) primary mortgage on the property, and authorizing the City Manager to execute said Subordination Agreement and loan amendment.

Background

In 2002 the City of Cotati Community Redevelopment Agency authorized a $397,000 loan to Burbank Housing for the development and construction of the Wilford Lane Village development project, a deed restricted affordable housing development for low- and very low-income families, located at 160 Wilford Lane. The term of the loan was for 55-years and the annual interest rate was three percent. Payment of the principal and accrued interested is due to the City on December 31, 2058.

Analysis/Discussion

Pursuant to Assembly Bill 26X from the 2011-12 First Extraordinary Session of the California Legislature, all redevelopment agency activities, except continued performance of “enforceable obligations”, were immediately suspended. Under the California Supreme Court ruling in California Redevelopment Assn. v. Matosantos (2011), 53 Cal. 4th 231, all redevelopment agencies dissolved on February 1, 2012. Pursuant to Health and Safety Code Section 34176(a), the City of Cotati elected to retain the housing assets and functions previously performed by the
Former Agency, including assuming the position of the Subordinate Lender under the Loan Agreement.

In summer of 2019, Burbank Housing identified to the City an interest in refinancing their primary loan on the property, with the goal of reducing their interest rate and transferring full ownership of the project (and all debt) to Burbank Housing exclusively. The existing previously secured financing included a third party partner whom is not proposed to remain in the ownership or debt structure after refinancing of the current commercial loan is secured. The new commercial lender for the refinanced loan is Berkadia Commercial Mortgage, LLC.

Burbank is requesting a new refinanced commercial loan term of 30-years, with maturation of this loan in 2049. The City’s original loan agreement (which established the affordability and deed restrictions) was for a term of 55-years (starting in 2002), allowing the existing loan agreement (attached) to remain in place. The City’s original loan agreement requires a minor amendment to authorize subordination to the new re-financed loan. The original loan agreement and draft subordination agreement are attached for reference.

**Financial Considerations**

There were no identified financial concerns resulting from the request from Burbank Housing to subordinate a new re-financed loan for the Wilford Lane Village project. No new costs or future financial impacts will result from this subordination agreement. It is worth noting the subordination agreement puts the City in second place “behind” the commercial loan on the property (as is typical of any loan to an affordable housing project that also includes commercial lending) should default on any of the financing occur. However, it is generally the case that commercial financing cannot be secured for a project unless all other financing mechanisms are subordinate to the commercial loan and most subsidy loans are structured this way.

**Environmental Issues**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

Attachments:
Wilford Burbank Portfolio Refi Request Letter (PDF)
Draft Subordination Agreement (DOC)
Original Wilford Village (Burbank) loan agreement (PDF)
July 18, 2019

Damien O'Bid
City Manager
City of Cotati
201 West Sierra Avenue
Cotati, CA 94931

Re: Burbank Portfolio refinance

Damien,

Burbank Housing has been working with Berkadia/Freddie Mac to identify existing properties that can be refinanced. The purpose of the refinancing is to lock in lower interest rates on existing servicing loans; hedge against expected future interest rate increases when existing loans are fully amortized; access capital to fund new affordable housing and to fund capital needs in our Sonoma County portfolio.

Included with this letter are the following:

1. Term sheet for the new loans from Berkadia/Freddie Mac.
2. Debt service coverage calculation for Wilford Lane demonstrating the viability of operations with new financing.
3. Subordination agreement for Wilford Lane.

Berkadia/Freddie Mac is requesting subordination and extension agreements from the City of Cotati to move forward with the transaction.

We appreciate your consideration of this request. Please let me know if you have any questions.

Larry Florin
Chief Executive Officer
SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

between

Berkadia Commercial Mortgage LLC

and

City of Cotati
Freddie Mac Loan Number: __________________
Property Name: Wilford Lane Village

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 11-18-2019)

THIS SUBORDINATION AGREEMENT ("Agreement") is entered into this ___ day of ____________, 2019, by and between (i) BERKADIA COMMERCIAL MORTGAGE, LLC, a limited liability company organized and existing under the laws of the state of Delaware ("Senior Lender") and (ii) CITY OF COTATI, a local public agency organized and existing under the laws of the State of California ("Subordinate Lender").

RECITALS

A. WILFORD LANE VILLAGE, LP, a limited partnership organized under the laws of the State of California ("Borrower") is the owner of certain land located in Sonoma County, California, described in Exhibit A ("Land"). The Land is improved with a multifamily rental housing project ("Improvements").

B. Senior Lender has made or is making a loan to Borrower in the original principal amount of $1,569,000 ("Senior Loan") upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of ____________, 2019 between Senior Lender and Borrower ("Senior Loan Agreement") in connection with the Mortgaged Property. The Senior Loan is secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date of the Senior Loan Agreement ("Senior Mortgage") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "Mortgaged Property."

C. Pursuant to a Note dated April 24, 2002 between Subordinate Lender and Borrower ("Subordinate Loan Agreement"), Subordinate Lender has made or is making a loan to Borrower in the original principal amount of $397,000 ("Subordinate Loan"). The Subordinate Loan is or will be secured by a deed of trust dated July 5, 2002 ("Subordinate Mortgage") encumbering all or a portion of the Mortgaged Property.

D. The Senior Mortgage will be recorded in Office of the Sonoma County Recorder ("Recording Office") at 585 Fiscal Drive, Santa Rosa, CA 95403. The Subordinate Mortgage is recorded in the Recording Office.
E. The execution and delivery of this Agreement is a condition of Senior Lender’s making of the Senior Loan and Borrower’s granting of the Subordinate Mortgage.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings:

The terms “**Condemnation,**” “**Imposition Deposits,**” “**Impositions,**” “**Leases,**” “**Rents**” and “**Restoration,**” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
“**Enforcement Action Notice**” means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“**Lien**” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“**Notice**” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“**Regulatory Agreement**” means the Agency Regulatory Agreement between Borrower and Subordinate Lender recorded at Office of the Sonoma County Recorder in the Recording Office of Sonoma, County, California.

“**Senior Indebtedness**” means the “Indebtedness” as defined in the Senior Loan Agreement.

“**Senior Lender**” means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“**Senior Loan Documents**” means the “Loan Documents” as defined in the Senior Loan Agreement, as such documents may be amended.

“**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Agreement.

“**Senior Note**” means the promissory note or other evidence of the Senior Indebtedness and any replacement of the Senior Note.

“**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.
“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

(a) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Deposits.

(b) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

(a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:

(i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.

(ii) No Subordinate Mortgage Default has occurred and is continuing.

(iii) The current unpaid principal balance of the Subordinate Indebtedness is $397,000.

(iv) No scheduled payments under the Subordinate Note have been prepaid.

(b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:

(i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
(ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.

(iii) Accept any prepayment of the Subordinate Indebtedness.

3. **Terms of Subordination.**

   (a) **Agreement to Subordinate.** The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.

   (b) **Subordination of Subrogation Rights.** If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

   (c) **Payments Before Senior Loan Default.** Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date.

   (d) **Payments After Senior Loan Default or Bankruptcy.**

      (i) Immediately upon Subordinate Lender’s receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.

      (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:

         (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.

         (B) Any proceeds from any Enforcement Action.
(C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.

(iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.

(e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.


(a) Notice of Subordinate Loan Default and Cure Rights.

(i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.

(ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:

(A) Discontinues its pursuit of any cure.

(B) Delivers to Subordinate Lender Senior Lender’s written consent to the Enforcement Action described in the Enforcement Action Notice.
(iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.

(iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.

(b) Subordinate Lender’s Exercise of Remedies After Notice to Senior Lender.

(i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender’s right to cure a Subordinate Mortgage Default set forth in Section 4(a).

(ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:

(A) The expiration of such 90-day period or such longer period as provided in Section 4(a).

(B) The delivery by Senior Lender to Subordinate Lender of Senior Lender’s written consent to such Enforcement Action by Subordinate Lender.

(iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender’s Enforcement Action in Senior Lender’s sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender’s right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.

(iv) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
(c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

(i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender’s rights and remedies under the Senior Loan Documents.

(ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.

(iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender’s secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.

(iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender’s right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.
(b) **Release of Mortgaged Property.**

(i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:

(A) To conduct a separate sale of any portion of the Mortgaged Property.

(B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.

(C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines. Subordinate Lender waives to the fullest extent permitted by law any and all benefits under California Civil Code Sections 2845, 2849 and 2850.

(ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:

(A) Extend the time for or waive any payment or performance under the Senior Loan Documents.

(B) Modify or amend in any respect any provision of the Senior Loan Documents.

(C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. **Conflicts.** If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:
(a) Extend Borrower’s time to cure any Senior Loan Default or Subordinate Loan Default.

(b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.

(c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

(a) Insurance.

(i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.

(ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.

(iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

(i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
(ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.

(iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.

(iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.

(c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender’s consent, then such amendment or assignment will be void ab initio and of no effect whatsoever.

(d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior...
Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

(e) **Commercial or Retail Leases.** If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.

(f) **Consent Rights.** Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender’s approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).

(g) **Escrows.** Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.

(h) **Certification.** Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. **Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. **Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

(a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

    Berkadia Commercial Mortgage LLC
    323 Norristown Road, Suite 300
    Ambler, Pennsylvania 19002
    Attention: Servicing Senior Vice President

Notices intended for Subordinate Lender will be addressed to:

    City of Cotati
    201 W. Sierra Ave., Cotati, CA 94931
    Attention: City Manager

(b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

(a) **Assignments/Successors.** This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.

(b) **No Partnership or Joint Venture.** Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venture or partner of Subordinate Lender.

(c) **Further Assurances.** Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement.

(d) **Amendment.** This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.

(e) **Governing Law.** This Agreement will be governed by the laws of the State in which the Land is located.

(f) **Severable Provisions.** If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

(g) **Term.** The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:

(i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender as described in Section 2(e) of this Agreement.

(ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.

(iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of
foreclosure, or trustee’s sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.

(iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 5(d), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

(i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.

(j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.

(k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

(l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

BERKADIA COMMERCIAL MORTGAGE LLC,
a Delaware limited liability company

By: ________________________________ (SEAL)
Name
Title: Authorized Representative

STATE OF __________________
) ss:
COUNTY OF __________________

On _______________, 2019, before me, ________________________________, a Notary Public, personally appeared ______________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same as Authorized Representative of BERKADIA COMMERCIAL MORTGAGE LLC, a Delaware limited liability company, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

WITNESS my hand and official seal.

______________________________ (SEAL)
(Signature of Notary)

My Commission Expires:______________

(Affix seal)
SUBORDINATE LENDER:

CITY OF COTATI

By: __________________________
Name: __________________________
Title: __________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _______________ )
) ss:
COUNTY OF _______________ )

On _______________, 2019, before me, _________________________________, a Notary Public, personally appeared ____________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same as __________________ of City of Cotati and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

WITNESS my hand and official seal.

__________________________ (SEAL)
(Signature of Notary)

My Commission Expires: ____________

(Affix seal)
CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated ____________, 20__, by and between Berkadia Commercial Mortgage LLC and the City of Cotati and consents to the agreement of the parties set forth in this Agreement.

WILFORD LANE VILLAGE, LP

By: __________________________
Name: __________________________
Title: __________________________
Date: __________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF __________________ )
COUNTY OF __________________ ) ss:

On ____________, 2019, before me, _______________________________, a Notary Public, personally appeared ____________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same as ____________________ of Wilford Lane Village, LP, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

WITNESS my hand and official seal.

____________________________ (SEAL)
(Signature of Notary)

My Commission Expires: ____________
EXHIBIT A

LEGAL DESCRIPTION

BEING A PORTION OF PARCEL 2 AS SHOWN ON PARCEL MAP NO. 31, AS RECORDED IN BOOK 247 OF MAPS AT PAGE 21, SONOMA COUNTY RECORDS, LYING WITHIN THE CITY OF COTATI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWEST CORNER OF SAID PARCEL 2; THENCE FROM SAID POINT OF BEGINNING SOUTH 84° 46' 46" EAST, 308.33 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 241.60 FEET, THROUGH A CENTRAL ANGLE OF 7° 14' 17'', FOR A DISTANCE OF 30.52 FEET; THENCE SOUTH 55° 24' 00" WEST, 258.82 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF WILFORD AVENUE; THENCE ALONG SAID RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 430.00 FEET FROM A TANGENT THAT BEARS NORTH 73° 21' 18" WEST, THROUGH A CENTRAL ANGLE 16° 00' 51'' FOR A DISTANCE OF 120.11 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 1° 00' 39" WEST, 174.67 FEET TO THE POINT OF BEGINNING OF THE HEREINABOVE DESCRIBED PROPERTY.

BEING THE SAME PARCEL OF LAND AS SHOWN AS PARCEL 2-A OF THE RECORD OF SURVEY RECORDED IN BOOK 264 OF MAPS, AT PAGE 20, SONOMA COUNTY RECORDS.

A.P. NO. 144-070-020
LOAN AGREEMENT

WILFORD LANE VILLAGE
COTATI, CALIFORNIA
($397,000)

This Loan Agreement is made this 24th day of April, 2002, by and between COTATI COMMUNITY REDEVELOPMENT AGENCY, a public agency (the "Agency") and BURBANK HOUSING DEVELOPMENT CORPORATION, a California Non-profit Public Benefit Corporation ("BHDC").

RECITALS

A. BHDC is a California non-profit corporation which develops low-income housing.

B. The Agency is a public entity which, among other activities, is involved in programs designed to develop low-income housing. The Agency is a redevelopment agency established and authorized to transact business under the Community Redevelopment Law (Health & Safety Code § 33000 et seq.) and the powers of the Agency includes the power to enter into agreements for the loan of its Low and Moderate Income Housing Fund for the purposes set forth in said Law.

C. BHDC is the owner of that certain parcel of real property as described in the attached Exhibit A ("the Property"). The Property is located within the Cotati Redevelopment Area.

D. BHDC wishes to enter into a loan agreement with the Agency for assistance in the sum of Three Hundred, Ninety-seven Thousand Dollars ($397,000.00) for the development and construction of Wilford Lane Village. This Loan Agreement relates to the BHDC housing project to be constructed upon that certain real property more particularly described in Exhibit A attached hereto (the "Project").

E. The purpose of the Agency Loan (defined below) is to provide long term financing for property development and construction by BHDC in connection with the Project.

F. The Agency has found and determined that:

1. The Project to be financed through the Loan is of benefit to the City of Cotati ("City") and the
Cotati Redevelopment Project Area ("Project Area"), as it promotes and enhances economic development and preserves land and enables for the construction of very low- and low-income housing.

2. No other reasonable means of financing is available, as the revenues generated by the Project to be financed will be insufficient to pay the costs of the Project, and would therefore constitute an unreasonable drain on the general fund of the City if the housing set-aside portion of the tax increment from the Project Area is not used to offset a portion of the cost of the Project.

3. The loan of Agency funds for the Project will preserve land and develop land for very low- and low-income persons, and is consistent with the implementation plans adopted pursuant to Health & Safety Code § 33490.

4. The Project to be financed through the instant Loan constitutes "redevelopment" as prescribed in Health & Safety Code §§ 33020 and 33021, and none of the proceeds of the Loan shall be used for the purpose of paying for employee or contractual services of any local governmental commission other than services directly related to the redevelopment purposes authorized by such sections.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE ONE. LOAN PROVISIONS

1.01. Loan Amount. Agency agrees to lend to BHDC and BHDC agrees to borrow from Agency (subject to terms and conditions herein set forth) an amount not to exceed Three Hundred, Ninety-seven Thousand Dollars ($397,000.00) (the "Loan"). The Loan shall be for a term of fifty-five (55) years from the date of the final closing of the permanent loan (which is being funded by another lender) or December 31, 2058, whichever is earlier, and interest shall accrue at an annual rate of three percent (3%) simple interest. Interest will accrue on disbursed Loan proceeds at said
rate with respect to each disbursement from the date on which the disbursement is made. All Loan proceeds shall be evidenced by the Note (defined below) and will be secured by the Deed of Trust (defined below) and other applicable security instruments. Upon the final closing of the permanent loan, BHDC shall notify Agency in writing of same. The fully executed Note shall be completed and delivered to the Agency on the date that the Agency first disburses the Loan proceeds pursuant to section 1.01(a), showing its due date in accordance herewith. Principal and accrued interest shall be due and payable at the end of the term for the Loan. The Loan proceeds shall be used by BHDC solely for the purposes specified in Exhibit E, and no other.

(a) The Loan shall be disbursed in two amounts. Initially, upon written request from BHDC, the Agency shall disburse Loan proceeds of up to Two Hundred, Twenty-eight Thousand Dollars ($228,000) to pay for the predevelopment expenses outlined in Exhibit E. Any such request shall include written documentation supporting each of the costs for which the Loan proceeds are requested. As to those costs which BHDC has already incurred or paid, said documentation shall establish that those costs have, in fact, been incurred or paid. As to those costs which BHDC intends to incur or pay, said documentation shall establish that BHDC has entered into binding and non-cancellable, written agreements obligating BHDC to incur or pay said costs.

(b) Thereafter, at the closing of the construction loan and upon written request from BHDC, or as mutually agreed by the Agency Director and BHDC, an amount of up to One Hundred, Sixty-nine Thousand Dollars ($169,000) shall be disbursed for local fees and construction costs as specified in Exhibit E. Any such request shall include written documentation supporting each of the costs for which the Loan proceeds are requested. As to those costs which BHDC has already incurred or paid, said documentation shall establish that those costs have, in fact, been incurred or paid. As to those costs which BHDC intends to incur or pay, said documentation shall establish that BHDC has entered into binding and non-cancellable, written agreements obligating BHDC to incur or pay said costs.

(c) All disbursements of Loan proceeds shall be conclusively deemed paid to and received by BHDC.

