

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND THE
CITY OF SAN JOSE**

I. PURPOSE

This Memorandum of Understanding (“MOU”) establishes the terms and conditions for the working agreement (“Agreement”) between the Natural Resources Defense Council, Inc. (“NRDC”) and the City of San Jose, a Municipal corporation, (the “City”), in support of the Zero Now Project also known as the Deliver Zero Emissions Communities accelerator project.(the “Project”). NRDC together with the City are also referred to as the “parties”.

II. BACKGROUND

The Delivering Zero Emissions Communities (DZEC) Project is a one-year accelerator supporting three American cities to take bold actions towards a goal that by 2030, 100% of vehicles used for commercial purposes in their cities will be zero emissions (“ZE”). Actions by cities will accelerate the production, purchase, and utilization of electric light, medium, and heavy-duty vehicles used for commercial purposes. This will in turn send a strong positive market signal to vehicle manufacturers that their market share will be adversely affected if they do not have ZE offerings. The Zero Now Fund, a pooled fund supported by Hewlett Foundation, ClimateWorks Foundation, and Tempest Advisors, has provided the funding for the Project.

NRDC is a 501(c)(3) public charity established in 1970 with the mission to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has the experience and ability to support a participating City’s execution of buildings and transportation initiatives, which will enhance the City’s ability to achieve the long-term success of those initiatives and benefit other communities seeking to implement similar initiatives.

III. AGREEMENT TO PARTICIPATE

The City will participate in the Project and agrees to pursue the successful execution of all such initiatives, measures and other actions and goals to which it has committed in the City Commitments (as defined in Section V). NRDC will support the City in the achievement of all such initiatives, measures and other actions and goals to which it has committed, for the duration of the City’s participation in the Project, as more specifically set forth in this MOU.

IV. COMMITMENTS BY NRDC

NRDC, for the duration of the City’s participation in the Project and at no expense to the City, will use commercially reasonable efforts to provide the support, resources and opportunities to assist the City in achieving the goals contained in this MOU, including the following undertakings:

1. Share best practices and expertise on all aspects of initiative design and implementation including regular access to staff at NRDC and Third Parties (as defined below) as appropriate;

2. Provide \$100,000 (the “Funds”) to support City execution of the City Commitments, as detailed in Section V. The Funds will be disbursed by NRDC to City upon execution of the MOU.
3. As needed, and as determined by NRDC in its sole discretion, identify and assist the City in securing additional resources to achieve the City Commitments and its resource commitment requirements;
4. Assist the City in peer-to-peer networking with other cities, including hosting virtual forums involving other cities and partners participating in the Project;
5. Designate an NRDC team member to direct NRDC’s work with the City on the Project and to serve as the City’s primary NRDC contact.

“Third Parties” refers to parties not affiliated with, or under contract with, NRDC and are referenced in this Section IV and in Section V below. Such Third Parties are associated with the Project and will provide support, resources and opportunities to Cities other than those listed in this Section IV. NRDC is not responsible for Third Parties’ ultimate delivery of support, resources and opportunities to Cities, and Third Parties’ failure to provide the resources listed in the Support Package (as further described in Section V) shall not be a basis to terminate this MOU under the provisions of Section XI.

V. COMMITMENTS BY THE CITY

The City commits to pursue, to the best of its ability and in a manner that complies with applicable laws, ordinances, rules and policies, subject to future approval and appropriation by the City Council, in a manner that facilitates collaboration among the City and its major stakeholders, the implementation of the following initiatives, by June 30, 2022, to reduce net emissions from light, medium, and heavy-duty vehicles used for commercial purposes in the city:

1. Collect data and perform relevant analyses to inform City work, in particular: a) analyze San Jose freight emissions data in conjunction with equity data in order to identify high-priority geographies for harm reduction, and b) evaluate potential strategies to reduce freight emissions in said geographies;
2. Establish regular and collaborative communication with the community through an equity task force of community-based organizations to gather and provide input on candidate strategies, equity considerations, and pilot concepts;
3. Establish and deepen private-sector relationships through an Urban Freight Working Group of private-sector partners to provide input on strategies and explore policy options and opportunities for collaboration;
4. Design and prepare to launch a Zero Emissions Neighborhood pilot with a zero emissions urban freight component, co-created with and championed by residents; and
5. Secure City Council approval for a resolution codifying a commitment to achieve 100% ZE commercial vehicles in San Jose by 2030.
6. Use the Funds exclusively to pay for the salary and benefits of the City Project Lead and in compliance with the Fund Terms (attached hereto as Exhibit A).

