

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF SANTA CLARA AND THE CITY OF SAN JOSÉ
FOR DISTRIBUTION OF CRIMINAL ASSET FORFEITURE FUNDS**

This Memorandum of Understanding (“MOU”) is made by and between the County of Santa Clara (“County”) and the City of San José (“City”) (each individually a “Party,” and collectively the “Parties”). The purpose of this MOU is to establish the terms and conditions under which the County, through its Office of the District Attorney (“DA”), will allocate and distribute certain criminal asset forfeiture funds to the City’s San José Police Department (“SJPD”) for investigations above a threshold of \$500,000 in assets seized.

This MOU shall commence on July 1, 2019 and shall apply to all cases to which its terms apply that were pending as of that date. This MOU shall continue through December 31, 2023, unless terminated earlier by either Party pursuant to Section IV.

I. PURPOSE

The California Control of Profits of Organized Crime Act (Penal Code, §§ 186-186.8) (“Act”) governs the process for seizure of criminal assets acquired and accumulated as a result of organized crime. In these statutory sections, the Legislature provided that criminal asset forfeiture funds seized in such cases shall be retained and used by the prosecuting agency in order to punish and deter further criminal activities of organized crime.

Notwithstanding these statutory sections, in certain complex, time- and resource-intensive cases that result in seizures of asset forfeiture funds of significant value, the County wishes to enter into an asset-sharing arrangement with the City that recognizes SJPD’s contribution to successful investigation and prosecution of offenses within the Act.

II. SCOPE

In cases investigated by SJPD in which the DA initiates and pursues criminal asset forfeiture proceedings under the Act, and successfully obtains forfeiture of assets totaling \$500,000 or more in value after all expenditures made or incurred in connection with the sale of the property and for the payment of restitution, the County and the City shall equitably allocate the forfeited assets as follows:

SJPD	DA
50% of value of forfeited assets for investigation	50% of value of forfeited assets to the DA’s Asset Forfeiture Proceeds Fund (Fund 0336).

III. PAYMENT

The total allocation to be paid to SJPD in any case falling within the scope of this MOU shall not exceed 50% of the total value of assets ordered forfeited by a judge of the Santa Clara County Superior Court in proceedings upon a petition of forfeiture filed by the DA under the Act.

Payment to SJPD and to the DA's Asset Forfeiture Proceeds Fund (Fund 0336) will be made 45 days after such forfeited funds or proceeds of the sale of forfeited property are deposited into the County General Fund, as set forth in Section 186.8(c) of the Penal Code.

The County's obligation to make payment under this MOU is contingent upon entry of a final order by a judge of the Santa Clara County Superior Court declaring assets forfeited to the County under Section 186.7 of the Penal Code. If this MOU is terminated prior to entry of a final order in any particular case, no payment shall be due to SJPD with respect to that case.

IV. TERMINATION

Either Party may terminate this MOU at any time by giving 30-day written notice to the other Party.

In the event that SJPD's participation in any investigation falling within the scope of this MOU is, in the DA's sole judgment, no longer necessary or helpful to the outcome of the investigation and/or prosecution, the DA may exclude that investigation from the MOU or the County may terminate this MOU immediately by giving written notice to SJPD.

V. NOTICES

Communications relating to this MOU will be in writing, and shall be delivered personally, sent by United States mail, first class postage prepaid, or by private messenger or courier service, or by electronic mail, to the addresses set forth below:

To County:

David Angel
Assistant District Attorney
70 W. Hedding Street, West Wing
San Jose, CA 95110
(408) 792-2857
dangel@dao.sccgov.org

To City:

Craig Storlie
Lieutenant
201 West Mission Street
San Jose, CA 95110
(408) 277-4115
craig.storlie@sanjoseca.gov

VI. GENERAL PROVISIONS

1. Entire Agreement; Modification. This MOU and its exhibits constitute the final, complete and exclusive statement of the terms of the agreement between the Parties. It replaces all previous agreements and the discussions relating to the subject matters hereof and constitutes the entire agreement between County and City with respect to the subject matter of this MOU. This MOU may only be modified by written instrument signed by both County and City.