(d) Prior and as a condition precedent to any disbursement of Loan proceeds to BHDC: (i)the Note
shall be executed by BHDC and delivered to the Agency, the Deed of Trust and Covenant (defined below) shall be executed and recorded; (ii) at BHDC's sole cost, BHDC shall deliver to the Agency a (a) title report or other evidence satisfactory to the Agency showing the recordation of the Deed of Trust and Covenant as liens against the Property and in a position of priority consistent with this section 1.03 and 2.02, and (b) lender's title insurance policy naming the Agency as insured, showing no intervening liens or encumbrances on the Property except as provided herein and insuring the full amount of the Loan proceeds disbursements; (iii) the representations and warranties in the Consolidated Loan Documents shall be correct as of the date of the requested disbursement as though made on that date; (iv) BHDC shall have delivered to the Agency all documents, instruments, policies and other materials required to be delivered to the Agency prior to the disbursement of Loan proceeds; and (v) no litigation or other adversarial proceeding shall have been commenced and remain pending in which any action taken by the Agency or City of Cotati pursuant to this Agreement is challenged for which BHDC has not proved the Agency and City a fully paid defense and indemnification of Agency and City under terms and conditions acceptable to the Agency and City, including but not limited to actions brought challenging the Agency's approval of this Agreement, the Consolidated Loan Documents, the City's approval of the Project, the City's abandonment of a portion of Wilford Land park and the City's conveyance of a portion of the Property to BHDC.

1.02  **Note and Deed of Trust.** The Loan shall be evidenced by a promissory note in the amount of Three Hundred, Ninety-seven Thousand Dollars ($397,000.00) (the "Note"), in the form attached hereto as Exhibit B, to be executed and delivered by BHDC to the Agency in accordance herewith. As security for the Note, BHDC shall execute and grant to Agency, a deed of trust (the "Deed of Trust"), in the form attached hereto as Exhibit C, creating a valid lien upon the Project and Property.

1.03  **Priority of Deed of Trust and Covenant.** BHDC and Agency agree that the Deed of Trust provided for in Section 1.02 and the Covenant (as defined below) shall be subordinate to the liens, deeds of trust, and encumbrances specified below and shall not be subject or subordinate to any liens, deeds of trust, or encumbrances upon the Project and Property other than those specified in this section.
1.03 and non-delinquent taxes and assessments levied against the Property:

(a) deed of trust dated November 28, 2000, and recorded in the official records of Sonoma County on November 29, 2000, as document number 2000-0125410, showing BHDC as trustor, and Sonoma County Community Development Commission as beneficiary;

(b) deed of trust dated January 22, 2002, and recorded in the official records of Sonoma County on January 25, 2002, as document number 2002-011928, showing BHDC as trustor, and Northern California Community Loan Fund, as beneficiary;

(c) deed of trust dated April 30, 2002, and recorded in the official records of Sonoma County on May 8, 2002, as serial number 02-71256, showing BHDC as trustor, and Sonoma County Community Development Commission, as beneficiary; and

(d) those certain exceptions to title shown in the preliminary title report prepared by North American Title Company, dated June ___, 2002, and attached hereto as Exhibit "F".

1.04. Prepayment. BHDC shall have the right to prepay all or any portion of the principal and interest due under the Note without any charge or penalty being made therefor.

1.05. Loan Documents. This Agreement, the Note, the Deed of Trust, and the Low Income Housing Covenant ("Covenant"), attached hereto as Exhibit D and incorporated herein by reference, financing statements, and other security instruments to evidence and secure the Loan are hereinafter collectively referred to as the "Consolidated Loan Documents."

ARTICLE TWO. CONDITIONS AND COVENANTS ON DISBURSEMENT OF LOAN PROCEEDS

2.01. Conditions Precedent. Prior to the disbursement of the Loan, and as a condition precedent to any advance of the Loan, BHDC shall (A) submit to Agency for its approval: (i) a development budget for the Project including a detailed breakdown of the costs identified in Exhibit E; (ii) execution and recordation of the Covenant; (iii) execution and recordation of the Deed of Trust; and (iv) the documentation described in sections 1.01(a) and 1.03; and (B) comply with sections
1.03 and 2.02 and any other provision in the Consolidated Loan Documents required to be fulfilled prior to Loan disbursements.

2.02. **Covenant.** In consideration of the Loan, BHDC agrees to construct and to operate the Project as a qualified low income housing project for rental of not less than seventeen (17) of the thirty-six (36) units to very low- and low-income tenants, based upon applicable HUD income requirements at the time of occupancy.

BHDC's duties respecting the provision of housing units in the Project for very low- and low-income tenants are more specifically set forth in the Covenant. BHDC shall cause the Covenant to be executed by its authorized officer(s) prior to the initial disbursement of any Loan funds, and shall be recorded in the Public Records of Sonoma County, California, prior to recordation of any deed of trust or other security instrument against the Project and/or Property.

2.03. **Liens and Stop Notices.** If a claim of lien is recorded affecting the Project and/or Property, or a bonded stop notice is served upon the Agency which affects the Loan or any of the additional financing for the Project, BHDC shall, within twenty (20) days of such recording or service, or within five (5) days of the Agency's demand (whichever last occurs): (a) pay and fully discharge the same; or (b) effect the release thereof by recording or delivering to the Agency a surety bond in sufficient form and amount or otherwise; or (c) provide the Agency with other assurance which the Agency deems in its sole discretion to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Agency from the effect of such lien or bonded stop notice. If BHDC has not received actual notice of the claim of lien or bonded stop notice prior to the Agency's demand, then the five (5) day period described above shall be extended to twenty (20) days. BHDC shall give the Agency prompt written notice of all lien claims and stop notices affecting the Project.

2.04. **Title Insurance.** BHDC shall procure from a title insurer acceptable to the Agency a CLTA Lender's Policy of Title Insurance ("Title Policy"), with any endorsement the Agency may reasonably require insuring the Agency in the principal amount of the Loan and the validity and the priority of the lien of Deed of Trust upon the Project, subject only to matters of record
approved by the Agency in writing. During the term of the Loan, BHDC shall procure and deliver to the Agency within five (5) working days of the Agency's request other endorsements to the Title Policy as the Agency may reasonably require.

ARTICLE THREE. REPRESENTATIONS AND WARRANTIES

3.01. Representations and Warranties. BHDC represents and warrants to Agency that: (a) BHDC is duly organized and in good standing in the State of California and has full power and authority to execute this Agreement and the Consolidated Loan Documents; (b) the persons executing this Agreement and the Consolidated Loan Documents on behalf of BHDC have the full power and authority to do so and the Consolidated Loan Documents are binding obligations of and enforceable against BHDC in accordance with their terms and conditions; (c) the monies to be disbursed under this Agreement and/or the Loan shall be used solely for the purposes described herein and in accordance with BHDC's obligations and covenants contained herein and for no other purpose unless specifically consented to in advance and in writing by the Agency; (d) BHDC shall fully comply with all of the terms and conditions of the Consolidated Loan Documents and any other loan documents secured by the Project and/or Property; (e) BHDC has full authority to perform all of the Consolidated Loan Documents' conditions and terms; (f) there are no actions, suits or proceedings pending or, to BHDC's knowledge, threatened against or which affect BHDC, the Project and/or Property, or involving the Deed of Trust or other Consolidated Loan Documents, at law or in equity or before any governmental authority; (g) the consummation of this transaction and performance under the Consolidated Loan Documents shall not result in the breach or constitute a default under any agreement or any instrument to which the BHDC is a party; (h) BHDC is the sole legal and beneficial owner of the Property; and (i) BHDC shall comply with all applicable laws, rules, regulations and ordinances in the use of the Property and shall obtain all permits and approvals required to effect the Project and use the Property in the fashion required under the Consolidated Loan Documents. BHDC certifies that all the warranties and representations made in this Agreement by BHDC are true and correct in all material respects and no not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material
respects and will survive so long as any of BHDC's obligations have not been satisfied or the Loan or any part of it remains outstanding.

ARTICLE FOUR. RECORDS

4.01. Maintenance of Records. BHDC shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by Agency with respect to all matters covered by this Agreement.

4.02. Access by Agency. BHDC, at such time and in such forms as Agency may require, shall furnish to Agency statements, records, reports, data and information pertaining to matters covered by this Agreement. Upon request for examination by Agency, BHDC, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement and/or related to the Project and/or Property. BHDC shall permit Agency to audit, examine and make excerpts or transcripts from these records.

ARTICLE FIVE. INDEMNIFICATION.

5.01. Indemnification. BHDC agrees to indemnify, defend and save Agency, its officials, officers, employees and agents harmless from and against any and all liability, active and passive, claims, suits, actions, damages, penalties and/or causes of action arising during the term of the Loan and out of any personal injury, loss of life or damage to property, violation of any federal, state or municipal law or ordinance (including but not limited to hazardous substance or materials laws, regulations and ordinances) or other cause in connection with BHDC's and/or BHDC's agents, contractors or subcontractors, acts or omissions or willful misconduct, under this Agreement and/or arising from or in any way related to the Project and/or Property and from and against all costs, counsel fees, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon and from and against any orders, judgments or decrees which may be entered therein; excluding, however, any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising from or caused in whole or part by the sole, negligent acts or omissions or willful misconduct of the Agency, the City of Cotati, and/or their respective officials, agents, contractors, employees or officers.
ARTICLE SIX. INSURANCE.

6.01. Worker's Compensation. For the term of the Loan, BHDC, at its own cost and expense, shall carry and maintain full Worker's Compensation Insurance and Employer's Liability with limits as required by California law with an insurance carrier satisfactory to Agency. The policy shall provide that no cancellation, major change or expiration shall become effective or occur until at least ten (10) days after receipt of such notice by Agency.

6.02. Liability and Property Damage. BHDC, at its own cost and expense, shall maintain commercial general liability insurance on an occurrence basis for the period covered by the Loan in the amount of ONE MILLION DOLLARS ($1,000,000) combined single limit coverage and TWO MILLION DOLLARS ($2,000,000) general aggregate limit. Starting in April 2007 and in April every five years thereafter, the Agency shall consult with its insurance representatives and risk manager as to whether said limits and coverages should be increased or expanded, respectively. If said representatives and manager, in the exercise of their reasonable judgment, recommend said increases and/or expansions, then the Agency shall deliver those determinations to BHDC and BHDC shall comply with the recommendations within 60 days after the receipt thereof. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement and use of owned and non-owned automobiles. BHDC shall also obtain all risk property damage on a full replacement value basis and loss of rents insurance. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to Agency and shall provide that notice must be given to Agency at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to each policy:

(a) Policy shall cover on an occurrence basis;

(b) Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated form personal injury endorsements;

(c) Policy must cover BHDC's works and provide contractual liability coverage;
(d) Agency, its officers and employees, shall be named as additional insureds. The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance affected by Agency will be called upon to contribute to a loss suffered by BHDC hereunder;

(e) BHDC agrees to furnish any certificate of insurance evidencing the above described policies as requested by Agency. Upon notification of receipt by Agency of a notice of cancellation, or major change in coverage, BHDC shall file with Agency a certified copy of the required new or renewal policy and certificates for such policy.

If, at any time during the term of the Loan, life of this Agreement or any extension thereof, whichever is longer, BHDC fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately and all payments due or that become due to BHDC will be withheld until notice is received by Agency that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to Agency. Any failure to maintain the required insurance will be sufficient cause for Agency to terminate this Agreement and declare the Note and Deed of Trust in default. From time to time during the term of this Agreement or the term of the Loan, whichever is longer, Agency may require additional insurance and/or increases in the limits of the insurance described herein if in the reasonable business judgment of Agency and based upon similar rental housing developments in the County of Sonoma, the insurance described hereunder is not sufficient.

ARTICLE SEVEN. DEFAULT

7.01. Defaults. Any one or all of the following events shall constitute a default by BHDC:

(a) any material misleading statement, misrepresentation or warranty of BHDC herein, in the Consolidated Loan Documents or in any other writing pertaining to any of the obligations described herein;

(b) failure to perform any obligation or covenant contained herein following written notice and opportunity to cure not exceeding forty-five (45) days from the date of such notice;
(c) the filing by or against BHDC of a petition for relief under any bankruptcy or debtor relief law which is not terminated within sixty (60) days;

(d) a general assignment by BHDC for the benefit of BHDC's creditors or the appointment of any receiver or trustee of all or any portion of the assets of BHDC which is not terminated within sixty (60) days;

(e) the filing of any liens, levy, attachment, executions, tax assessments or similar processes against the Project and not released within the time period specified in the first sentence of section 2.03 or such longer period not to exceed one hundred twenty (120) days provided BHDC is diligently pursuing the release of the above described liens or is diligently challenging the same;

(f) the occurrence of an Event of Default under the Deed of Trust;

(g) any uncured default under the Note or any of the Consolidated Loan Documents;

(h) BHDC's failure to comply with any governmental requirements;

(i) BHDC's neglect, failure, or refusal to keep in force any permit, license, consent, or approval with respect to the construction, occupancy or use of the Project and/or Property;

(j) the attachment, levy, execution, or other judicial seizure of any portion of the Property or Project that is not released, expunged, bonded, discharged or dismissed within 30 days after the attachment, levy, execution, or seizure; and/or

(k) the dissolution of BHDC or the termination or suspension of BHDC's rights and powers to do business in the State of California for any reason.

7.02. Remedies. Upon the occurrence of an event of default, Agency, at its option, may declare this Agreement to be in default and, in such event, Agency shall have all of the rights and remedies prescribed in the Consolidated Loan Documents and at law or in equity, including but not limited to declaring the Note and all other sums owed to the Agency with respect to the other Consolidated Loan Documents immediately due. In addition, following an event of default, Agency
shall have no further obligation to disburse all or any portion of the Loan. All of Agency's rights and remedies provided in this Agreement or in any of the Consolidated Loan Documents are cumulative and may be exercised by Agency at any time.

ARTICLE EIGHT. MISCELLANEOUS

8.01. **Conflict of Interest.** No member, officer, or employee of BHDC, or its designees, or agents, who exercises any functions or responsibility with respect to the Project during his or her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement. BHDC shall incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

8.02. **Charges Incurred Under Agreement.** No member of the governing body of the Agency and no other officer, employee or agent of the Agency who exercised any functions or responsibilities in connection with the carrying out of Agency's work shall have any personal interest, direct or indirect, in the Agreement.

8.03. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be prohibited or invalid under applicable law, such prohibited or invalid provision shall be disregarded without invalidating the remainder of such or the remaining provisions of this Agreement.

8.04. **Compliance With Governmental Regulations.** BHDC shall, at its sole cost and expense, comply with all applicable municipal, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to any and all activities completed under this Agreement, including, but not limited to, issuance of building and use permits.

8.05. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, the jurisdiction of which the parties hereto submit.

8.06. **Alteration.** No alteration or variation in the
terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

8.07. **Waiver.** Agency's waiver of any default, breach or condition precedent shall not be construed as a waiver on the part of Agency of any other default, breach or condition precedent, or other right hereunder.

8.08. **Status of BHDC.** BHDC and the agents and employees of BHDC, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Agency.

8.09. **Successors and Assigns.** The terms, conditions and provisions herein contained shall, subject to the provision as to assignments, apply to and bind the successors, executors, administrators and assigns of all the parties hereto.

8.10. **Time.** Time is of the essence of this Agreement.

8.11. **Notices.** All notices and communications to be given to either party shall be deemed given (i) when personally delivered to the party at the address stated below, (ii) when delivered by facsimile, provided that on the same day any such facsimile notice is sent, a copy thereof is deposited with the U.S. Postal Service, first class postage prepaid and returned receipt requested and addressed to the party at the same address as for personal delivery, or (iii) forty-eight (48) hours following the deposit of two copies thereof with the United States Postal Service, first class postage prepaid and return receipt requested and addressed to the party at the same address as for personal delivery. If notice is given for personal delivery such notice shall be deemed given when so delivered but a copy of such notice shall, within twenty-four (24) hours of such delivery be deposited with the United States Postal Service, first class postage prepaid and return receipt requested addressed as set forth below:

**Agency:** Dale Shaddox, Executive Director  
Cotati Community Redevelopment Agency  
201 West Sierra Avenue  
Cotati, CA 94931-4217  
FAX 707-795-7067

**BHDC:** John Lowry, Executive Director  
Burbank Housing Development Corporation
8.12. **Sale of the Project.** Subject to the rights of the superior lenders described in Section 1.03, BHDC shall not assign, transfer or convey any interest in the Project but excluding the transfer of the Project and the Consolidated Loan Documents to a limited partnership of which BHDC or its affiliate is the general partner, without the prior written consent of Agency. Agency shall agree to grant its consent provided that:

(a) BHDC is not in default thereunder;

(b) the continued development and operation of the Project shall comply with the provisions of this Agreement and the other Consolidated Loan Documents;

(c) the purchaser, the successor or assignee of BHDC shall execute an assumption agreement in a form and substance acceptable to Agency expressly assuming all the obligations hereunder and under the Consolidated Loan Documents;

(d) Agency has no reason to believe that the purchaser, successor or assignee of BHDC is incapable, financially or otherwise, of complying with all the terms of this Agreement and the Consolidated Loan Documents; and

(e) such other conditions which Agency may reasonably impose to ensure that the intended consequences of this Agreement are continued and which may otherwise be reasonable under the circumstances.

8.13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

8.14. **Controlling law.** The Consolidated Loan Documents shall be governed by and construed in accordance with California law.

8.15. **Survival of Warranties.** The warranties, representations, conditions, covenants and agreements in this Agreement and in the other Consolidated Loan Documents shall survive the making of the Loan and the execution and delivery of the Note and will continue in
full force and effect until the Loan has been fully repaid.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement in duplicate on the day and year first above written.