In support of the implementation of these initiatives, the City commits to pursue the following actions:

1. Designate a City Project Lead to allocate 50% of their time to work on the City's commitments as outlined in this Section V.
2. Designate additional city staff to execute on the City's commitments as outlined in section V as needed to achieve milestones.
3. Review and provide input to NRDC and Third Parties on the detailed activities and deliverables for the milestones that will occur during the project (the "Work Plan"). NRDC and the City shall meet to update the Work Plan no less frequently than every three months after the project launch to reflect any changes.
4. Provide NRDC and Third Parties with all information allowed by City, state, and federal laws, ordinances, rules, and policies to enable them to successfully assist the City as set forth in this MOU, including information related to emission metrics to the extent the information can be anonymized and privacy interests protected.
5. Participate in the Project network of peer cities to share best practices with NRDC and other cities participating in the Project, including work products and materials, programmatic concepts and successful processes.
6. Make the City Project Lead available to meet with designees of NRDC at least once every three months (at a time and place to be mutually agreed by the parties acting reasonably) for the duration of the City's involvement with the Project.
7. Make reasonable use of the NRDC-approved designee (Julie Benabente, Deputy Director in Environmental Services), available to participate in no less than three meetings per year with senior officials of the Project team to discuss the City's progress on the initiatives described in this Section V.
8. Use reasonable best efforts to prioritize staffing Project work.
9. Use reasonable best efforts to take all necessary and appropriate actions to complete the work stated in the Work Plan in accordance with the timeline and other provisions set forth therein.
10. Use reasonable best efforts to coordinate with NRDC and its partners and other funders, whether or not they are parties to this Agreement.
11. Use reasonable best efforts to provide information that will facilitate coordination between NRDC and Third Parties and other entities also involved in the Project.
12. Cause the City Project Lead and other relevant City staff to be available for one-hour conference calls with representatives of NRDC and Third Parties (at a time to be mutually agreed by the parties acting reasonably, and occurring no less frequently than on a quarterly basis) to discuss the status of the Project work.

VI. LOBBYING

The City affirms that so long as NRDC employees are performing work on behalf of the City and, further, are receiving compensation from NRDC, Hewlett Foundation, ClimateWorks Foundation, and Tempest Advisors, nonprofit organizations with tax exempt status, such employees do not meet the definition of "lobbyist" under the San Jose Municipal Code. The City will not request NRDC employees to perform any work such that such employees will fall outside the exemptions in the San Jose Municipal Code Chapter 12.12 *San Jose Municipal Lobbying Ordinance*.

VII. COMPLIANCE WITH RULES

The City represents and warrants that it is permitted under all applicable laws, ordinances, rules, and policies, including those concerning government ethics, to participate in the Project under the terms and conditions of this MOU and to accept resources from NRDC for these purposes. The City also represents and warrants that it has consulted with the Office of the City Attorney, and the City Manager's Office to participate in the Project under the terms and conditions of this MOU and to accept resources from NRDC for these purposes.

VIII. TERM

This MOU shall be for a term commencing upon execution of this agreement and shall expire on June 30, 2022, unless earlier terminated in accordance with the provisions herein. This MOU can be extended by mutual agreement via an MOU amendment for an additional one-year term.

IX. AFFILIATION WITH THE PROJECT

NRDC supports the integration of all initiatives that are undertaken by the City with support from the Project into the City's own long-term vision for sustainability, including any applicable sustainability or climate action plans. NRDC may use the City's name and describe the activities the City undertakes in conjunction with the Project, including in web and print materials produced for public consumption, subject to the terms and conditions in Section XIII of this MOU. Furthermore, NRDC may promote the involvement of the City in the Project through case studies, reports, and other media, subject to the conditions in Sections X and XIII of this MOU.

X. OTHER PUBLIC COMMUNICATIONS

The City will be available to work with NRDC on future communication needs from high-level City officials during the duration of the City's participation in the Project.

