



REGULAR MEETING AGENDA

Date: 12/5/2023
Time: 6:00 p.m.
Locations: [Zoom.us/join](https://zoom.us/join) – ID# 814 7839 7160 and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Members of the public can listen to the meeting and participate using the following methods. If you have issues viewing the meeting, please email the city clerk at jaherren@menlopark.gov.

How to participate in the meeting

- Submit a written comment online up to one-hour before the meeting start time:
city.council@menlopark.gov
- Attend in person in the City Council Chambers
- Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 814 7839 7160
- Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 814 7839 7160
Press *9 to raise hand to speak

Watch meeting:

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Channel 26 (Uverse channel 99)

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Regular Session

- Call To Order**
- Roll Call**
- Agenda Review**
- Public Comment**

Under “Public Comment,” the public may address the City Council on any subject not listed on the agenda. Each speaker may address the City Council once under public comment for a limit of three minutes. You are not required to provide your name or City of residence, but it is helpful. The City Council cannot act on items not listed on the agenda and, therefore, the City Council cannot respond to non-agenda issues brought up under public comment other than to provide general

information.

E. Consent Calendar

- E1. Waive the second reading and adopt ordinances to amend Chapters 16.02, 16.04, 16.08, 16.20, 16.22, 16.23, 16.24, 16.26, 16.30, 16.36, 16.38, 16.40, 16.43, 16.72, 16.80, and 16.98; repeal Chapters 16.32, 16.39, and 16.42; and create Chapter 16.95 of the Zoning Ordinance (Title 16 of the Municipal Code) and amend the zoning map to implement zoning-related programs in the adopted 2023-2031 Housing Element to modify the Affordable Housing Overlay (AHO) to allow residential densities up to 150 dwelling units per acre in combination with State Density Bonus Law; create new opportunities for residential and mixed-use development by modifying certain existing nonresidential zoning districts and combining certain nonresidential and mixed use zoning districts to create a new C-MU (Neighborhood Mixed Use) zoning district, increase densities in the R-3 (Apartment) zoning district around downtown and for sites over 100,000 square feet in size and increase lot coverage in the R-3 and R-4 zoning districts, allow ministerial review of reuse sites, create a new Residential Overlay to allow additional residential development potential for certain parcels, allow family day care homes by-right in residential districts, and rezone certain properties associated with the changes as applicable ([Staff Report #23-268-CC](#))
Determine the proposed amendments are consistent with a previously-certified subsequent environmental impact report under the California Environmental Quality Act (CEQA)
- E2. Adopt a resolution approving a grant of utility easement to West Bay Sanitary District at 100 Terminal Ave. ([Staff Report #23-260-CC](#))
Determine this action is categorically exempt under CEQA Guidelines §15305 Class 5 exemption for minor alterations in land use limitations.
- E3. Adopt a resolution authorizing the city manager to submit applications for all CalRecycle grant and payment programs for which the City of Menlo Park is eligible ([Staff Report #23-261-CC](#))
Not a CEQA project.
- E4. Authorize the city manager to execute three-year master agreements with multiple consulting firms for on-call transportation services ([Staff Report #23-262-CC](#))
Not a CEQA project.
- E5. Amend the agreement with APTIM Environmental and Infrastructure, LLC for the operation, maintenance and reporting of the Bedwell Bayfront Park Landfill gas and leachate collection and control ([Staff Report #23-263-CC](#))
Determine this action is categorically exempt under CEQA Guidelines §15301 exemption for existing facilities.
- E6. Authorize the city manager to execute an agreement with Surveillance Grid for implementing a city-building security camera system in an amount not to exceed \$617,194.59 ([Staff Report #23-265-CC](#))
Not a CEQA project.
- E7. Authorize the city manager to execute an agreement with 360S2G to provide water utility billing services and amend the agreement with Minol USA to provide transitional services for a limited term ([Staff Report #23-266-CC](#))

Not a CEQA project.

- E8. Adopt a resolution approving the proposed revisions to the Below Market Rate Housing Program Guidelines to update the below market rate residential unit for-sale process
([Staff Report #23-267-CC](#))
Not a CEQA project.

F. Public Hearing

- F1. Introduce and waive the first reading of an ordinance amending the City's comprehensive master fee schedule for the city manager's office, community development, library and community services, and public works departments, and Menlo Park Municipal Water
([Staff Report #23-259-CC](#))
Not a CEQA project.

G. Regular Business

- G1. Adopt a resolution to appropriate and allocate expenditures and revenues to support Belle Haven Community Campus opening and ongoing operations ([Staff Report #23-264-CC](#))
([Informe de Personal #23-264-CC](#))
Not a CEQA project.
- G2. Adopt a resolution approving the 2024 City Council regular meeting schedule
([Staff Report #23-269-CC](#))
Not a CEQA project.