COTATI COMMUNITY REDEVELOPMENT AGENCY

By: [Signature]
    Dale Shaddox, Executive Director

BURBANK HOUSING DEVELOPMENT CORPORATION. ("BHDC")

By: [Signature]
    John Lowry, Executive Director

By: [Signature]
    Name: Gerald Villarreal   Title: Secretary

RECOMMENDED FOR APPROVAL:

By: [Signature]
    Dennis Dorch, Assistant Agency Director

APPROVED AS TO FORM:

By: [Signature]
    Jeffrey Walter, Attorney for Cotati Community Redevelopment Agency

EXHIBITS (attached hereto and incorporated by this reference):

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<tr>
<th>No.</th>
<th>Description</th>
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<tr>
<td>A</td>
<td>Legal description</td>
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<td>B</td>
<td>Promissory Note</td>
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<td>C</td>
<td>Deed of Trust</td>
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<tr>
<td>D</td>
<td>Low Income Housing Covenant</td>
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Redevelopment and Construction Uses
Preliminary Title Report
RESOLUTION NO.
RESOLUTION OF THE COUNCIL OF THE CITY OF COTATI APPROVING AND
AUTHORIZING EXECUTION OF A SUBORDINATION AGREEMENT BETWEEN
THE CITY OF COTATI AND BERKADIA COMMERCIAL MORTGAGE LLC,
MAKING SUBORDINATION FINDINGS, AND APPROVING AND AUTHORIZING
EXECUTION OF A LOAN AMENDMENT TO ALLOW AN EXITING $397,000 LOAN
FROM THE CITY'S AFFORDABLE HOUSING TRUST FUND TO BE
SUBORDINATED TO A NEW LOAN RESULTING FROM A RE-FINANCE OF THE
PROPERTY AT 160 WILFORD LANE, A BURBANK HOUSING DEVELOPMENT.

WHEREAS, in 2002, in keeping with the City’s goals and policies to support and further
affordable housing within the community, the Cotati Community Redevelopment Agency
(“Agency”) entered into a loan agreement (“Wilford Lane Village Loan Agreement”) with
Burbank Housing Development Corporation (“Burbank Housing”) whereby the Agency agreed
to provide a loan from the Affordable Housing Trust Fund, to Burbank Housing in the principal
amount of Three Hundred Ninety-seven Thousand Dollars ($397,000) for the development and
construction of the Wilford Lane Village Affordable Housing Development; and

WHEREAS, the Wilford Lane Village Loan Agreement is for a term of 55-years,
coincides with the term of the deed restriction on the development, is evidenced by a promissory
note dated June 28, 2002, a regulatory agreement (“the Low Income Housing Covenant”), and
secured by a deed of trust dated July 5, 2002; and

WHEREAS, pursuant to Assembly Bill 26X from the 2011-12 First Extraordinary
Session of the California Legislature, all redevelopment agency activities, except continued
performance of “enforceable obligations”, were immediately suspended. Under the California
Supreme Court ruling in California Redevelopment Assn. v. Matosantos (2011), 53 Cal. 4th 231,
all redevelopment agencies dissolved on February 1, 2012; and

WHEREAS, on January 11, 2012, the City Council adopted Resolution 2011-74 electing
to serve as the successor agency to the Cotati Community Redevelopment Agency pursuant to
Health and Safety Code Section 34176; and

WHEREAS, on July 25, 2012, in accordance with AB 1484, enacted on June 27, 2012,
the City Council adopted Resolution No. 2012-51 and the Successor Agency Board adopted
Resolution No. 2012-52, acknowledging the Successor Agency as a local public entity distinct
from the City of Cotati; and

WHEREAS, in the summer of 2019, Burbank Housing approached the City, as the
Successor Agency, identifying their desire to refinance their existing commercial loan on the
Wilford Lane Village property, and indicating this refinancing effort would require the City to
agree to subordinate the existing Wilford Lane Village Loan Agreement to the new commercial
lender, Berkadia Commercial Mortgage, LLC through a subordination agreement (the
“Subordination Agreement”); and
WHEREAS, the City fully supports the efforts of Burbank Housing to reduce costs and maintain affordable housing within the community and has found no financial or maintenance concerns with the management of Wilford Lane Village; and

WHEREAS, the existing Wilford Lane Village Loan Agreement requires an amendment to authorize subordination and the City, as Successor Agency, desires to subordinate the existing Wilford Lane Village Loan; and

WHEREAS, Health and Safety Code Section 33334.14(a) requires certain findings to be made by the City prior to subordination; and

WHEREAS, by staff report accompanying this Resolution and incorporated into this Resolution by reference (the “Staff Report”), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based; and

WHEREAS, the action of subordinating an existing loan does not constitute a project as defined by California Environmental Quality Act Guidelines Section 15378; therefore, no further environmental review is required.

NOW THEREFORE BE IT RESOLVED the City Council of the City of Cotati does hereby:

1. Find that all of the above recitals are true and correct, and the City has based the findings and actions set forth in this Resolution, in part on such recitals; and

2. Find that an economically feasible alternative method of financing the project on substantially comparable terms and conditions, but without subordination, is not reasonably available; and

3. Find that, pursuant to the Subordination Agreement, the City has obtained written commitments reasonably designed to protect the City’s interests in the event of a default, including one or more of the protections described in Health and Safety Code Section 33334.14 (a)(4)(A)-(D); and

4. Approve the Subordination Agreement with Berkadia Commercial Mortgage LLC to subordinate the existing $397,000 Wilford Lane Village Loan, keeping the loan’s 55-year term in place; and

5. Approve an amendment to the Wilford Lane Village Loan Agreement to allow for subordination; and

6. Authorize and delegate negotiation and final execution of said loan amendment and Subordination Agreement to the City Manager, in keeping with the facts and elements identify herein.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect upon adoption.
IT IS HEREBY CERTIFIED that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Cotati held on the November 26th, 2019, by the following vote, to wit:

Approved: ____________________________________________
       Mayor

Attest: ____________________________________________
       Lauren Berges, City Clerk

Approved as to form:

__________________________________________
City Attorney
**Cotati City Council**  
**Agenda Staff Report**

**Item type:** CONSENT CALENDAR (ACTION)  
**To:** City Council  
**Subject:** Adoption of an Ordinance amending Section 1.08.010 of the Cotati Municipal Code to update the locations for posting public notices  
**Date:** November 26, 2019  
**Written by:** Lauren Berges, City Clerk

### Recommendation

It is recommended that the City Council of the City of Cotati adopt an ordinance amending section 1.08.010 of the Cotati municipal code updating the locations for posting public notices.

### Background

Government Code § 36933(a) outlines the City Clerk’s responsibility for the posting of ordinances within fifteen (15) days after its passage. This code includes the requirement to publish the notice of adopted ordinance in a newspaper of general circulation and/or to post in at least three (3) public places within the City. Historically, the City Clerk has posted adopted ordinances and public notices at City Hall, the Cotati Veteran’s Memorial Building, and at our local U.S. Post Office.

The Cotati Municipal Code section 1.08.010 stipulates where public notices are to be posted within the City. The code language for locations was last updated in 2005 and reads as follows:

**1.08.010 Locations Named.**

The following places within the City are designated as the places for posting public notices:

A. Cotati City Hall;  
B. Cotati Veteran’s Building;  
C. U.S. Post Office (Ord. 779 §1, 2005: Ord. 49 §1, 1965)

This item was introduced at the November 12th, 2019 regular City Council meeting.

### Analysis/Discussion

In the month of October the City was made aware of physical updates that were taking place at our local U.S. Post Office located at 502 E. Cotati Ave. More post office boxes were brought in
to accommodate the growing need for local residents to receive their mail. Our dedicated posting location inside the post office was moved and reduced to a size that no longer works for viewing our adopted ordinances, agendas, or various notices we need to post for public consumption.

A suitable alternative to the post office location is the City’s SMART Train Depot building. A secure posting box is located on the East side of the building’s exterior and is always accessible for public viewing.

With the changing conditions at our local post office it is recommended we update our existing ordinance to remove the U.S. Post office location and add the SMART Train Depot to our list of locations named.

**Financial Considerations**

There is no fiscal impact associated with changing our posting locations.

**Environmental Issues**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COTATI AMENDING SECTION 1.08.010 OF THE MUNICIPAL CODE NAMING THE LOCATIONS FOR POSTING PUBLIC NOTICES

THE CITY COUNCIL OF THE CITY OF COTATI DOES ORDAIN AS FOLLOWS:

Section 1.08.010 of the Municipal Code is amended to read as follows:

1.08.010 Locations Named.

The following public places within the City are designated as the places for posting public notices:

A. Cotati City Hall;
B. Cotati Veteran’s Memorial Building;
C. Cotati SMART Train Depot Building.

SECTION 1. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 2. Effective Date. This ordinance shall become effective thirty (30) days after the date of adoption.

SECTION 3. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

Approved:________________________________
Mayor

Attest:____________________________________
Lauren Berges, City Clerk

Approved as to form:

________________________________________
John Bakker, City Attorney

This document is a true and correct copy of Ordinance Number and has been published or posted pursuant to law. California Government Code § 40806
Lauren Berges, City Clerk
Cotati City Council
Agenda Staff Report

**Item type:** CONSENT CALENDAR (ACTION)

**To:** City Council

**Subject:** Emergency Organization Ordinance

**Date:** November 26, 2019

**Written by:** Damien O’Bid, City Manager

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**Recommendation**

It is recommended that the City Council of the City of Cotati adopt an ordinance amending Chapter 2.24 of the Cotati Municipal Code regarding Emergency Organization and Functions.

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**Background**

The City has an existing emergency organization ordinance (Ordinance 162, codified in Chapter 2.24), which describes the roles of “Disaster Council” and Director of Emergency Services, including their respective roles in emergency planning. The Disaster Council has accomplished emergency planning through an informal process to date.

This item was introduced at the November 12th, 2019 regular City Council meeting.

**Analysis/Discussion**

The goal of the ordinance amendment is to update the definition of an emergency, consistent with the latest revisions to state statutes, and to update the process for the Disaster Council, following the recent City Council update to the Emergency Operations Plan (EOP). It is expected that the Disaster Council will, at a minimum, have annual meetings, but likely more frequently, as needed.

While staff continue to meet weekly to discuss emergency operations topics, as has been the case for the past several years, the Disaster Council is intended to provide emergency planning direction on a more policy/strategic direction within the EOP that is approved by the City Council.

The proposed Ordinance amendments, indicated in redline/strikeout in Exhibit A to the Ordinance, are consistent with the recently amended EOP and Purchasing Policies.

**Financial Considerations**

The City incorporates emergency planning and related purchases into normal budgeted
operations. No special appropriations are requested.

**Environmental Issues**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

Attachments:
Redline of Chapter 2.24 Revisions  (DOCX)
Chapter 2.24  
EMERGENCY ORGANIZATION AND FUNCTIONS

Sections:
2.24.010 Purpose.
2.24.020 Emergency defined.
2.24.030 Disaster council – Membership.
2.24.040 Disaster council – Powers and duties.
2.24.050 Director and assistant director of emergency services – Created.
2.24.060 Director and assistant director of emergency services – Powers and duties.
2.24.070 Emergency organization.
2.24.080 Emergency plan.
2.24.090 Expenditures.
2.24.100 Unlawful acts designated – Penalty.

2.24.010 Purpose.

The declared purposes of this chapter are to provide for the preparation and carrying out of plans for the protection of persons and property within this city in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions of this city with all other public agencies, corporations, organizations, and affected private persons.

2.24.020 Emergency defined.

As used in this chapter, “emergency” means the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this city caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, or earthquake, or other conditions; including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel,

1 For statutory provisions regarding the establishment and powers of local war or disaster councils, see Gov. Code § 8610 et seq.; for the criteria governing certification of a local disaster council by the State Emergency Council, see Gov. Code § 8612; for provisions regarding mutual aid between local governments and the state, see Gov. Code § 8615 et seq.; for provisions authorizing an ordinance outlining emergency executive powers, see Gov. Code § 38791.
equipment, and facilities of this city, requiring the combined forces of other political subdivisions to combat.

As used in this chapter, “emergency” means a local emergency, as defined by Government Code Section 8558(c), as may be amended from time to time. At the time of adoption of this ordinance, a “local emergency” is defined as “the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.”

2.24.030 Disaster council – Membership.

The Cotati disaster council is created and shall consist of the following:

A. The mayor, who shall be chairman;
B. The director of emergency services, who shall be vice-chairman;
C. The assistant director of emergency services, if applicable;
D. Such department heads as are provided for in a current emergency plan of this city, adopted pursuant to this chapter;
E. Such representatives of civic, business, labor, veterans, professional, or other organizations having an official emergency responsibility, as may be appointed by the director with the advice and consent of the city council. (Ord. 162 § 3, 1973)

2.24.040 Disaster council – Powers and duties.

It shall be the duty of the Cotati disaster council, and it is empowered, to develop and recommend for adoption by the city council, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The disaster council shall meet upon call of the chairman or, in his absence from the city or inability to call such meeting, upon call of the vice-chairman. (Ord. 162 § 4, 1973)

2.24.050 Director and assistant director of emergency services – Created.

A. There is created the office of director of emergency services. The city manager shall be the director of emergency services.
B. There is created the office of assistant director of emergency services, who shall be appointed by the director as needed. (Ord. 162 § 5, 1973)

2.24.060 Director and assistant director of emergency services – Powers and duties.
A. The director is empowered to:
1. Request the city council to proclaim the existence or threatened existence of a “local emergency” if the city council is in session, or to issue such proclamation if the city council is not in session. Whenever a local emergency is proclaimed by the director, the city council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect;
2. Request the Governor to proclaim a “state of emergency” when, in the opinion of the director, the locally available resources are inadequate to cope with the emergency;
3. Control and direct the effort of the emergency organization of this city for the accomplishment of the purposes of this chapter;
4. Direct cooperation between and coordination of services and staff of the emergency organization of this city, and resolve questions of authority and responsibility that may arise between them;
5. Represent this city in all dealings with public or private agencies on matters pertaining to emergencies as defined in this chapter;
6. In the event of the proclamation of a “local emergency” as herein provided or as proclaimed by the City of Cotati or County of Sonoma, the director is empowered:
   i) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council,
   ii) To obtain vital supplies, equipment, and the other properties found lacking and needed for the protection of life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use,
   iii) To require emergency services of any city officer or employee,
   iv) To requisition necessary personnel or material of any city department or agency, and
   v) To execute all of his ordinary power as city manager, all of the special powers conferred upon him by this chapter or by resolution or emergency plan pursuant hereto adopted by the city council, all powers conferred upon him by any statute, by any agreement approved by the city council, and by any other lawful authority.
6. In the event of the proclamation of a “state of emergency” or “state of war emergency” in the County of Sonoma by the Governor or the director of the State Office of Emergency Services, or the existence of a “state of war emergency,” the director is empowered:
   i) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council,
   ii) To obtain vital supplies, equipment, and the other properties found lacking and needed for the protection of life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use,
   iii) To require emergency services of any city officer or employee and, in the event of the proclamation of a “state of emergency” in the county in which this city is located or the existence of a “state of war emergency,” to command the aid of as many citizens of this community as he deems necessary in the execution of his duties. Such persons shall be
entitled to all privileges, benefits, and immunities as are provided by state law for registered
disaster service workers,

iv) To requisition necessary personnel or material of any city department or agency, and

v) To execute all of his ordinary power as city manager, all of the special powers conferred
upon him by this chapter or by resolution or emergency plan pursuant hereto adopted by
the city council, all powers conferred upon him by any statute, by any agreement approved
by the city council, and by any other lawful authority.

B. The director of emergency services shall designate the order of succession to that office, to take
effect in the event the director is unavailable to attend meetings and otherwise perform his duties
during an emergency. Such order of succession shall be approved by the city council.

C. The assistant director shall, under the supervision of the director and with the assistance of
emergency service chiefs, develop emergency plans and manage the emergency programs of this
city, and shall have such other powers and duties as may be assigned by the director. (Ord. 162 § 6,
1973)

2.24.070 Emergency organization.

All officers and employees of this city, together with those volunteer forces enrolled to aid them during
an emergency, and all groups, organizations, and persons who may by agreement or operation of law,
including persons impressed into service under the provisions of Section 2.24.060(6)(c) of this chapter,
be charged with duties incident to the protection of life and property in this city during such emergency,
shall constitute the emergency organization of the city. (Ord. 162 § 7, 1973)

2.24.080 Emergency plan.

The Cotati disaster council shall be responsible for the development of the city emergency plan, which
plan shall provide for the effective mobilization of all of the resources of this city, both public and
private, to meet any condition constituting a local emergency, state of emergency, or state of war
emergency; and shall provide for the organization, powers and duties, services, and staff of the
emergency organization. Such plan shall take effect upon adoption by resolution of the city council.
(Ord. 162 § 8, 1973)

2.24.090 Expenditures.

Any expenditures made in connection with emergency activities, including mutual aid activities, shall be
deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the
city. Emergency purchasing requirements shall follow the adopted Purchasing Policies of the City. (Ord.
162 § 9, 1973)

2.24.100 Unlawful acts designated – Penalty.

In addition to the civil remedies allowed under Chapter 1.20 (General Penalty) herein, it is a
misdemeanor, punishable by a fine of not to exceed one thousand dollars ($1,000), or by imprisonment
for not to exceed six months, or both, for any person, during an emergency, to:
A. Wilfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;

B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if the act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this city, or to prevent, hinder or delay the defense or protection thereof;

C. Wear, carry or display, without authority, any means of identification specified by the emergency agency of the state. (Ord. 162 § 10, 1973)

3348884.1
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COTATI AMENDING CHAPTER 2.24 OF THE COTATI MUNICIPAL CODE REGARDING EMERGENCY ORGANIZATION AND FUNCTIONS

WHEREAS, the City conducts periodic updates of the provisions of the Municipal Code to ensure compliance with current laws, changes in local policy, consistency with adopted plans and programs, clarify ambiguities, address changing market conditions, reflect best practices, and to address issues or concerns with current regulations; and

WHEREAS, the City Council of the City of Cotati continues to prioritize emergency preparedness; and

WHEREAS, the existing Municipal Code, adopted as Ordinance 162, and codified in Chapter 2.24 regarding Emergency Organization and Functions, requires updates to reflect the current definition of an emergency under the Government Code; and

WHEREAS, the Chapter 2.24 also requires updates to reflect current operations and for consistency with the adopted Emergency Operations Plan and Purchasing Policy; and

WHEREAS, the action of amending Chapter 2.24 of the Cotati Municipal Code does not constitute a project as defined by California Environmental Quality Act Guidelines Section 15378; therefore, no further environmental review is required.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF COTATI DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct findings of the City Council of the City of Cotati.