The City agrees to coordinate with NRDC on formal public communications or press releases by or on behalf of the City that refer to the Project, and any such public communications must be mutually approved in advance by the City and NRDC. Any joint communications or materials will require the prior written approval of both the City and NRDC. The City and NRDC agree to work in good faith to resolve any disputes over wording of the joint communications or materials.

XI. TERMINATION OF MOU

This MOU may be terminated by the parties according to the following conditions:

1. Failure by the City to Update the Work Plan: NRDC may terminate this MOU if the City fails to update the Work Plan with any changes every three months after the date hereof, assuming no reasonable communications have been made with the City that explain the delay in submission.
2. Failure by the City to Achieve Milestones: NRDC may terminate this MOU if, more than six months after the execution of this MOU, it determines that the City is substantially unable to achieve the milestones and goals outlined in this MOU, or that the City has

demonstrated an inability to dedicate the required resources to the achievement of the milestones and goals in this MOU.

3. **For Cause:** Either the City or NRDC may terminate this MOU if the other party is in material breach of its obligations under this MOU, and such breach has not been corrected to the non-breaching party's reasonable satisfaction in a timely manner after written notice of such breach has been provided to the breaching party.
4. **Notice:** Unless otherwise specified herein, written notice of termination pursuant to this Section XI shall be given by the party terminating this MOU to the other not less than 30 calendar days prior to the effective date of termination.
5. **Funds:** In the event this MOU is terminated early, the City shall return any portion of the Funds unused at the date of termination. In the event NRDC determines any portion of the Funds were used for purposes not in compliance with this Agreement (including the provisions of Exhibit A), City shall promptly refund the relevant portion to NRDC.

XII. RELATIONSHIP

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent of any of the other parties. Each of the parties hereto expressly disclaims any intention to enter into any such agency or joint venture and agrees to conduct itself so as not to act or purport to act on behalf of the other. This MOU does not authorize any party to act as the agent or legal representative of any other party for any purpose whatsoever and no party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other party, or to bind any other party in any manner or thing whatsoever.

To aid in the advancement of the Project, NRDC employees will be advising the City regarding governmental decisions with intervening substantive review by the City's Project Lead. As such, NRDC Employees may present themselves as working with the City to further the goals of the Project in spoken and written communications, provided there is identification as a NRDC employee. Any individual that inquires about the NRDC employee's status of employment or role within the City will be provided with information that confirms they are an employee of NRDC who is advising the City pursuant to this Agreement.

XIII. CONFIDENTIALITY OF INFORMATION AND PROTECTION OF INTELLECTUAL PROPERTY

Each party recognizes that it may have access to information of a proprietary, private or confidential nature owned by another party (a "Disclosing Party"). Each party acknowledges that any proprietary, private and confidential information it shares with any other party under this MOU must be identified and clearly labeled as such at the time of communication. As such, each party that receives or has access to information that has been so identified (a "Receiving Party") agrees to keep such information in strictest confidence and protect it from disclosure; provided that the parties may disclose such information as required by any applicable ordinances, regulations and laws that govern the Receiving Party. The provisions of this Section XIII shall not apply to (a) information that is publicly known or publicly available, other than as a result of breach of this Section XIII, (b) information obtained by a Receiving Party from a source other than a Disclosing Party, which the Receiving Party knows is not under an obligation of confidentiality to the Disclosing Party, (c) information that is independently developed by a Receiving Party without access to a Disclosing Party's

confidential information, (d) information already in the possession of Receiving Party, provided that such information is not known by Receiving Party to be subject to any legal or contractual obligation of confidentiality owed to Disclosing Party and (e) information that cannot be treated as proprietary, private, or confidential pursuant to applicable law. Each party hereby waives any and all right, title and interest in and to such information of the other and agrees to return all physical copies, and destroy all electronic copies, of such information, except as otherwise agreed or as legally required by any applicable ordinances, regulations and laws that govern the Receiving Party, at the expense of the party returning or destroying the information, upon request at the expiration or termination of this MOU. NRDC retains the right to aggregate otherwise confidential information for use in publications or other materials intended for public consumption, providing that individual confidentiality is maintained.

All rights and intellectual property rights (including copyrights), in any work, including, without limitation, all plans, research results, publications, developments, reports, processes, programs, analyses, website content, and other materials created or developed by or on behalf of the City (“Works”) will be licensed to NRDC on a royalty-free basis to facilitate best practice sharing among participating cities in the Project and other interested cities.