2. Severability. If any term or provision of this MOU is deemed invalid, contrary to, or prohibited under applicable laws or regulation of any jurisdiction, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

3. Governing Law, Venue. This MOU shall be governed by the laws of the state of California. Proper venue for legal action regarding this MOU shall be in the County of Santa Clara.

4. Conflicts of Interest. County and City must make all reasonable efforts to ensure that they and their subcontractors are complying with (i) all requirements governing avoidance of impermissible client conflicts; and (ii) all federal, state, and local conflict of interest laws and regulations, including without limitation California Government Code § 1090 et seq., the California Political Reform Act (Cal. Gov. Code § 87100 et seq.), and the regulations of the Fair Political Practices Commission. Failure to do so constitutes a material breach of this MOU and is grounds for immediate termination of this MOU. In accepting this MOU, City covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this MOU. City is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

5. Independent Contractor. City is an independent contractor with respect to County and not an agent or employee of County. None of the provisions of this MOU are intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this MOU. The Parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither Party has the authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to use the name of the other Party in any publications or advertisements, except with the written consent of the other Party or as is explicitly provided herein. City will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

6. Insurance/Indemnification. City shall comply with County's indemnification and insurance requirements as described in Exhibit B-2, attached hereto and incorporated herein by this reference.

7. Assignment. No assignment of this MOU or of the rights and obligations hereunder shall be valid without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. Waiver. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, condition, or provision hereof shall constitute a waiver of any subsequent breach, default, or violation of the same or any other term, warranty, representation, agreement, covenant, condition, or provision hereof. All waivers must be in writing and signed by the party against whom enforcement of the waiver is sought. All remedies are cumulative, and the election to pursue less than all remedies shall not be a waiver of the right to pursue any other remedy.

9. California Public Records Act. County and City are public agencies subject to the disclosure requirements of the California Public Records Act ("CPRA"). In the event of a request to one Party for information submitted to it by the other Party, the Party receiving the request will make best efforts to provide notice to the submitting Party prior to such disclosure. If the submitting Party contends that any documents are exempt from the CPRA and wishes to prevent

disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the Party receiving the CPRA request is required to respond to the CPRA request. If the submitting Party fails to obtain such remedy within the time the Party receiving the CPRA request is required to respond to the CPRA request, the latter Party may disclose the requested information.

10. Third Party Beneficiaries. This MOU does not, and is not intended, to confer any rights or remedies upon any person or entity other than the parties.

11. Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention.

i. Compliance with All Laws. City shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

ii. Compliance with Non-Discrimination and Equal Opportunity Laws. City shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, City shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall City discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

iii. Compliance with Wage and Hour Laws. City shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

iv. Definitions. For purposes of this Section 11, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government

agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

v. Prior Judgments, Decisions or Orders against City. By signing this MOU, City affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that City violated an applicable wage and hour law or pay equity law. City further affirms that it has satisfied and complied with—or has reached agreement with County regarding the manner in which it will satisfy—any such final judgments.

vi. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract. If at any time during the term of this MOU, City receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then City shall promptly satisfy and comply with any such Final Judgment. City shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. City shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this MOU and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

vii. Access to Records Concerning Compliance with Pay Equity Laws. In addition to and notwithstanding any other provision of this MOU concerning access to City's records, City shall permit County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon County's request, City shall provide County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section 11, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during City's normal business hours upon no less than 10 business days' advance notice.

viii. Pay Equity Notification. City shall (1) at least once in the first year of this MOU and annually thereafter, provide each of its employees working in California and each person applying to City for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this MOU,

continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of City's Employees and Job Applicants.

ix. Material Breach. Failure to comply with any part of this Section 11 shall constitute a MOU. In the event of such a breach, County may, in its discretion, exercise any or all remedies available under this MOU and at law. County may, among other things, take any or all of the following actions:

1. Suspend or terminate any or all parts of this Agreement.
2. Withhold payment to City until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
3. Offer City an opportunity to cure the breach.

x. Subcontractors. City shall impose all of the requirements set forth in this Section 11 on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

12. Force Majeure. Obligations of either Party under this MOU shall be suspended, and such Party shall not be liable for damages or other remedies while such Party is prevented from complying herewith, in whole or in part, due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire, acts of God, injunction, compliance with any law, regulation, or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created, inability to secure materials or obtain necessary permits, provided, however, the Party so prevented from complying with its obligations hereunder shall promptly notify the other party thereof.

13. Mutual Drafting. The Parties agree that this MOU has been mutually drafted and authored by all Parties and that it shall not be construed against any one Party.

14. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same MOU.

15. Contract Execution. Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

//

//

//

16. Authority. Each person executing this MOU on behalf of a Party represents that he or she is duly authorized to execute and deliver this MOU on the Party's behalf.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding.

COUNTY OF SANTA CLARA

CITY OF SAN JOSÉ

 JUN 18 2019

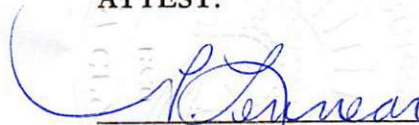
S. Joseph Simitian
President, Board of Supervisors

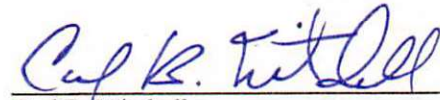
Leland Wilcox
Chief of Staff
Office of the City Manager

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

APPROVED AS TO FORM:


Tiffany Lennear
Assistant Clerk of the Board of Supervisors

 6/11/2019
Carl B. Mitchell
Senior Deputy City Attorney

APPROVED AS TO FORM AND LEGALITY:

 06/11/19
Kavita Natayan
Lead Deputy County Counsel

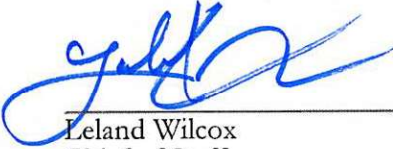
16. Authority. Each person executing this MOU on behalf of a Party represents that he or she is duly authorized to execute and deliver this MOU on the Party's behalf.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding.

COUNTY OF SANTA CLARA

CITY OF SAN JOSÉ

S. Joseph Simitian
President, Board of Supervisors



Leland Wilcox
Chief of Staff
Office of the City Manager

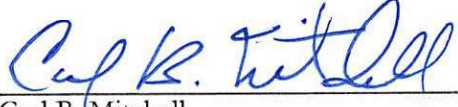
6/24/19

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

APPROVED AS TO FORM:

Tiffany Lennear
Assistant Clerk of the Board of Supervisors



Carl B. Mitchell
Senior Deputy City Attorney

6/11/2019

APPROVED AS TO FORM AND LEGALITY:



Kavita Natayan
Lead Deputy County Counsel

06/11/19

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk OR Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: No
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Grant Applications/Agreements

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667232-000

Contractor: The County of Santa Clara

Address: 70 W. Hedding Street, West Wing San Jose, CA 95110

Phone: (408) 792-2857

Email: dangel@dao.sccgov.org

Contract Description: The County wishes to enter into an asset-sharing arrangement with the City that recognizes SJPD's contribution to successful investigation and prosecution of offenses within the The California Control of Profits of Organized Crime Act.

Term Start Date: 07/01/2019 Term End Date: 12/31/2023 Extension: Select one

Method of Procurement: N/A RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: _____ Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____ NTE/Updated Contract Amount: _____

Fund/Appropriation: _____


Form 700 Required (Selection mandatory for processing): No Revenue Agreement: Select one

Tax Certificate No.: _____ Expiration Date: _____

Department: Police (50)

Department Contact: Sylvia Perez Customer (Finance Only): _____

Notes: The original agreement is with the County.

Department Director Signature:  _____ Date

Office of the City Manager Signature: _____ Date