SECTION 2. The City Council hereby adopts the amendments to Chapter 2.24 of the Cotati Municipal Code, as shown and incorporated in Exhibit A to this ordinance.

SECTION 3. 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 4. Posting. Within fifteen (15) days after adoption, the Ordinance or a summary thereof shall be posted or published as may be required by law.
SECTION 5, Effective Date. This Ordinance shall take effect and be enforced thirty (30) days after the date of adoption.

Approved:________________________________
Mayor

Attest:____________________________________
Lauren Berges, City Clerk

Approved as to form:

_______________________________
John Bakker, City Attorney

This document is a true and correct copy of Ordinance Number and has been published or posted pursuant to law. California Government Code § 40806

_______________________________
Lauren Berges, City Clerk
Chapter 2.24

EMERGENCY ORGANIZATION AND FUNCTIONS

Sections:

2.24.010 Purpose.

2.24.020 Emergency defined.

2.24.030 Disaster council – Membership.

2.24.040 Disaster council – Powers and duties.

2.24.050 Director and assistant director of emergency services – Created.

2.24.060 Director and assistant director of emergency services – Powers and duties.

2.24.070 Emergency organization.

2.24.080 Emergency plan.

2.24.090 Expenditures.

2.24.100 Unlawful acts designated – Penalty.

2.24.010 Purpose.

The declared purposes of this chapter are to provide for the preparation and carrying out of plans for the protection of persons and property within this city in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions of this city with all other public agencies, corporations, organizations, and affected private persons.

2.24.020 Emergency defined.

As used in this chapter, “emergency” means a local emergency, as defined by Government Code Section 8558(c), as may be amended from time to time. At the time of adoption of this ordinance, a “local emergency” is defined as “the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an

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1 For statutory provisions regarding the establishment and powers of local war or disaster councils, see Gov. Code § 8610 et seq.; for the criteria governing certification of a local disaster council by the State Emergency Council, see Gov. Code § 8612; for provisions regarding mutual aid between local governments and the state, see Gov. Code § 8615 et seq.; for provisions authorizing an ordinance outlining emergency executive powers, see Gov. Code § 38791.
earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission."

2.24.030 Disaster council – Membership.

The Cotati disaster council is created and shall consist of the following:

A. The mayor, who shall be chairman;
B. The director of emergency services, who shall be vice-chairman;
C. The assistant director of emergency services, if applicable;
D. Such department heads as are provided for in a current emergency plan of this city, adopted pursuant to this chapter;
E. Such representatives of civic, business, labor, veterans, professional, or other organizations having an official emergency responsibility, as may be appointed by the director with the advice and consent of the city council.

2.24.040 Disaster council – Powers and duties.

It shall be the duty of the Cotati disaster council, and it is empowered, to develop and recommend for adoption by the city council, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The disaster council shall meet upon call of the chairman or, in his absence from the city or inability to call such meeting, upon call of the vice-chairman.

2.24.050 Director and assistant director of emergency services – Created.

A. There is created the office of director of emergency services. The city manager shall be the director of emergency services.
B. There is created the office of assistant director of emergency services, who shall be appointed by the director as needed.

2.24.060 Director and assistant director of emergency services – Powers and duties.

A. The director is empowered to:
1. Request the city council to proclaim the existence or threatened existence of a “local emergency” if the city council is in session, or to issue such proclamation if the city council is not in session. Whenever a local emergency is proclaimed by the director, the city council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect;
2. Request the Governor to proclaim a “state of emergency” when, in the opinion of the director, the locally available resources are inadequate to cope with the emergency;
3. Control and direct the effort of the emergency organization of this city for the accomplishment of the purposes of this chapter;
4. Direct cooperation between and coordination of services and staff of the emergency organization of this city, and resolve questions of authority and responsibility that may arise between them;
5. Represent this city in all dealings with public or private agencies on matters pertaining to emergencies as defined in this chapter;
6. In the event of the proclamation of a “local emergency” as herein provided or as proclaimed by the City of Cotati or County of Sonoma, the director is empowered:
   i) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council,
   ii) To obtain vital supplies, equipment, and the other properties found lacking and needed for the protection of life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use,
   iii) To require emergency services of any city officer or employee,
   iv) To requisition necessary personnel or material of any city department or agency, and
   v) To execute all of his ordinary power as city manager, all of the special powers conferred upon him by this chapter or by resolution or emergency plan pursuant hereto adopted by the city council, all powers conferred upon him by any statute, by any agreement approved by the city council, and by any other lawful authority.
7. In the event of the proclamation of a “state of emergency” or “state of war emergency” in the County of Sonoma by the Governor or the director of the State Office of Emergency Services, the director is empowered:
   i) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council,
   ii) To obtain vital supplies, equipment, and the other properties found lacking and needed for the protection of life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use,
   iii) To require emergency services of any city officer or employee and to command the aid of as many citizens of this community as he deems necessary in the execution of his duties. Such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers,
   iv) To requisition necessary personnel or material of any city department or agency, and
   v) To execute all of his ordinary power as city manager, all of the special powers conferred upon him by this chapter or by resolution or emergency plan pursuant hereto adopted by the city council, all powers conferred upon him by any statute, by any agreement approved by the city council, and by any other lawful authority.

B. The director of emergency services shall designate the order of succession to that office, to take effect in the event the director is unavailable to attend meetings and otherwise perform his duties during an emergency. Such order of succession shall be approved by the city council.
C. The assistant director shall, under the supervision of the director and with the assistance of emergency service chiefs, develop emergency plans and manage the emergency programs of this city, and shall have such other powers and duties as may be assigned by the director.

2.24.070 Emergency organization.

All officers and employees of this city, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons impressed into service under the provisions of Section 2.24.060(6)(c) of this chapter, be charged with duties incident to the protection of life and property in this city during such emergency, shall constitute the emergency organization of the city.

2.24.080 Emergency plan.

The Cotati disaster council shall be responsible for the development of the city emergency plan, which plan shall provide for the effective mobilization of all of the resources of this city, both public and private, to meet any condition constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the city council.

2.24.090 Expenditures.

Any expenditures made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the city. Emergency purchasing requirements shall follow the adopted Purchasing Policies of the City.

2.24.100 Unlawful acts designated – Penalty.

In addition to the civil remedies allowed under Chapter 1.20 (General Penalty) herein, it is a misdemeanor, punishable by a fine of not to exceed one thousand dollars ($1,000), or by imprisonment for not to exceed six months, or both, for any person, during an emergency, to:

A. Wilfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;
B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if the act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this city, or to prevent, hinder or delay the defense or protection thereof;
C. Wear, carry or display, without authority, any means of identification specified by the emergency agency of the state.

3348884.1
Cotati City Council  
Agenda Staff Report

**Item type:** REGULAR AGENDA (ACTION)  
**To:** City Council  
**Subject:** Declaration of Climate Emergency and Support of a 2030 Climate Emergency Mobilization Strategy  
**Date:** November 26, 2019  
**Written by:** Damien O'Bid, City Manager

**Recommendation**
It is recommended that the City Council of the City of Cotati adopt a resolution declaring a climate emergency and supporting creation of a 2030 Climate Emergency Mobilization Strategy.

**Background**
It is estimated that over 925 local governments representing over 206 million people in 18 countries have declared a climate emergency. These cities, counties and countries have developed these resolutions to solidify their commitment to mobilizing an emergency response that is commensurate with the scale of the climate crisis.

On September 9, 2019, the Regional Climate Protection Authority (RCPA) Board of Directors adopted a “Climate Emergency Resolution”. This was followed up by a second item on October 14, 2019 to discuss options for implementation of the RCPA Strategic Plan and Climate Emergency Resolution. Three options were discussed, with different levels of staffing to implement the adopted Strategic Plan and Climate Emergency Resolution through the 2030 Climate Emergency Mobilization Strategy.

Sonoma County remains the only county in the US to create a Regional Climate Protection Authority (RCPA) to coordinate and support climate action countywide. The RCPA adopted a climate emergency resolution and has committed to developing a “2030 Climate Emergency Mobilization Strategy” that acknowledges the following:

- The current scale and rate of expansion of local government action has not resulted in the necessary greenhouse gas emission reductions needed to avert catastrophic, irreversible climate impacts.
- Many of the major climate change drivers—energy generation, fuel standards, consumption patterns, product design and specification and large scale infrastructure investments—are dispersed across.
- Both the private and public sector and are controlled at scales larger than local and...
regional governments.

- We cannot only focus on reducing emissions but must also dramatically increase and enable meaningful carbon sequestration while preparing communities now for significant climate impacts.
- We must reimagine the role of local government and work within and outside of our jurisdictional boundaries and across sectors to drive the systems change need to address major climate change drivers.
- That our communities, members and partners are our greatest assets and allies and therefore this mobilization effort must be both robust and inclusive.

The Cotati City Council has previously taken various actions to reduce greenhouse gas emissions and promote the transition to clean energy, including the following summary of key milestones:

- **2002:** Endorsed the aims and objectives of the cities for climate protection campaign and supported an inventory of municipal sources and development of an action plan to reduce greenhouse gas emissions (Resolution 02-21).

- **2004:** Set goal of 20% Reduction in Greenhouse Gas Emissions from Municipal Operations (Resolution 04-88).

- **2005:** Set goal of 30% Reduction in Greenhouse Gas Emissions Community Wide (Resolution 05-66).

- **2008:** Adopted and enacted the greenhouse gas action plan to reduce municipal sources of greenhouse gases (Resolution 08-62). Since that date, the City has taken numerous actions to reduce GHG emissions, such as purchasing more fuel efficient or electric vehicles, changing out every light in the city with more energy efficient fixtures, upgrading water and sewer pumps with more efficient motors, and implementing a comprehensive leak monitoring system to greatly reduce unnecessary pumping.

- **2009:** Support the formation of the Regional Climate Protection Authority, as a first in the nation effort to foster collaboration, help set goals, pool resources, formalize partnerships, and work across jurisdictional limitations.

- **2013:** Takes a leading role in the formation of Sonoma Clean Power, a local community choice aggregator for cleaner electricity (Resolution 2013-41).

- **2014:** Approved a Clean Energy Performance Contract for city wide lighting retrofits to high efficiency lighting and water meter retrofits to improve detection of, and reduce duration of water leaks.

- **2017:** Resolution of support of the Paris Climate Agreement (Resolution 2017-45).

- **2018:** Adoption of the Climate Action 2020 Plan and re-affirm the City’s intent to reduce greenhouse gases as part of a coordinate effort through the RCPA and implementation of local measures from the Climate Action 2020 plan.
- **2019**: City Council directed the transition of all city electricity accounts to Evergreen (100% renewable) energy.

**Analysis/Discussion**

The attached resolution, if adopted, does several things that can be generally condensed into the following actions:

1. Declare a climate emergency, reaffirms that actions and policies to reduce climate impacts are a key priority, and continue the City’s actions to support the reduction of greenhouse gases to blunt the potential impact of climate change.
2. Authorize a designated staff person to work with RCPA to develop a 2030 Climate Emergency Mobilization Strategy.
3. Commit to continue to educate staff and the public in our community about the climate crisis.

**Financial Considerations**

If adopted, this resolution would provide direction for city staff to work with the RCPA to develop a 2030 Climate Emergency Mobilization Strategy. Based on the Climate Action 2020 plan work effort, this is likely to be a significant work effort for designated city staff.

Although not part of this action, it is expected that RCPA will present final implementation recommendations to their Board of Directors in December 2019. Depending on the implementation recommendations and related staffing at RCPA, this is likely be accompanied by a request for additional budget from all Sonoma County cities. It is expected that any significant change in funding to RCPA will return to the City Council for further discussion and direction.

**Environmental Issues**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.
RESOLUTION NO.
RESOLUTION OF THE CITY OF COTATI ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY AND IMMEDIATE EMERGENCY MOBILIZATION TO RESTORE A SAFE CLIMATE

WHEREAS, human activities have warmed the Earth to a point that threatens climate stability, and climate change has already set in motion catastrophic changes to the Earth’s systems, including fresh water scarcity and droughts, floods, extreme weather events and increased heat, wildfires, accelerating ice mass loss that will result in sea-level rise, and species extinction; and

WHEREAS, the current pace and scale of national climate action is not sufficient to avert substantial damage to the economy, environment, and human health over the coming decades; and

WHEREAS, the October 8, 2018 special report of the United Nations Intergovernmental Panel on Climate Change (IPCC) projected that curtailing warming to 1.5°C to reduce the risks to health, livelihoods, food security, water supply, human security, economic growth and plant and animal life this century, will require an unprecedented transformation of every sector of the global economy over the next 12 years; and

WHEREAS, on November 23, 2018 the Federal Government issued the Fourth National Climate Assessment detailing the massive threat that climate change poses to the American economy and underscoring the need for immediate climate emergency action at all levels of government; and

WHEREAS, critical tipping points must be avoided, as they will have cascading feedback effects that are predicted to cause an increasingly uncontrollable climate emergency that includes a devastating burden to the global economy, and with current greenhouse gas (GHG) emission levels these tipping points could be passed as soon as 2050; and

WHEREAS, restoring a safe and stable climate requires an emergency mobilization to reach zero greenhouse gas emissions across all sectors, to rapidly and safely draw down or remove all the excess carbon from the atmosphere, and to implement measures to protect all people and species; and

WHEREAS, a just transition away from fossil fuels requires the development of a framework for a fair shift to an economy that is ecologically sustainable, equitable, and just for all its members; and

WHEREAS, marginalized communities worldwide—including people of color, immigrants, indigenous communities, low-income people, those with disabilities, and the unhoused—are already disproportionately affected by climate change and must benefit from a just transition to a sustainable and equitable economy; and
WHEREAS, on September 10, 2018, the State of California’s Governor Brown issued an executive order establishing a 2045 statewide target to achieve carbon neutrality, and on the same day, Senate Bill 100 was passed, which sets a 100% clean electricity goal for the State by 2045; and

WHEREAS, California’s Fourth Climate Change Assessment warned that extreme weather and climate-related events in the United States are worsening, predicting increased drought cycles and heat waves in the western U.S. with a resulting three-fold increase in intensity and magnitude of wildfires, declined water supply and snow pack, increased flooding, impacted agriculture, as well as substantial damages to the U.S. economy and human health, unless GHG emissions are curbed; and

WHEREAS, the California Legislature has set clear climate objectives for the next decade, including a 40% reduction in 1990 level GHG emissions by 2030; 50% renewable energy; 50% reduction in petroleum use in vehicles and a doubling of energy efficiency savings in existing buildings; and

WHEREAS, Sonoma County has already begun to experience extreme climate-related events, including six years of drought, the October 2017 Northern California wildfires, which caused more than $9.4 billion in damage and killed forty-four people, and the February 2019 Winter Storms and Flooding that caused over $150 million in damages and resulted in the declaration of a local health emergency due to the scale of household hazardous waste scattered along waterways, roadsides and on public and private properties after flooding; and

WHEREAS, Sonoma County public agencies have taken a number of important actions to reduce GHG emissions and enhance quality of life in our community, including long-term commitments to preserving over 100,000 acres of both agricultural and open space lands; setting and meeting a goal to deliver carbon free water; offering cost effective programs to reduce energy use and conserve water; and establishing Sonoma Clean Power, a regional community choice energy provider offering the first 100% local renewable power option in California; and

WHEREAS, the current scale and rate of expansion of local government action has not resulted in the necessary reductions in global greenhouse gas emissions to enable us to limit global temperature increase to well below 2°C above pre-industrial levels and no more than 1.5°C as outlined in the 2016 Paris Climate Accord and recommended by the United Nations Intergovernmental Panel on Climate Change (IPCC); and

WHEREAS, many of the major climate change drivers - energy generation, fuel standards, consumption patterns, product design and specification and large scale infrastructure investments – are dispersed across both the private and public sector and are controlled at scales larger than local and regional governments; and
WHEREAS, in order to avoid irreversible, catastrophic climate change impacts, we cannot only focus on reducing emissions but must also dramatically increase and enable meaningful carbon sequestration while preparing communities now for significant climate impacts;

NOW, THEREFORE BE IT RESOLVED, the City of Cotati declares that a climate emergency threatens humanity and the natural and built environments; and

BE IT FURTHER RESOLVED, that the City of Cotati joins a nationwide call for a just transition away from fossil fuels and an urgent collaborative climate mobilization effort focused on enacting policies that dramatically reduce heat-trapping emissions, and rapidly catalyzing a mobilization at all levels of government to restore a safe climate; and

BE IT FURTHER RESOLVED, that an urgent global climate mobilization effort to reverse global warming is needed to achieve zero net emissions as quickly as possible and that full community participation, inclusion and support is integral to our efforts to safely draw down carbon from the atmosphere and accelerate adaptation and resilience strategies in preparation for intensifying climate impacts; and

BE IT FURTHER RESOLVED, the City of Cotati acknowledges that successful climate action and a just transition at scale requires that we work both within and outside of our regional boundaries and across sectors to accelerate the necessary systems change required to address the climate emergency; and

BE IT FURTHER RESOLVED, the City of Cotati, commits to contributing to the development of a countywide 2030 Climate Emergency Mobilization Strategy that focuses on identifying key local actions – including a ten-year Emergency Policy Package prioritizing a short list of the most impactful local policies that will drive systems change and identify the key areas for state level advocacy; and

BE IT FURTHER RESOLVED, the City of Cotati re-commits to ensuring that our actions remain in alignment with the most current scientific findings regarding climate change; and

BE IT FURTHER RESOLVED, the City of Cotati will collaboratively develop and implement more ambitious but achievable goals consistent with or exceeding state goals and objectives, integrated into a new 2030 Climate Emergency Mobilization Strategy; and

BE IT FURTHER RESOLVED, the City of Cotati commits to identifying a Climate Emergency Mobilization Liaison to drive this effort in our jurisdiction and to support the participation of this city staff member or a designated RCPA staff member in the RCPA coalition of local governments mobilizing regional climate action; and
BE IT FURTHER RESOLVED, the Council of the City of Cotati establishes the climate emergency and development and implementation of the 2030 Climate Emergency Mobilization Strategy as a key Council priority, and directs staff to work with the RCPA and coalition members to evaluate policies through the lens of the climate emergency; and

BE IT FURTHER RESOLVED, the City of Cotati commits to educating its employees and residents about the climate crisis and the work needed to catalyze an equitable emergency climate mobilization effort at the local, regional, state, national and global levels.