XIV. DISPUTE RESOLUTION

Any dispute or misunderstanding that may arise under this MOU shall first be addressed through negotiations, if possible, between the parties. If the official representatives of the parties do not reach a resolution within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including (but not limited to) alternate dispute resolution processes, with mediation to be the first such process pursued by the parties.

XV. LIMITATION OF LIABILITY

No party shall be liable to any other party for any incidental, indirect, special or consequential damages of any kind arising out of this MOU or the relationship between the City and NRDC. The provisions of this Section XV will survive the expiration or earlier termination of this MOU.

XVI. NOTICES

All notices and other communications pursuant to this MOU must be in writing, addressed to the parties at the applicable address set forth on the signature page hereof (or such other address as a party may from time to time specifically designate in writing), must be sent by a nationally recognized overnight courier and will be deemed given on the date delivery is first accepted or refused.

XVII. INDEMNIFICATION

To the extent legally permissible, the City will indemnify and hold harmless NRDC and all of its officers, directors and employees from and against any and all liabilities, losses, damages, claims or causes of action, and any and all related expenses (including reasonable attorneys’ fees) that in any way arise out of or are alleged to arise out of acts or omissions of the City, its officers, agents, employees and subcontractors and arise out of or are related to, directly or indirectly, NRDC’s work for the City (except as noted below), including, without limitation, any and all claims by NRDC employees or others related to harassment, discrimination, unlawful conduct,

negligence or otherwise, irrespective of whether such claims are made by NRDC or City employees, contractors, customers, clients or any other third parties. Other than as specified herein, neither the City nor NRDC shall be liable to the other party for any alleged damages solely based on the substantive results of any initiatives implemented pursuant to this MOU.

NRDC will defend and indemnify and hold harmless City and all of its officers, directors, and employees from and against any and all liabilities, losses, damages, claims or causes of action, and any and all related expenses (including reasonable attorneys' fees) that in any way arise out of or are alleged to arise out of acts or omissions of NRDC employees that arise out of or are related to, directly or indirectly, NRDC employees' work for the City (except as noted below), including, without limitation, any and all claims related to harassment, discrimination, unlawful conduct.

City and NRDC agree that neither party shall have any obligation to indemnify the other for any liabilities, losses, damages, claims or causes of action, and any and all related expenses (including reasonable attorneys' fees) that in any way arise out of or are alleged to arise out of and NRDC employee's contributions towards completion of the tasks noted in this MOU.

XVIII. MISCELLANEOUS PROVISIONS

Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by any party, by operation of law or otherwise, without the express prior written approval of the other parties. This MOU cannot be modified orally, and none of the terms hereof will be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. This MOU contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

[Signature page follows]

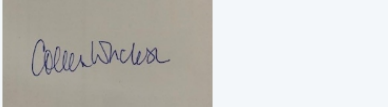
IN WITNESS WHEREOF, the parties to this MOU have affixed their signatures:

APPROVED AS TO FORM:



Approved as to Form:

Attorney
Colleen Winchester



Email: colleen.winchester@sanjoseca.gov



Email: sarah.zarate@sanjoseca.gov



Email: dsims@nrdc.org

EXHIBIT A

Funding Terms

City shall use the Funds solely to support the Project, which is to be conducted for charitable purposes as defined in Section 501(c)(3) of the Internal Revenue Code. No portion of the Funds may be used for lobbying or for participating in, or intervening in (including the publishing or distributing of any statement), any political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of Section 501(c)(3) of the Internal Revenue Code. All of City's actions with respect to the Funds must also be consistent with all federal, state, and local laws and regulations to which City and NRDC are subject. Further, City will not use any portion of the Funds to engage in any activity to support or oppose any ballot measure, initiative or referendum.

At NRDC's reasonable request, City shall provide such written records of receipts and expenditures with respect to the Project and the Funds as are reasonably necessary to enable NRDC to accurately report the use of the Funds on its annual tax and financial filings and to donors and grantors. While the Funds are to be restricted/intended for use for the purposes described in this Agreement, the Funds shall not be deemed to be contingent/conditioned upon the accomplishment of any specific, measurable barrier.