IT IS HEREBY CERTIFIED that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Cotati held on the November 26th, 2019, by the following vote, to wit:

Approved:________________________________

Mayor

Attest:_________________________________

Lauren Berges, City Clerk

Approved as to form:

____________________________

City Attorney
Cotati City Council  
Agenda Staff Report

Item type: REGULAR AGENDA (ACTION)  
To: City Council  
Subject: Approval of Integrated Pest Management Plan  
Date: November 26, 2019  
Written by: Damien O'Bid, City Manager

Recommendation
It is recommended that the City Council approve a resolution adopting an Integrated Pest Management Plan for municipal landscape maintenance.

Background
The City is responsible for maintenance of City buildings, parks, streets, sewer systems, and water supply systems. This includes maintenance of weeds and pests. This is accomplished directly by Public Works crews, as well as a third party contractor (PJM) who performs the majority of the landscape maintenance work.

Landscape maintenance work is primarily accomplished by mowing or string mowing. Some areas, generally decorative landscape plantings, are point applied with glyphosate for invasive weeds if the weed barriers and mulch are not sufficient. In some limited hardscape areas, there is point application of glyphosate between curb and sidewalk, or along the edge of paving to keep invasive plants from causing damage to the hardscape. There is no application in the creeks or drainage ways and no application in turf areas of parks.

Glyphosate is the only herbicide used by the City or the City’s contractors. Application twice per year is typically adequate to control these weeds.

On August 13, 2019, the City Council discussed City uses of synthetic pesticides. At that meeting, the City Council directed staff to move to eliminate the use of synthetic pesticides by City staff and contractors.

Analysis/Discussion
Following direction by the City Council, the City immediately stopped the use of all synthetic pesticides by City staff, and began drafting a written integrated pest management plan (IPM) and negotiating the amendment to the contract with the City’s landscape contractor (PJM). The IPM is modeled largely on the IPM developed by the Town of Windsor, including an emergency
exemption process and providing more public information regarding landscape maintenance practices.

The proposed amended agreement with PJM is a separate action for the City Council, but is intended to conform to the draft IPM policy.

**Financial Considerations**

Alternative herbicides are expected to require more frequent application and are generally more expensive than glyphosate. At this time, PJM has requesting an additional of $1,000 per year to accommodate the additional cost of materials and labor, which is included in that City Council item. Given this is the first year, this cost may change as PJM gains experience using new weed control methods. It is also expected that there will be additional material cost to the City, as well as additional staff time as the City works through the transition, but this is currently expected to be absorbed in the existing budget.

**Environmental Issues**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.
RESOLUTION No.
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COTATI APPROVING AN INTEGRATED PEST MANAGEMENT PLAN FOR MUNICIPAL LANDSCAPE MAINTENANCE.

WHEREAS, the City of Cotati is responsible for landscape maintenance of City-owned buildings, parks, streets, sewer systems, and water supply systems; and

WHEREAS, landscape maintenance is accomplished directly by Public Works crews, as well as a third party contractor who performs the majority of the landscape maintenance work in parks and street medians; and

WHEREAS, landscape maintenance work is primarily accomplished by mowing or string mowing, but glyphosate has traditionally been point applied to kill invasive weeds when the weed barriers and mulch are not sufficient; and

WHEREAS, in some limited areas, there is also point application of glyphosate between curb and sidewalk, or along the edge of paving to keep invasive plants from causing damage to the hardscape; and

WHEREAS, consistent with best practices, product label instructions, and the City’s Phase 1 Storm Water Permit, there is no glyphosate application in the creeks or drainage ways; and

WHEREAS, glyphosate is the only herbicide used by the City or the City’s contractors; and

WHEREAS, on August 13, 2019, the City Council directed staff to move to eliminate the use of synthetic pesticides (inclusive of herbicides) by City staff and contractors; and

WHEREAS, the City Council directed that this be accomplished by the immediate cessation of use by City staff, development of a written Integrated Pest Management Plan (IPM), and amending city contracts to require City contractors to stop the use of synthetic pesticides.

WHEREAS, the action of adopting an IPM does not constitute a project as defined by California Environmental Quality Act Guidelines Section 15378; therefore, no further environmental review is required.

NOW THEREFORE BE IT RESOLVED THAT the City Council of the City of Cotati hereby approves the attached IPM, including the authority for staff to make non-substantive clarifications to the text as needed to implement the policy goals of the IPM.

IT IS HEREBY CERTIFIED that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Cotati held on the November 26th, 2019, by the following vote, to wit:
Approved:________________________________
                                      Mayor
Attest:________________________________
            Lauren Berges, City Clerk

Approved as to form:

_______________________________
City Attorney
Attachments:
Integrated Pest Management Policy (DOCX)
City of Cotati
Integrated Pest Management Policy

Adopted by Resolution No. XXX
November 26, 2019
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DEFINITIONS:

**Acute Toxicity**  
The adverse effects of a substance that result either from a single exposure or from multiple exposures in a short period of time (usually less than 24 hours). To be described as *acute* toxicity, the adverse effects should occur within 14 days of the administration of the substance.

**Banned Pesticides**  
A pesticide will be considered a "banned pesticide" if it has been banned by the US EPA and is therefore not legal for sale and use in the United States.

**Best Management Practices**  
BMPs means actions based on current science and technology that have been proven to be effective in the control and management of the site or pest to prevent or reduce the incidence of pest problems, with careful consideration given to protect public health and safety, wildlife and the environment.

**Carcinogen**  
Any substance that has the potential to cause cancer in living tissues. Carcinogen exposure can occur from the inhalation, ingestion, or absorption of many different types of substances into our bodies. Carcinogens cause changes to DNA at the cellular level and affect the rate of cell division.

**Chronic Toxicity**  
Adverse health effects from repeated exposures of a substance, often at lower levels, over an extended time (months or years).

**CDPR Certified Applicator**  
A person who is certified by the California Department of Pesticide Regulation to apply pesticides.

**Integrated Pest Management**  
An ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant
varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.

**IPM Manager**
The designated employee who is responsible for IPM program coordination for the City.

**Pesticide**
Federal law broadly defines a "pesticide" as any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest. Pests can be insects, mice and other animals, weeds, fungi or micro-organisms. Though often misunderstood to refer only to insecticides, the term pesticide also applies to herbicides, fungicides, rodenticides and various other substances used to control pests. A pesticide is also any substance or mixture of substances intended for use as a plant growth regulator, defoliant or desiccant.

**Mutagenicity**
A physical or chemical agent that changes the genetic material, usually DNA, of an organism and thus increases the frequency of mutations above the natural background level.

**No Action**
An option for pest managers to refrain from using any chemical pesticide, even if some pests remain present after the use of non-chemical methods. This option allows for some presence of pests, if that level of pest presence is not detrimental to health and safety and maintains an acceptable aesthetic.

**Organoch/orines**
Organochlorine pesticides are chlorinated hydrocarbons used extensively from the 1940s through the 1960s in agriculture and mosquito control. Representative compounds in this group include DDT, methoxychlor, dieldrin, chlordane, toxaphene, mirex, kepone, lindane, and benzene hexachloride. Most of these are banned for sale and use in the United States by the US EPA.
Organophosphates
Organophosphates are chemical substances originally produced by the reaction of alcohols and phosphoric acid and include insecticides, such as diazinon, chlorpyrifos, disulfoton, azinphos-methyl, and fonofos, which have been used widely in agriculture and in household pest control. Chlorpyrifos has been discontinued in residential uses.

Organic
This term is used to describe products which are considered least toxic when compared to the spectrum of available pesticides and which are generally non-synthetic. The City recognizes that "organic" as a term in chemistry is meant to describe a compound, synthetic or not, which contains carbon atoms.

Signal Word
A word used to indicate the relative level of severity of hazard and alert the reader to a potential hazard on the label. Pesticide signal words are 'Danger,' 'Warning' and 'Caution.'

City
Any property owned or operated by the City of Cotati.

Teratogen
Substances that may cause birth defects via a toxic effect on an embryo or fetus.
Integrated Pest Management Policy

A. Purpose

It is the purpose and intent of the Integrated Pest Management (IPM) Policy to comply with the City’s Phase I Municipal Storm Water Permit, Order No. R1-2015-0030 and any subsequent Order renewals and to comply with the City Council's direction at its regular meeting of August 13, 2019, to discontinue the use by City staff or contractors of synthetic pesticides which pose a threat to human health. This IPM Policy applies to any property owned and operated by the City of Cotati.

The Phase I Storm Water Permit requires the City to follow Integrated Pest Management (IPM) practices.

This IPM Policy follows the widely accepted principles of Integrated Pest Management. The basic principles are the use of least-toxic methods for pest control, the goal of removing only the target organism, and minimization of risks to human health, beneficial non-target organisms, and the environment.

The policy includes the option for City staff to consider a "no action" approach to pest management to minimize the use of chemical pest control methods.

This IPM Policy also provides a process for addressing emergencies where the use of pesticides would be necessary to protect public health or safety. In these emergency cases, City staff could request an exemption, which would allow use of a pesticide on the Discontinued Use List, as defined in Section G, Part 2 of this IPM Policy. Under no circumstances would the City use pesticides banned by the United States Environmental Protection Agency (US EPA).

B. City Policy

It is the policy of the City that:

1. Departments performing pest management will comply with the City’s IPM Policy. These policies will apply to all property and grounds owned, leased, or managed by the City.
2. Departments will require contractors providing pest management services on all property owned, leased, or managed by the City to comply with the City’s IPM Policy.

3. Pest controls will be selected and applied in a manner that minimizes risk to human health, non-target organisms, water quality, and the environment.

4. The City IPM implementation program shall include the following:

   a) As needed, create Standard Operating Procedures (SOPs) for pest management and pesticide application for City Staff and contractor consistency.
   b) Educate and train City staff in City IPM policy, practices, and SOPs.
   c) Reduce the use of pesticides to the maximum extent practicable.
   d) Consider taking a "no action" approach (no pesticide use) in addressing certain pest control issues.
   e) Use pesticides with the goal of removing only the target organism.
   f) Identify the least toxic methods to control pests.
   g) Identify, evaluate, and minimize or eliminate conditions that encourage pest problems.
   h) Conduct careful and efficient inspection, monitoring, and assessment for pest problems by using designated personnel or contractors trained in IPM methods for application.
   j) Maintain records by City departments on IPM methods used to prevent and control pests.
   k) Comply with all applicable state and federal regulations, including pesticide use, storage and reporting.

C. IPM Policy Goals

1. Eliminate the use of pesticides that are classified by the US or California EPA as known carcinogens or possible carcinogens, reproductive toxicants (teratogens, mutagens, endocrine disruptors, organophosphates) or groundwater contaminants.
2. Protect the environment, and public and worker health and safety, by selecting OMRI or equivalent products, using all products in accordance with label instructions and consistent with all laws and regulations, and ensuring the use of appropriate personal protective equipment.

3. Comply with the Phase I Municipal Storm Water Permit, as may be amended from time to time, by implementing the following landscape maintenance and design practices:
   a) Use a standardized protocol for the routine and non-routine application of pesticides and fertilizers;
   b) Encourage planting and retention of California native and Mediterranean climate-adapted vegetation to reduce the amount of water, pesticides, and fertilizers. Ensure pesticides and fertilizers are not applied to an area immediately prior to a likely rain event, during, or immediately after a rain event, or when water is flowing off the area.
   c) Limit or replace pesticide use with alternatives such as conducting manual weed removal.
   d) Apply pesticides in accordance with product instructions, or if no instructions exist, with the Department of Pesticide Regulation requirements to prevent surface water contamination.
   e) Minimize irrigation run-off by using efficient methods of irrigation and scheduling, such as an evapotranspiration-based irrigation schedule, or soil moisture sensors, and rain sensors as possible.
   f) Store pesticides and fertilizers indoors or under cover on paved surfaces with secondary containment.
   g) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
   h) Regularly inspect storage areas.

D. Designation of IPM Manager

The City Manager shall designate an IPM Manager who will operate within the City to coordinate implementation of the IPM Policy. The IPM Manager shall:
- Ensure each City department understands the requirements of the City IPM Policy.
- Organize IPM training for staff as needed.
- Coordinate data collection regarding the quantity of pesticides used and reductions by City staff and contractors at least annually.
- Oversee development of any necessary Standard Operating Procedures (SOPs) and work with City staff performing pest management to develop forms summarizing pesticide use and a form for emergency exemption requests.
- Ensure that reported public health issues related to pest outbreaks on City owned and managed properties are addressed as needed.
- Use a standardized sign for a pesticide application notification that includes the date of application, the name and type of product used, and a website where the public may find information about the product if available.
- Ensuring that records of active exemptions and all IPM policies are posted on the City’s website.
- Maintain accurate pesticide application records and reporting that includes the City’s own use of pesticides and pesticides used by contractors.
- Verify records annually to ensure compliance with the IPM Policy.
- Develop and maintain list of approved pesticides.
- Add or remove products from Approved and Discontinued Product Lists as data becomes available.
- Coordinate pesticide use tracking and reporting by each department.
- Provide information to the City’s Storm Water Program Manager for reporting annual reductions in pesticide use to the North Coast Regional Water Quality Control Board in accordance with Phase I Municipal Storm Water Permit requirements.

E. Education and Training of IPM Manager, Certified Pesticide Applicators and Staff

The IPM Manager will ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation (CDPR) or are under the direct supervision of a CDPR pesticide applicator certified in the appropriate category.
City Staff and contractors that use pesticides will be educated on the IPM Policy and approved SOPs. IPM training will be updated and reviewed annually.

F. IPM Applications and Guidelines

Only persons specifically authorized by the IPM Manager and certified by the State as pesticide applicators will be permitted to use pesticides on City property.

Use of pesticides is limited to those products on the Approved Reduced-Risk Product List, unless an exemption has been granted due to a threat to human health or the environment.

Pesticide applicators must follow regulations and product label instructions and precautions. Applicators will have training in IPM and must comply with the City’s IPM policy.

G. Guidelines for Pesticide Selection

It is the goal of the City to minimize the use of pesticides through alternative pest control practices and by giving preference to products approved by the Organic Materials Review Institute (OMRI) or by the National Organic Program for use in Integrated Pest Management programs, as available and effective. Except for pesticides granted an emergency exemption, the City will not use any products on the Discontinued Use Product List below.

Pesticide use will be evaluated to determine the need, appropriate type and amount of product, and the most effective application methods. Pesticides will only be used if evaluation indicates that they are needed.

It is the intent of the policy to promote the use of the least-toxic pesticide and to consider new products and methods of pest control as they become available.

1. Approved Reduced-Risk Products List. The following minimum-risk pest control products and methods may be used:
a) Caulking agents and crack sealants
b) Borates, silicates and diatomaceous earth
c) Soap-based products
d) Natural (non-synthetic) products that are exempt from provisions of the Federal Insecticide, Fungicide and Rodenticide Act due to their characterization as a minimum risk pesticide (40 CFR § 152.25).
e) National Organic Program approved product
f) Natural (non-synthetic) products on the Organic Materials Review Institute (OMRI) approved list
g) OMRI-approved and cruelty-free baits and traps for rodents and other mammals. Cruelty-free includes live traps that do not injure the organism trapped, and which allow for rehabilitation, or traps which instantaneously kill the organism trapped, such as electrocution traps.
h) Cryogenics, electronic products, heat and lights
i) Biological controls, such as parasites and predators
j) Microbial pesticides (naturally-occurring microorganisms that target specific problems)
k) Insect growth regulators
l) Physical barriers

2. Discontinued Use Pesticide Product List. The following categories of high health-risk pest management products are not allowed to be used on City property and will only be available for use through the exemption process. Under no circumstances will the City use pesticides banned by the US EPA.

a. Proposition 65
Pesticides on the California Proposition 65 list (the Safe Drinking Water and Toxic Enforcement Act of 1986, materials known to the State to cause cancer or reproductive or developmental toxicity) including mutagens and teratogens

b. Carcinogen
A known carcinogen, probable carcinogen, or possible carcinogen
identified by the US EPA per "List of Chemicals Evaluated for Carcinogenic Potential"

c. **Endocrine Disruptors**
   Any known endocrine disruptor listed by the US EPA Endocrine Disruptor website

d. **Organophosphates**
   Some pesticides in the organophosphate category have been banned entirely by the US EPA, while others have been discontinued for residential use.

e. **Organochlorines**
   Organochlorines include the pesticide DDT (Dichlorodiphenyltrichloroethane). Most are entirely banned by the US EPA.  https://chemview.epa.gov/chemview

f. **Foggers, bombs, fumigants**
   Any such fumigants containing pesticides identified by the State of California as potentially hazardous to human health (3 CCR § 6198.5). This does not include organically certified mixes such as mint oil or soap solutions etc. that may be applied in spray format.  https://www.cdpr.ca.gov/docs/legbills/calcode/020103.htm

H. **Notification of Pesticide Applications**

All use of pesticides from the approved list, where the product label requires posting, will be posted near the application area.

Any synthetic pesticide to be applied through the exemption process will also be posted near the application area and the public will be notified via the City’s website, at least 2 days before the application. The IPM Manager will keep written records of all approved exemptions and maintain an active exemptions list that is available for public review on the City’s website. One time use exemptions shall be posted on the City’s website for a minimum of 60 days following the last date of application.

1. Signs should be posted at public and employee points of entry to the treated
area pursuant to state and/or federal law, and according to product label instructions.

2. When required by labeling directions, signs will be posted in advance of application and remain in place until no longer required, following the application and as required by the manufacturer's product label.

3. Signs should contain the name and active ingredient(s) of the pesticide product, the target pest, date of application, the re-entry interval as determined by the product label or regulation, and the web address of the City website or the product if available. The sign shall state whether the pesticide is certified for use in organic production systems by the Organic Materials Review Institute (OMRI) or approved under the National Organic Program.

4. Signs should be of standardized design that is easily recognized to the public and employees.

5. For every building and site where pesticide baits are used, signs will be posted at conspicuous locations and include information as outlined above. Departments shall not be required to post signs in right-of-way locations that the general public does not use for recreation or pedestrian purposes, such as median strips.

I. Pest Emergency Exemption

In rare cases in which the presence of a pest(s) threatens the health or safety of staff, the public, or the structural integrity of City facilities, a Department Director or the City Manager may deem it necessary to use a pesticide that is not included on the approved list. In such cases, the following exemption process will be required:

1. Contact the IPM Manager to discuss pest issue, alternative control methods and desired exemption.

2. Complete a Pesticide Exemption Request form (Attachment A) and submit to the IPM Manager for review. If recommended by the IPM Manager, the form will be submitted to the City Manager for approval. Approvals must be obtained prior to the pesticide application.

Exemptions will only be granted in cases of documented and justified need for the
variance as it relates to public health and safety and/or noxious pest control, including alternative control measures implemented and deemed ineffective or impractical, and documentation that the recommended pesticide is the least toxic pesticide available to control the target pest. Under no circumstances will pesticides banned in the United States by the US EPA be used on City-owned or operated properties.

In the event of a budgetary shortfall, the City Council reserves the option to limit application of this policy to areas accessible to the general public. Areas not accessible to the general public could be exempted, include median strips and secure facilities, such as the corporation yard and other locked locations.

J. Record Keeping of Pesticide Application

The City shall maintain records of all pesticide applications and exemptions to City property and shall make the information available to the public upon request. Records of active exemptions and all IPM policies will also be posted on the City’s website. Each application record shall include the following information:

a. City Department
b. Name of IPM Manager
c. Whether application was made by City staff or by a contractor to the City
d. The name and active ingredient of the pesticide to be applied and USEPA registration number
e. Quantity of pesticide applied
f. Specific site of the application
g. The target pest
h. The date the pesticide was used and re-entry period (for short term use), or use frequency throughout the year (if regularly applied during the year).

K. Collaboration with Other Agencies

The City will continue to collaborate at a regional level to encourage implementation of IPM. The City is a member agency of the Russian River...
Watershed Association and supports and participates in watershed and water quality enhancement efforts. As part of the City's sustainability outreach and education, staff will promote the use of IPM techniques to reduce the use of pesticides throughout the City.

L. Applicability

This IPM Policy applies to property owned and operated by the City of Cotati.
Attachment  A Pesticide Exemption Form

This form is to be used to request an exemption for use of a pesticide product that is not included on the Allowed Reduced-Risk Pesticide List. This form shall be submitted to the IPM Manager and approved by the City Manager in advance of the pesticide application requested.

<table>
<thead>
<tr>
<th>Application Information</th>
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<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Pesticide:</td>
</tr>
<tr>
<td>Date(s) of Proposed Use:</td>
</tr>
<tr>
<td>Product Name:</td>
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13.a Packet Pg. 121
Explanation of Alternative Controls Tried


Strategies to Prevent Future Exemptions


Additional Comments


IPM Manager Review: ___________________________ Date: ________________
City Manager Approval: ___________________________ Date: ________________

*Attach product data sheet and Safety Data Sheet (SDS)*
Cotati City Council
Agenda Staff Report

Item type:
To: City Council
Subject: Landscape Agreement for Maintenance of Public Landscape Areas
Date: November 26, 2019
Written by: Brittany Bober, Administrative Analyst

Recommendation
It is recommended the City Council adopt a resolution authorizing the City Manager to execute a five (5) year agreement with PJM Yard Maintenance Inc. to maintain public landscaping.

Background
The City has a number of public landscape areas which require ongoing maintenance. Due to staff constraints, the City has historically used an outside contractor. The current agreement with the contractor will expire on January 1, 2020 and needs to be renewed.

The adopted Fiscal Year 2019-20 operating budget includes funding for landscape maintenance services through the Public Works Street and Parks General Fund as well as the Landscape and Lighting Assessment District (LLAD) Assessment Fund.

Analysis/Discussion
The City has contracted with PJM Yard Maintenance Inc. (PJM) over the past five (5) years for various landscape services throughout the City. Landscape services are essential to City beautification and help ensure proper maintenance of public areas. During this time, PJM partnered with the City on adoption of the landscaping at 116/101 to provide more timely maintenance of the interchange and gateway into Cotati. Cotati has 10 city-owned parks and a variety of street landscaping areas that require maintenance.

PJM Yard Maintenance is a landscape contractor located in Rohnert Park. Their maintenance staff has in-depth knowledge of the City’s landscape areas and is qualified to provide these services. Staff requested and PJM provided a proposal for maintaining the City’s various landscape areas. Staff has reviewed the proposal and finds it to be fair and reasonable.

The proposed scope of work requires that the contractor use Organic Materials Review Institute (OMRI) listed products for fertilizer, pesticides, or herbicides. Any alternative product would need prior City approval, and will be evaluated in accordance with the City’s Integrated Pest
Management Plan (IPM). Staff has revised the scope of work to reflect City Council’s recent ban of Roundup. Specifically, the “Weed Control” section on page 9 of the agreement now includes the text “Under no circumstance shall Roundup be used to control weeds. The City has prohibited the use of this herbicide as it contains glyphosate.” The section also prescribes the use of the City’s Integrated Pest Management (IPM) methods for the control of broadleaf weeds. City staff has concurrently developed the City’s IPM Program for City staff and its contractors to follow.

Financial Considerations

The adopted Fiscal Year 2019-20 operating budget includes funding for landscape maintenance services through the Public Works Streets and Parks General Fund as well as the LLAD Assessment Fund for an annual budgeted total of $86,900 and a 2019-20 not-to-exceed amount under the new PJM contract of $81,700. The City’s adopted Fiscal Year 2019-20 budget anticipates continuing contracting for landscape maintenance services with the proposed service agreement. An amount of $1,000 has been added to the contract as an estimate for the additional labor and alternative methods for controlling weeds. The actual amount may vary as there will be an adjustment period balancing the increased costs of manual weed control versus expectations of the appearance of these landscaped areas. Any additional cost would require additional prior written approval.

Environmental Issues

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.
RESOLUTION NO.
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COTATI APPROVING A LANDSCAPE MAINTENANCE AGREEMENT WITH PJM YARD MAINTENANCE INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, the City has contracted with PJM Yard Maintenance Inc. over the past five (5) years for various landscape services throughout the City; and

WHEREAS, Cotati has 10 city-owned parks with a variety of other landscape areas that require maintenance; and

WHEREAS, Landscape services are essential to City beautification and help ensure proper maintenance of public areas; and

WHEREAS, PJM Yard Maintenance, Inc.’s staff has in-depth knowledge of the City’s landscape areas and is qualified to provide these services; and

WHEREAS, the proposed standard services agreement is to run five (5) years with an annual not-to-exceed amount of $81,700; and

WHEREAS, City Staff has reviewed the scope and rates and finds the rates and charges to be of good value to the City; and

WHEREAS, the scope of work includes language banning the use of Roundup and instead uses the City’s Integrated Pest Management methods to control weeds; and

WHEREAS, the action of executing a Standard Services agreement for landscape services does not constitute a project as defined by California Environmental Quality Act Guidelines Section 15378; therefore, no further environmental review is required.

NOW THEREFORE BE IT RESOLVED THAT the City Council of the City of Cotati does hereby approve the attached Standard Services Agreement and authorizes the City Manager to execute said agreement.

IT IS HEREBY CERTIFIED that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Cotati held on the November 26th, 2019, by the following vote, to wit:

Approved: ________________________________
Mayor

Attest: ________________________________
Lauren Berges, City Clerk

Approved as to form:

______________________________
City Attorney
Attachments:
Landscape Agreement for Maintenance of Public Landscape Areas (PDF)
CITY OF COTATI
STANDARD SERVICE AGREEMENT
FOR LANDSCAPE SERVICES

THIS SERVICE AGREEMENT ("Agreement") is entered into and effective as of ________, 2019 ("Effective Date"), by and between the City of Cotati, a municipal corporation ("City") and PJM Yard Maintenance Inc. ("Contractor") (collectively, the "Parties").

WHEREAS, the Parties enter into this Agreement for the purpose of Contractor providing services to City under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Contractor shall provide the services which shall be made up of one or more written task orders and the general conditions as described in Exhibit A, attached hereto and incorporated herein ("Services"). A separate scope of work will be defined for each project and a task order showing scope of work, schedule, and not to exceed cost will be executed separately by the City Manager or his/her designee. Contractor. At all times, Contractor shall act as a contractor and shall not be an employee, officer, agent, partner, or joint venture of the City by virtue of this Agreement. Contractor acknowledges that contractor: (1) is free from the control and direction of the City in connection with the performance of Services; (2) performs Services outside the usual course of the City's business; and (3) is customarily engaged in an independently established trade, occupation, or business of the same nature as the Contractor performs for the City, and has the option to perform such work for other entities. To the fullest extent provided by law, Contractor agrees to defend, indemnify and hold the City harmless from any claims, demands, liabilities, damages, penalties or taxes resulting from Contractor's misclassification of its employees (as independent contractors) who provide services under this Agreement. Contractor shall have no authority to contract for other otherwise bind the City. The Contractor, at its own expense, may use the contractor's own employees or other subcontractors to perform the services.

2. **Compensation.**

   A. For the full performance of the Services described in Exhibit A hereto City shall compensate Contractor on a time-and-materials basis at the compensation rates specified in Contractor's Services Rate Schedule included as the last page of Exhibit A, provided, however, that total compensation for the full performance by Contractor of all Services paid by the City under all Task Orders shall not exceed Eighty-One Thousand Seven Hundred dollars and No Cents ($81,700.00) for the initial year under contract, said amount being referred to herein as the "not-to-exceed" amount. Task orders for services that will be fully reimbursed by a developer or other third party shall not be included in calculating the not to exceed amount.

   B. Contractor shall submit detailed monthly invoices reflecting all services performed during the preceding month, and including a revised schedule for
performance and additional documentation requested by City, as applicable.

C. Contractor shall be compensated for services in addition to those described in Exhibit A, only if Contractor and City execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services. In no case shall the total compensation under this Agreement exceed the “not-to-exceed” amount specified in Paragraph A, above, without prior written authorization of the City Manager.

D. City’s obligation to pay compensation to Contractor as provided herein is contingent upon Contractor’s performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto. Notwithstanding any other provision herein, Contractor shall not be paid any compensation until Contractor has complied with the City’s Business License Ordinance.

3. **Term.** The term of this Agreement commences on the Effective Date, and shall continue thereafter for a period of five (5) years. Beginning on the first annual anniversary date of this agreement, and on each annual anniversary date thereafter, the term of this agreement shall be extended for a period of one year in addition to the then remaining term, and terminates on June 30, 2024, unless sooner terminated in accordance with Section 4. Upon termination, any and all of City’s documents or materials provided to Contractor and any and all of the documents or materials prepared for City or relating to the performance of the Services, shall be delivered to the City as soon as possible, but not later than fourteen (14) days after termination of the Agreement.

4. **Termination.** City may terminate this Agreement without cause upon ten (10) days’ written notice. City may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Contractor or Contractor’s bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Contractor shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by City, Contractor shall be entitled to payment for all Services performed to the date of termination to the extent such Services were performed to the satisfaction of City in accordance with the terms and conditions of this Agreement. If City terminates this Agreement for cause, Contractor shall be liable to City for any excess cost City incurs for completion of the Services.

5. **Contractor’s Representation: Independent Contractor.** Contractor represents that Contractor possesses distinct skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Contractor shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Contractor, its agents and employees shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of City. This Agreement shall not be construed as an agreement for employment.

6. **Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services pursuant to this
Agreement. City shall furnish to Contractor no facilities or equipment, unless the City otherwise agrees in writing to provide the same.

7. **Licenses, Permits, Etc.** Contractor shall, at Contractor’s sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.

8. **Time.** Contractor shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Contractor’s obligations pursuant to this Agreement.

9. **Inspection.** Contractor shall provide the City every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to inspection and approval by the City. The inspection of such work shall not relieve Contractor of any of its obligations pursuant to this Agreement.

10. **Progress Reports.** Upon the City’s request, Contractor shall provide, in a form acceptable to City, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Contractor’s performance of the Services.

11. **Confidentiality.** In the course of providing services for City, Contractor may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Contractor shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.

12. **Conflict of Interest.** Contractor represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services hereunder. Contractor further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Contractor represents that no one who has or will have any financial interest under the Agreement is an officer or employee of City. If such conflict of interest arises during this Agreement or any extension, Contractor will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement.

13. **Contractor No Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

14. **Standard of Performance.** Contractor shall perform all the Services in a manner consistent with the standards of Contractor’s profession. All instruments of service of whatsoever nature, which Contractor delivers to City pursuant to this Agreement, shall be prepared in a substantial, first class and workmanlike manner and conform to the
standards of Contractor’s profession. All such instruments of service shall become the sole and exclusive property of City upon delivery of the same.

15. **Assignment/Transfer.** Contractor shall make no assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of City.

16. **Subcontractors.** Contractor shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of the City. Any such subcontractors shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name City as an additional insured.

17. **Business Registration.** Contractor shall file a Business License Application as required by the City. The Administrative Services Department shall provide the Contractor with the required form. Contractor shall complete and file the form with the City and shall pay the business license fee before any payment for Services under this Agreement is rendered.

18. **Statement of Economic Interests.** The City may determine that the Contractor must file a Form 700, Statement of Economic Interests, as required by the City’s Conflict of Interest Code. If such is the case, the City Clerk’s office will provide the Contractor with the required form and Contractor shall file form with the City Clerk’s office. Said filing shall include an Assuming Office Statement within thirty (30) days of execution of this contract, annual statements on or before April 1 of each year, and a Leaving Office Statement within thirty (30) days after termination of this Agreement or any extensions thereto.

19. **Internal Revenue Service Form W-9.** Contractor must file an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by the City to comply with regulations of the United States Department of the Treasury. If such is the case, the Administrative Services Department shall provide the Contractor with the required form. Contractor shall complete and file the form with the City before any payment for Services under this Agreement is rendered.

20. **Compliance With All Laws.** Contractor and any subcontractors shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Services required hereunder, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that any other government agency or entity provides compensation for any Services, Contractor shall comply with all rules and regulations applicable to such fiscal assistance. Contractor’s failure to comply with any law(s) or regulations(s) applicable to the performance of the Services hereunder shall constitute a breach of contract.

Such laws include, but are not limited to, the California Prevailing Wage Law, California Labor Code section 1720 et seq. Because the services described in Exhibit A include “work performed during the design and preconstruction phases
of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of section 1720(a)(1) of the California Labor Code. Therefore, the services described in Exhibit A shall be performed in accordance with all applicable requirements of the California Prevailing Wage Law including, but not limited to, all applicable requirements contained in Exhibit B, which is attached to and made a part of this Agreement. To the extent that any other government agency or entity provides compensation for any services, Contractor shall comply with all rules and regulations applicable to such fiscal assistance.”

21. **Discrimination.** During the performance of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.

22. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

A. Personal delivery, in which case notice is effective upon delivery;

B. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

C. Nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or

D. Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a non-business day.

City: Attn: Craig A. Scott
City of Cotati
201 West Sierra Avenue
Cotati, California 94931-4217

Contractor: Attn: Paul Machado
PJM Yard Maintenance Inc.
3170 Primrose Avenue
Santa Rosa, CA 95407
T: (707)792-2200
23. **Ownership of Documents.** All original papers, documents or computer material on disk or microfilm, and copies thereof, produced as a result of this Agreement, shall be the property of the City and may not be used by Contractor without the written consent of City. Contractor shall provide documents in electronic form in a format required by the City. Copies of such documents or papers shall not be disclosed to others without the written consent of the City Manager or his or her designated representative.

24. **Internet-Ready Deliverables.** If applicable to this Agreement, each contract deliverable shall be delivered as a data file suitable for publication on the Internet. The following specifications define the formats that satisfy this requirement:

A. Brochures, reports, plan documents, catalogues, flyers with graphics included, and forms are to be formatted as screen-optimized ".pdf" files, if possible.

B. Freestanding, individual graphics such as logos, small maps and photos are to be formatted as ".tif" files, with the largest side no larger than four inches.

C. Large maps are to be formatted as ".jpg" files with the largest side no larger than four inches, unless mutually agreed otherwise by the Parties.

D. Short text documents with no graphics are to be in MS Word.

E. Freestanding charts, graphs and listings are to be in MS Excel.

25. **Indemnification.** To the fullest extent allowed by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within thirty (30) days to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be
retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of Consultant to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

If any term of portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

This obligation to defend and indemnify City set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination or completion of this Agreement or this section or final payment to the fullest extent and duration allowed by law.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

26. **Insurance.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, Consultant's agents, representatives and employees.

A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Consultant shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Errors and Omissions liability insurance appropriate to the Consultant’s profession. Architects’ and Engineers’ coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3. Employers Liability: $1,000,000 per accident for bodily injury or disease

4. Workers’ Compensation, Statutory Limits: $1,000,000 per accident for bodily injury or disease.

5. Errors and Omissions liability: $1,000,000 per occurrence or claim as approved by the City’s Administrative Services Director.

C. No Coverage Limitations or Restrictions. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the aforementioned specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insureds (defined below). Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

D. Deductibles and Self-Insured Retentions (“SIR”). All deductibles or SIR must be declared to and approved by the City and shall not reduce the limits of liability. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to so exercise later.
E. **Other Insurance Provisions.** The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers ("Additional Insureds") are to be covered as insureds as respects liability arising out of work or operations as performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

2. The Additional Insured coverage under Consultant’s policy shall be "primary and non-contributory" and will not seek contribution from the City’s insurance or self-insurance, and shall be at least as broad as CG 20 01 04 13.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

4. The Workers’ Compensation endorsement shall contain a Waiver of Subrogation against the City. The Consultant shall provide to the City an endorsement from the Worker’s Compensation insurer, if any, agreeing to waive all rights of subrogation against the City for injuries to employees of the Insured resulting from work for the City or use of the City’s premises or facilities.

5. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect City as a named insured.

F. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.

G. **Verification of Coverage.** Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City’s forms provided those endorsements conform to the City’s requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
H. Contractor. Contractor agrees to include with all subcontractor in their subcontract the same requirements and provisions of this Agreement, including the indemnity and insurance requirements to the extent they apply to the scope of a subcontractor’s work. Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement. Subcontractors shall further agree to include these same provisions with any sub-subcontractor. A copy of these indemnity and insurance provisions will be furnished by Contractor to a subcontractor on request. Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in their agreement prior to commencement of any work and Contractor shall provide proof of compliance to City.

27. Insurance. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, Contractor’s agents, representatives and employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

3. Workers’ Compensation Insurance as required by the State of California and Employers’ Liability Insurance. If no employees are utilized, the Contractor shall sign a declaration as described in California Health and Safety Code Section 19825.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

6. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

7. Employers Liability: $1,000,000 per accident for bodily injury or disease

8. Worker’s Compensation, Statutory Limits: $1,000,000 per accident for bodily injury or disease.
C. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers, or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. **Other Insurance Provisions.** The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as Insureds as respects liability arising out of work or operations as performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

2. For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor’s insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

4. The Worker’s Compensation endorsement shall contain a Waiver of Subrogation against the City. The Contractor shall provide to the City an endorsement from the Worker’s Compensation insurer, if any, agreeing to waive all rights of subrogation against the City for injuries to employees of the Insured resulting from work for the City or use of the City’s premises or facilities.

E. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

F. **Verification of Coverage.** Contractor shall furnish the City with original certificates and amending endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City’s forms provided those endorsements conform to the City’s requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require
complete, certified copies of all required insurance policies, including
endorsements affecting the coverage required by these specifications at any time.

G. Subcontractors. Contractor shall include all subcontractors as insureds under its
policies or shall furnish separate certificates and endorsements for each
Subcontractor. All coverages for Subcontractors shall be subject to all of the
requirements stated herein.

28. Amendment. This Agreement may be amended only by a written instrument executed
by both Parties.

29. Litigation. If litigation ensues between City and a third-party which pertains to the
subject matter of Contractor’s services hereunder, Contractor, upon request from City,
agrees to testify therein at a reasonable and customary fee.

30. Construction. This Agreement is the product of negotiation and compromise on the part
of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654,
any uncertainty in the Agreement shall not be construed against the drafter of the
Agreement.

31. Governing Law: Venue. This Agreement shall be enforced and interpreted under the
laws of the State of California and the City of Cotati. Any action arising from or brought
in connection with this Agreement shall be venued in a court of competent jurisdiction in
the County of Sonoma, State of California.

32. Non-Waiver. The City’s failure to enforce any provision of this Agreement or the
waiver thereof in a particular instance shall not be construed as a general waiver of any
part of such provision. The provision shall remain in full force and effect.

33. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or
otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of
this Agreement shall continue in full force and effect.

34. No Third Party Beneficiaries. The Parties do not intend to create, and nothing in this
Agreement shall be construed to create, any benefit or right in any third party.

35. Mediation. The Parties agree to make a good faith attempt to resolve any dispute arising
out of this Agreement through mediation prior to commencing litigation. The Parties
shall mutually agree upon the mediator and shall divide the costs of mediation equally.


A. Contractor shall maintain any and all ledgers, books of accounts, invoices,
vouchers, canceled checks, and other records or documents evidencing or relating
to charges for services, or expenditures and disbursements charged to the City for
a minimum period of three (3) years or for any longer period required by law,
from the date of final payment to Contractor pursuant to this Agreement.

B. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at Cotati City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained by the City. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor in interest.

37. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

38. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

39. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.
IN WITNESS WHEREOF, the parties hereto have executed this document the day, month and year first above written.

For City of Cotati:   For Contractor:

_________________________  __________________________
Damien O’Bid               Name:
City Manager               Title:
Taxpayer I.D. No.: ______________

Recommended for Approval:

_________________________
Angela Courter
Director of Administrative Services

Recommended for Approval:

_________________________
Department Director

Approved As to Form:

_________________________
John Bakker
City Attorney
EXHIBIT A
SCOPE OF SERVICES AND SCHEDULE

DEFINITIONS

CITY shall mean City of Cotati

CONTRACTOR shall mean PJM Yard Maintenance Inc.

SUPERVISOR shall mean Field Maintenance Supervisor

DAYS shall mean working days.

AS NEEDED or AS REQUIRED shall mean performing work to ensure landscape areas are healthy and serviced to a safe and clean condition, as determined by the SUPERVISOR or his/her designee.

GENERAL CONDITIONS

A. WORKING HOURS/SCHEDULES

Parameters for working hours will be determined by the CITY and are subject to change. The general hours for service are 7:30 a.m. to 4:30 p.m., Monday through Friday. Saturday work may be requested by submission of a written request at least 48 hours prior to day in question to the CITY for approval.

The CITY observes the following holidays: New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day and the following Friday, Christmas Eve and Christmas Day. CONTRACTOR will not provide service to CITY Facilities on observed CITY Holidays.

The CONTRACTOR shall provide the CITY with a written maintenance schedule which includes proposed working days. This schedule and any adjustments must be approved in writing by the CITY. The CITY shall approve of the dates selected.

The Plaza Park maintenance shall be scheduled either on a Wednesday or before noon on Thursday during the Farmer’s Market season.

B. PERSONNEL

CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. There must be at least one (1) employee on the premises during the hours that work is in progress who speaks and understands the English language (spoken and written). Fields crews shall have an experienced
crew leader with the ability to converse with the public and represent the CONTRACTOR on a daily basis. Field crews shall be trained and have the ability to make minor adjustment or repairs to equipment. In the event that the CITY, at its sole discretion, at any time during the term of this Agreement, desire the removal of any such persons, CONTRACTOR shall, upon receiving notice from CITY of such desire of CITY, cause the removal of such person or persons. The time period for removal of the affected employee shall be at the CITY's discretion.

CONTRACTOR shall provide and keep current an organizational chart and list of all employees performing work on CITY property. All employees that work on CITY property must be legally permitted to work in the United States, and shall not have any drug, driving, or background issues that would prevent the safe performance of their job duties, including the safety of the general public. The CONTRACTOR shall, within 1 working day, provide the CITY with an organizational chart and list of all employees performing work on CITY property.

C. SUPERVISION OF CONTRACTOR’S EMPLOYEES

CONTRACTOR must provide qualified supervision to each maintenance activity. Supervisor must be approved by the CITY prior to commencement of contract and any time Supervisor is changed. Supervisor must have the ability to make changes in scheduling and respond to CITY complaints regarding quality, scheduling issues, etc. For items beyond the Supervisor’s normal scope of authority, CONTRACTOR must respond within 24 hours. Field crews must have the ability to communicate to Supervisor/Contractor’s office via phone or radio immediately upon notification of concern by the CITY.

D. UNIFORMS

Personnel shall be uniformed with company name or logo. Shorts are not acceptable and shirts must be worn at all times. CONTRACTOR shall provide orange safety shirts or vests for personnel working in or adjacent to a public street.

E. HEALTH AND SAFETY

CONTRACTOR shall exercise all applicable safety measures to insure a safe workplace and the safety of others, outside of the workplace. All applicable safety orders, rules, and regulations of the Department of Industrial Relations, or other jurisdictional agency shall be followed and enforced by the CONTRACTOR. CONTRACTOR shall comply with all applicable federal, state, and local laws, ordinances, or codes.

Employees of the CONTRACTOR shall not wear earphones for radios or tape players while working or utilize “boom boxes” or other electronic devices that may disturb the public or distract from work being performed. CONTRACTOR
shall perform work in a safe manner so as not to endanger employees of CONTRACTOR or CITY or the General Public. Smoking is not allowed on CITY property.

CONTRACTOR when working in or from a roadway will provide sufficient advance warning and traffic control devices to provide motorists with a safe route around equipment and workplace. Where a parking lot is available CONTRACTOR shall utilize parking stalls for equipment (truck, trailer, mower, etc.). Do not use prime or typically used stalls. Keep equipment in less used portions of the parking lot when servicing CITY property.

All personnel shall be in good health and free from contagious diseases. No employee drinking alcohol or under the influence of alcohol or drugs shall be allowed on CITY property, nor shall any employee bring alcohol or drugs onto CITY property.

F. EQUIPMENT

CONTRACTOR, at its sole cost and expense, shall furnish, maintain, and use sufficient modern and efficient equipment and tools to perform the work required under the provisions of this agreement. CITY shall furnish to CONTRACTOR no equipment, unless the CITY otherwise agrees in writing to provide the same. The CONTRACTOR shall furnish, at the CONTRACTOR’s expense, all supplies and equipment necessary to properly perform work.

All equipment and tools shall be kept in safe, usable condition with cutting edges properly sharpened. In the event of equipment breakdowns, CONTRACTOR shall have back-up equipment available no later than 24 hours after breakdown occurs. CONTRACTOR shall notify the CITY immediately if a breakdown will result in work not resuming for that day.

The CITY shall not be responsible for damage to or loss of CONTRACTOR’s equipment, supplies, or property left on the premises.

G. COMMUNICATION/EMERGENCIES

The CONTRACTOR shall respond to all email and voicemail communication within a 24 hour period. For emergency purposes, the CONTRACTOR shall provide at his/her sole expense a home telephone number, answering service number, telephone beeper, or other method of receiving calls by the Supervisor on a 24-hour, 7-day-a-week basis. This contact arrangement shall be used to promptly address emergency situations. CONTRACTOR’s on-site supervisor shall carry a cellphone/pager.
Emergency response service after normal business hours is available in addition to regularly scheduled visits, billed at Time and Materials at the normal rate plus markup specified within the Landscape Maintenance Area Cost Schedule.

H. INSPECTIONS/REPORTS

The CONTRACTOR shall arrange for CONTRACTOR's representative to accompany the CITY representative on an inspection tour of any site covered by this contract upon request of the CITY. The purpose of such inspection tours shall be to evaluate the effectiveness, adequacy and acceptability of CONTRACTOR's performance in maintaining the sites in accordance with the provisions of the contract. The CITY representative may, during these inspection tours, identify and communicate to the CONTRACTOR's representative areas of unsatisfactory work or inadequate performance.

The CITY may request the CONTRACTOR to complete monthly maintenance reports indicating work performed and submit this completed report monthly to the Parks & Facilities Supervisor.

I. SPARE THE AIR DAYS

The CONTRACTOR upon written or verbal notice from the CITY will make every effort to reduce non-essential activities such as leaf blowers, edgers and other small gasoline/diesel powered equipment during period designated as “Spare the Air Days” by the Bay Area Air Quality Management District.”

J. BASIS OF PAYMENT

The CITY will pay for the sum of each landscape area on a monthly basis, using the annual costs provided in the bid schedule divided by 12 months. The CITY may at any time remove landscape areas from the work, and may request prices to include new areas. Removal or addition of landscape areas shall not affect the price of other areas.

K. PERFORMANCE PENALTIES

In the event of performance deficiencies with any of the services provided by the CONTRACTOR under this agreement, the CITY may issue a Notice To Cure the deficiency. The Notice To Cure will include a time limit to cure the deficiency that is mutually agreed to by the CITY and CONTRACTOR. If the CONTRACTOR fails to cure the deficiency within the agreed upon time limit, the CITY may assess financial penalties in the form of deductions to be taken in the amount billed on the next regular invoice to the CITY. The decision to issue a Notice To Cure and the assessment of the financial penalty will be at the sole discretion of the CITY. Examples of performance deficiencies that would generate a Notice To Cure include but are not limited to the following:
a. Failure to perform a duty at the frequency as specified in the Agreement.
b. Failure to perform a duty to the standard as specified in the Agreement.
c. Deficient conditions resulting from the performance of or failure to perform the work under the Contract.

The performance penalties will be tabulated and recorded over the original term of the agreement for Landscape Maintenance Services. The schedule for the assessment of penalties within each category will be assessed for each Notice To Cure not completed within the agreed upon time limit on the following basis:

a. First six (6) failures to correct – No Assessment.
b. Seventh (7th) through twelfth (12th) failures to correct - $100.00 plus $75.00 flat administrative fee per incident.
c. Greater than Twelve (12) failures to correct - $200.00 plus $75.00 flat administrative fee per incident.

Nothing herein limits the right of the CITY to terminate this Agreement per its terms.

Under no circumstances may the CONTRACTOR invoice the CITY for any charges derived to offset or pass-through the assessment for the Performance Penalties.

L. CHANGE OF OWNERSHIP

CONTRACTOR agrees that if there is a change in ownership prior to completion of this Agreement, the new owners will be required under terms of sale to assume this Agreement and complete it to the satisfaction of the CITY.

M. REPORT/REPAIR OF DAMAGE

General
Should damage occur to light standards, irrigation equipment, fencing or any other feature in street and/or park turf areas, CONTRACTOR shall notify the CITY immediately.

Contractor Causes Damage
CONTRACTOR shall repair or arrange to repair damaged item(s) within 24 hours. Irrigation equipment shall always be repaired within 24 hours during the months of May through October. A 72 hour repair window for irrigation will be allowed between November and April. All repairs of damage caused by CONTRACTOR shall be to the CITY’s satisfaction with no additional compensation allowed.
If CONTRACTOR fails to notice and/or report damage, the CITY shall notify CONTRACTOR, in writing via email or letter, to repair damage in 24 hours. Except as allowed above, if CONTRACTOR fails to comply within 24 hours after notification, CITY shall make repairs and deduct charges, including administrative charges, from the monthly invoice.

Other Damage
City may request that Contractor provide cost estimate to repair damage. All repairs under $500 must be approved by the SUPERVISOR. Repairs in excess of $500 must be itemized in a written quote for approval prior to starting work.

N. DROUGHT CONDITIONS

During mandatory CITY water rationing, CONTRACTOR may be asked to limit amount of scheduled mowing and edging of potable irrigated turf areas due to minimal turf growth. Mowing heights may also be increased to reduce stress on turf areas.

O. PERFORMANCE

Work shall be performed during weather that allows the completion of work in an effective and safe manner that does not damage the landscape areas.

CONTRACTOR shall be required to return and satisfy the SUPERVISOR, if dissatisfied, at no additional charge to the CITY.
MAINTENANCE ACTIVITIES

CONTRACTOR shall follow the Russian River-Friendly Landscape Guidelines best practices, as applicable to the activities in this Agreement. Fertilizers, herbicides, or pesticides shall be selected from the most recent Organic Materials Review Institute (OMRI) product list, or acceptable to CITY. If CONTRACTOR cannot find an acceptable product for the application, CONTRACTOR will need to obtain written authorization from CITY prior to use on CITY property. In addition, all pests shall be controlled using the City's Integrated Pest Management methods.

A. FERTILIZER APPLICATION

SUBMITTALS
CONTRACTOR shall provide copies of all manufacturer's labels (including recommended application instructions) and Material Safety Data Sheets for any product used or anticipated to be used at the beginning of the contract period to the CITY.

CONTRACTOR shall inform the CITY in writing 2 DAYS in advance of fertilizer application, including:
1. Areas, and
2. Fertilizers to be used, and
3. Date of application.

CITY agrees to perform maintenance activities in such a way as to not disturb effectiveness of said materials.

GENERAL
Unless authorized in writing by the CITY, CONTRACTOR shall use naturally derived fertilizers with a slow release of nutrients (typically 1-4 months). "Weed and Feed" fertilizers are not allowed. Do not fertilize within 25 feet of open water or storm drain inlets. CONTRACTOR shall apply even coverage of fertilizer, and shall not apply fertilizers when rain is projected in the 2 day weather forecast, or as directed by the CITY.

CONTRACTOR to follow all Manufacturers' label instructions so as to ensure proper use and effectiveness of materials applied. Operator shall carry a copy of the Manufacturer's Material Safety Data Sheet for any fertilizer used. Before watering, sweep any fertilizer on sidewalks, walkways, or driveways back onto landscape areas. Sweeping into street gutters and storm drains is prohibited. Avoid overwatering to prevent fertilizer and water from running into gutters. Use drop spreaders rather than rotary spreaders to avoid off-target fertilizer application.
TURF AREAS
Identify the type of grass and select the proper fertilizer rate and application timing. Deeply water the day before you apply fertilizer. After fertilizing, irrigate just enough to wash the fertilizer off the leaves and into the soil. Keep fertilizer off walkways and bare areas. Apply fertilizer only to planted areas where plant roots can take it up. Apply fertilizers only when grass is actively growing and no more than the recommended rates.

TREE, SHRUB AREAS
Apply fertilizer at the drip line of trees and shrubs and not directly on the trunk or crowns. Determine the actual cause of unhealthy-looking plants before fertilizing. Nutrient deficiency symptoms are often due to unhealthy roots, poor soil conditions, or improper care.

B. HERBICIDES AND PESTICIDE APPLICATION

SUBMITTALS
Prior to any herbicide or pesticide application on City property, CONTRACTOR shall provide California Department of Pesticide Regulation certifications, and any other applicable certifications, for any On-Site operators.

Where applicable, CONTRACTOR shall utilize and provide to the City any Notices of Intent from the Department of Pesticide Regulation and the County Agricultural Commission.

CONTRACTOR shall provide copies of Monthly Pesticide Use Reports as submitted to local County Agriculture Department.

CONTRACTOR shall provide copies of all manufacturer’s labels (including recommended application instructions) and Material Safety Data Sheets for any product used or anticipated to be used at the beginning of the contract period to the CITY.

GENERAL
Pre/post emergents to be chosen by CONTRACTOR to fit desired requirements and results, as determined by the CITY, for particular areas where material is applied. CONTRACTOR shall provide pre-emergent and post emergent applications in accordance with the frequency in the Landscape Maintenance Frequency Schedule, but is not limited to this frequency if needed to maintain desired control.

On-Site operators shall be a trained and competent professional certified by the Department of Pesticide Regulation of the State of California. CONTRACTOR to follow all Manufacturers’ label instructions so as to ensure proper use and
effectiveness of materials applied. Operator shall carry a copy of the Manufacturer’s Material Safety Data Sheet for any pesticide or herbicide used.

TREE, SHRUB AREAS
CONTRACTOR shall maintain weed-free bedding areas. Weeds shall not attain a height of 2” or more in open areas or grow through established groundcover(s) to the point where they can be seen above groundcover(s). Low growing and spreading weeds shall not be wider than 3” or be allowed to remain in open areas of landscape beds regardless of width, i.e., bare dirt or bark shall be maintained weed-free in any landscape. CONTRACTOR shall manually remove any weeds that exceed these limits within 2 day notice given by the CITY (See Performance Penalties Section).

Minor weed control of weeds growing in sidewalks, curbs and gutters, and other hardscapes is expected where adjacent to landscapes at no additional cost.

C. LAWN CARE

Mowing:
Lawn areas shall be mowed at a height appropriate for the species of turf during the active growing season, and as needed during the other seasons. Mulching mowers shall be used to replenish nutrients back into the soil, and to improve efficiency. Mowing shall be done in such a manner that cut grass is evenly dispersed, and not mounded in piles. Grass clippings shall be collected when weather conditions prevent mulching, or where mulching is deemed inappropriate.

Edging:
Edging along sidewalks, curbs, and softscape shall be performed per schedule.

Fertilization:
Lawns shall be fertilized as necessary to provide vigorous growth, maintain good health, and to provide a consistent green color.

Aeration:
Mechanical aeration of the soil under turf shall be performed annually in the spring, or before amending or planting. Cores shall be recycled into the ground.

Weed Control:
Under no circumstance shall Roundup be used to control weeds. The City has prohibited the use of this herbicide as it contains glyphosate. Broadleaf weeds (dicotyledon) shall be controlled using the City’s Integrated Pest Management (IPM) methods to include applications of selective herbicides as needed. Control of grass-type weeds (monocotyledon) such as Bentgrass, Nutsedge, Kikuyugrass, etc. can be addressed through a separate agreement.
D. **TREE CARE**

Management, responsibility, and care for trees, or portions of trees, 15 feet or less in height is included in this agreement. Care for portions of trees, in excess of 15 feet in height can be addressed through a separate agreement.

**Pruning:**
Pruning of trees shall be performed to promote structural strength, accentuate the tree’s natural form, and maintain growth within space limitations.

**Fertilization:**
Trees subject to this agreement shall be fertilized as needed with a soluble, granular fertilizer, or with deep root injected fertilization.

**Stake supports:**
Stakes, ties, and guys on trees subject to this agreement shall be adjusted or removed as required. Installation of new support systems can be addressed as an extra, with a separate agreement.

E. **SHRUB AND VINE CARE**

**Pruning:**
Natural pruning techniques shall be performed wherever possible to promote structural strength and to accentuate the shrub’s natural form. Power hedge shears shall be used where natural pruning is not feasible.

**Fertilization:**
Shrub beds shall be fertilized as needed with a soluble, granular fertilizer.

**Insect Control:**
Incidental insect infestations shall be controlled using the City's (IPM) methods to include foliar applied plant protection products. Abnormal or major insect infestations or pests requiring special products can be addressed as an extra, with a separate agreement.

**Weed Control:**
Shrub beds shall be maintained reasonably free of weeds using the City's (IPM) methods to include hand weeding and use of herbicides.

F. **GROUND COVER CARE**

**Edging:**
Groundcovers shall be edged as needed to maintain plant material within intended borders.
Fertilization:
Groundcover beds shall be fertilized as needed with a soluble, granular fertilizer.

Insect Control:
Incidental insect infestations shall be controlled using the City's (IPM) methods to include foliar applied plant protection products. Abnormal or major insect infestations or pests requiring special products can be addressed as an extra, with a separate agreement.

Weed Control:
Shrub beds shall be maintained reasonably free of weeds using the City's (IPM) methods to include hand weeding and use of herbicides.

G. SEASONAL COLOR CARE
Seasonal flower color shall be groomed to remove dead flowers, promote new growth and flowers, and to maintain weed control.

Fertilization:
Seasonal color beds shall be fertilized at time of planting and as needed to promote new growth and flowers.

Insect Control:
Incidental insect infestations shall be controlled using the City's (IPM) methods to include foliar applied plant protection products. Additionally, baiting for slugs and snails shall be performed as needed.

H. DEBRIS CLEANUP
Debris generated by Contractor during normal maintenance operations shall be removed and disposed of by Contractor. During days of service, limited man-made litter shall be collected, and if available, shall be disposed of into on-site dumpsters. Excess debris removal, typically due to a special event or storm damage, can be addressed through separate agreement.

I. REPLACEMENT PLANTS
Plants covered under this agreement, which are in a state of decline or dead shall be brought to the CITY attention. Plant replacements can be addressed as an extra, with a separate agreement. Plant materials installed and managed by Contractor have a 1-year replacement warranty for any losses under Contractor’s control.
J. **MULCH**

CONTRACTOR shall Mulch all non-turf landscape areas to maintain a minimum of 2" of mulch cover. Mulch shall be “Early Vineyard Mulch” or Equivalent approved by CITY. Areas with groundcover do not require mulch.

K. **IRRIGATION SYSTEM**

Automated irrigation controllers shall be adjusted by the CITY for frequencies and quantities consistent with seasonal requirements and the demands of plant materials.

The provisions and all costs of water and electricity, are the responsibility of the CITY.

L. **CURB AND WALKS**

Weeds in curbs and sidewalk joints adjacent to landscaped areas shall be controlled with the City's IPM methods.

Collection of leaf debris directly adjacent to curbs and contiguous to landscaped areas shall be collected during days of service.
# Landscape Maintenance Area Cost Schedule

<table>
<thead>
<tr>
<th>Location</th>
<th>Approximate Size</th>
<th>Annual Maintenance Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Minimum¹ As Scheduled²</td>
</tr>
<tr>
<td>Landscape Maintenance Districts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Altman Acres Planter Strip</td>
<td>12,000 SQ FT</td>
<td>420.00</td>
</tr>
<tr>
<td>Garden Gate</td>
<td>4,400 SQ FT</td>
<td>360.00</td>
</tr>
<tr>
<td>Macklin</td>
<td>4,750 SQ FT</td>
<td>360.00</td>
</tr>
<tr>
<td>Park Meadows</td>
<td>81,850 SQ FT</td>
<td>4,200.00</td>
</tr>
<tr>
<td>Oak Knoll</td>
<td>4,160 SQ FT</td>
<td>600.00</td>
</tr>
<tr>
<td>Quail Hollow</td>
<td>3,225 SQ FT</td>
<td>290.00</td>
</tr>
<tr>
<td>Sommers</td>
<td>2,800 SQ FT</td>
<td>300.00</td>
</tr>
<tr>
<td>Valparaiso Vista</td>
<td></td>
<td>360.00</td>
</tr>
<tr>
<td>Parks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civic Park – City Hall &amp; Police Facility</td>
<td>3.3 ACRES</td>
<td>15,600.00</td>
</tr>
<tr>
<td>Delano Park</td>
<td>1.1 ACRES</td>
<td>1,800.00</td>
</tr>
<tr>
<td>Draper Park</td>
<td>1.0 ACRES</td>
<td>3,300.00</td>
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<tr>
<td>Falletti Park</td>
<td>1.4 ACRES</td>
<td>3,300.00</td>
</tr>
<tr>
<td>Helen Putnam Park</td>
<td>8.3 ACRES</td>
<td>8,400.00</td>
</tr>
<tr>
<td>Kotase Park</td>
<td>2.3 ACRES</td>
<td>3,600.00</td>
</tr>
<tr>
<td>La Plaza Park</td>
<td>2.2 ACRES</td>
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<tr>
<td>Santero Park</td>
<td></td>
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<tr>
<td>Sunflower Park</td>
<td>1.7 ACRES</td>
<td>3,000.00</td>
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<tr>
<td>Vetrans Park</td>
<td>2.0 ACRES</td>
<td>3,300.00</td>
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<tr>
<td>Streets/City Property</td>
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<td></td>
</tr>
<tr>
<td>Apple Valley Park-n-Ride</td>
<td></td>
<td>1,200.00</td>
</tr>
<tr>
<td>Arthur Street Planter Area</td>
<td>1,410 SQ FT</td>
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</tr>
<tr>
<td>Commerce Blvd. Retaining Wall</td>
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<td>600.00</td>
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<tr>
<td>Corp Yard</td>
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<td>6,000.00</td>
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<tr>
<td>Dos Amigos Parking Lot</td>
<td>4,060 SQ FT</td>
<td>600.00</td>
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<tr>
<td>Down Planter/Public Parking</td>
<td>7,935 SQ FT</td>
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<tr>
<td>Eagle Drive Lift Station</td>
<td>0.2 ACRES</td>
<td>600.00</td>
</tr>
<tr>
<td>East Cotati Island @ Sunflower</td>
<td></td>
<td>600.00</td>
</tr>
</tbody>
</table>

¹ Minimum is the minimum level of maintenance required for safety purposes only, and is lower than the scheduled maintenance. The enclosed activity/frequency table does not apply to this level of maintenance.

² As Scheduled means per the Landscape Maintenance Frequency Schedule.
<table>
<thead>
<tr>
<th>Location</th>
<th>Area</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Cotati Island @ Laguna</td>
<td></td>
<td>300.00</td>
</tr>
<tr>
<td>Gilbert Court Planter Area</td>
<td>2,670 SQ FT</td>
<td>600.00</td>
</tr>
<tr>
<td>Gilman Ranch Circle</td>
<td></td>
<td>300.00</td>
</tr>
<tr>
<td>Gravenstein Way Planter Strip</td>
<td>7,160 SQ FT</td>
<td>600.00</td>
</tr>
<tr>
<td>Highway 116 Trees/Island</td>
<td></td>
<td>300.00</td>
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<tr>
<td>Hunters Ridge Entrance Landscape Area</td>
<td>20,000 SQ FT</td>
<td>2,100.00</td>
</tr>
<tr>
<td>Mini Park</td>
<td>5,000 SQ FT</td>
<td>1,200.00</td>
</tr>
<tr>
<td>Old Redwood Highway Planter Strip</td>
<td>8,290 SQ FT</td>
<td>1,800.00</td>
</tr>
<tr>
<td>Myrtle Avenue</td>
<td>10,115.00 SQ FT</td>
<td>910.00</td>
</tr>
<tr>
<td>Redwood Drive Medians &amp; Traffic Wall</td>
<td>9,120 SQ FT</td>
<td>300.00</td>
</tr>
<tr>
<td>Rosen Ranch Planter Strip</td>
<td>4,400 SQ FT</td>
<td>300.00</td>
</tr>
<tr>
<td>St. Joseph Way Planter Area</td>
<td>4,340 SQ FT</td>
<td>300.00</td>
</tr>
<tr>
<td>West Sierra Gateway</td>
<td>7,600 SQ FT</td>
<td>300.00</td>
</tr>
<tr>
<td>Cotati Train Depot</td>
<td></td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Round-Up Ban Premium</td>
<td></td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>ANNUAL TOTAL</strong></td>
<td></td>
<td><strong>$81,700.00</strong></td>
</tr>
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**AS NEEDED EMERGENCY RESPONSE**

$35/hour plus materials cost.
EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS PROJECTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

A. HOURS OF WORK

In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day’s work under this Agreement.

By signing this Agreement, CONTRACTOR agrees that CONTRACTOR is aware of the provision of California Labor Code section 3700 which requires every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of the California Labor Code, and that CONTRACTOR will comply with such provisions before commencing performance of the Services.

The CONTRACTOR and its subcontractors shall forfeit as a penalty to the CITY $25 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

B. WAGES

The services of the CONTRACTOR shall be done on or in the execution of a "public works" project as defined by Law. In accordance with California Labor Code Section 1773.2, the CITY has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the City and shall be made available on request. The CONTRACTOR and subcontractors engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services. The CONTRACTOR shall be responsible for the compliance of its subcontractors.
# Landscape Maintenance Frequency Schedule

**Landscape Maintenance Districts:** Altman Acres Planter Strip, Garden Gate, Macklin, Park Meadows, Oak Knoll, Quail Hollow, Sommers, Valparaiso Vista

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<th>Turf Maintenance</th>
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| Misc. Maintenance                |         |          |       | 1     | 0   | 1    | 1    | 1      | 1         | 1       | 1        | 1        |
| Litter & trash removal           |         |          |       | 0     | 1   | 1    | 1    | 1      | 0         |         | 1        | 1        |
| Sidewalk blowing                 |         |          |       | 1     | 1   | 1    | 1    | 1      | 1         | 1       | 1        | 1        |
| Parking lot blowing              |         |          |       | 1     | 0   | 1    | 1    | 1      | 0         |         | 1        | 1        |
| Irrigation system inspection     |         |          |       | 1     | 0   | 1    | 1    | 1      | 0         |         | 1        | 1        |
| Irrigation system repair         |         |          |       | 1     | 0   | 1    | 1    | 1      | 0         |         | 1        | 1        |
| Site inspection with City        |         |          |       | 1     | 0   | 1    | 1    | 1      | 1         |         | 1        | 1        |

**Comments:**

Pruning (structural) during dormant period.
# Landscape Maintenance Frequency Schedule

**Park Sites:** Civic Park (City Hall & Police Dept), Delano Park, Draper Park, Falletti Park, Helen Putnam Park, Kotre Park, La Plaza Park, Santero Park, Sunflower Park, Veterans Park

## Turf Maintenance

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## Shrub & Groundcover Maintenance

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## Comments:
- Pruning (structural) during dormant period
## LANDSCAPE MAINTENANCE FREQUENCY SCHEDULE

**STREETS/CITY PROPERTY:** Apple Valley Park-n-Ride, Arthur Street Planter Area, Corp Yard, Dos Amigos Parking Lot, Down Planter/Public Parking, Eagle Drive Lift Station, East Cotati Island @ Sunflower, East Cotati Island @ Laguna Commerce Blvd. Retaining Wall, Gilbert Court Planter Area, Gilman Ranch Circle, Gravenstein Planter Strip, Hwy116 Trees/Island, Hunters Ridge Landscape Area, Old Redwood Hwy Planter Strip, Mini Park, Redwood Drive Median & Retaining Wall, Rosen Ranch Planter Strip, St. Joseph Way Planter, West Sierra Gateway, Cotati Train Depot

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**COMMENTS:**
Pruning (structural) during dormant period
Attachment: Landscape Agreement for Maintenance of Public Landscape Areas (Landscape Agreement for Maintenance of Public Landscape Areas)
Quail Hollow LMD (Red) Myrtle Ave (Blue)
Attachment: Landscape Agreement for Maintenance of Public Landscape Areas (Landscape Agreement for Maintenance of Public Landscape
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(Landscape Agreement for Maintenance of Public Landscape Areas)
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Attachment: Landscape Agreement for Maintenance of Public Landscape Areas
Cotati City Council
Agenda Staff Report

Item type: INFORMATION RECEIVED AFTER THE AGENDA WAS POSTED
To: City Council
Subject: Supplemental information received after the agenda was posted.
Date: November 26, 2019
Written by: Lauren Berges, City Clerk

Recommendation

It is recommended that the City Council receive supplemental information pertaining to this meeting, and which was received after the agenda was posted.

Any supplemental information or written communication pertaining to this meeting which was received after the agenda was posted, is attached.

Pursuant to City Council Policy 2017-02: City Council Rules section IV A., written Communications, interested persons or their authorized representative may address the Council by written communication on any matters concerning the City’s business, or any matters over which the Council has control.

1. To be considered for inclusion in the agenda packet, such written communication shall be delivered to the City Clerk no later than 11:00 a.m. of the Wednesday the week preceding the regular Council meeting for which such written communication is intended.

2. If received after the above date and time, but no later than noon the day before the meeting, written communications received by the City Clerk shall be posted on the website by the end of that day and notification provided to the electronic Agenda mailing list by the end of the day. All written communications received by the City Clerk by 5 pm on the City Council meeting day shall be made available to the City Council and public at the City Council meeting.

City Council Policy 2017-02 is available at the online meeting portal at www.cotaticity.org or by request from the City Clerk at 707-665-3622 or lberges@cotaticity.org.