H. Study Session

- H1. Provide direction on potential updates to level of service, transportation impact analysis and transportation demand management policies ([Staff Report #23-270-CC](#))
Not a CEQA project.

I. Informational Items

- I1. City Council agenda topics: December 2023 ([Staff Report #23-271-CC](#))
Not a CEQA project.
- I2. Community Wellness and Crisis Response Team (CWCRT) – overview for City Council
([Staff Report #23-272-CC](#))
Not a CEQA project.
- I3. Update on the Caltrain quiet zone study ([Staff Report #23-273-CC](#))
Not a CEQA project.
- I4. Update on the City's Five Year Street Maintenance Plan ([Staff Report #23-274-CC](#))
Not a CEQA project.

I5. Update on the Peninsula Clean Energy Solar for public buildings program
([Staff Report #23-275-CC](#))
Not a CEQA project.

I6. Potential updates to City Council procedures ([Staff Report #23-276-CC](#))
Not a CEQA project.

J. City Manager Report

K. City Councilmember Reports

L. Adjournment

At every regular meeting of the City Council, in addition to the public comment period where the public shall have the right to address the City Council on any matters of public interest not listed on the agenda, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the chair, either before or during the City Council's consideration of the item.

At every special meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the chair, either before or during consideration of the item. Special meetings of the City Council do not provide the opportunity for public comment on items not on the agenda (Cal. Gov. Code §54956.)

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or before, the public hearing.

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at jaherren@menlopark.gov. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Cal. Gov. Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.gov/agendas and can receive email notification of agenda postings by subscribing at menlopark.gov/subscribe. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 12/1/2023)



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-268-CC

Consent Calendar: Waive the second reading and adopt ordinances to amend Chapters 16.02, 16.04, 16.08, 16.20, 16.22, 16.23, 16.24, 16.26, 16.30, 16.36, 16.38, 16.40, 16.43, 16.72, 16.80, and 16.98; repeal Chapters 16.32, 16.39, and 16.42; and create Chapter 16.95 of the Zoning Ordinance (Title 16 of the Municipal Code) and amend the zoning map to implement zoning-related programs in the adopted 2023-2031 Housing Element to modify the Affordable Housing Overlay (AHO) to allow residential densities up to 150 dwelling units per acre in combination with State Density Bonus Law; create new opportunities for residential and mixed-use development by modifying certain existing nonresidential zoning districts and combining certain nonresidential and mixed use zoning districts to create a new C-MU (Neighborhood Mixed Use) zoning district, increase densities in the R-3 (Apartment) zoning district around downtown and for sites over 100,000 square feet in size and increase lot coverage in the R-3 and R-4 zoning districts, allow ministerial review of reuse sites, create a new Residential Overlay to allow additional residential development potential for certain parcels, allow family day care homes by-right in residential districts, and rezone certain properties associated with the changes as applicable, and determine the proposed amendments are consistent with a previously-certified subsequent environmental impact report under the California Environmental Quality Act

Recommendation

Staff recommends that the City Council waive the second reading and adopt ordinances amending the Zoning Ordinance and zoning map to implement zoning-related programs in the adopted 2023-2031 Housing Element, and determine that the proposed amendments are consistent with the previously-certified subsequent environmental impact report (SEIR). The proposed resolutions and ordinances are included as Attachments A through G.

Policy Issues

The recommendation is consistent with the City Council's actions to introduce the ordinances at its Nov. 28

meeting. The Housing Element contains programs committing to increase residential densities within certain zoning districts and on Housing Element inventory sites within a one-year timeframe from adoption of the Housing Element to meet the City's Regional Housing Need Allocation (RHNA) of approximately 3,000 dwelling units at varying income levels. The City must adopt these changes by Jan. 31, 2024, or be potentially subject to a variety of penalties including loss of local control related to housing developments, pursuant to state law.

Background

On Nov. 28, the City Council conducted a public hearing and adopted resolutions amending the General Plan Land Use Element and El Camino Real/Downtown Specific Plan (Specific Plan) and introduced ordinances amending the Zoning Ordinance and zoning map, with modifications, to implement the zoning-related Housing Element programs. An overview of the proposed amendments, information on relevant Housing Element programs, and attachments providing a more detailed history of discussions around the proposed amendments (including the Planning Commission's review and recommendations) are included in the Nov. 28 staff report (Attachment H).

Analysis

The proposed Zoning Ordinance and zoning map amendments would address the following topic areas described in the adopted Housing Element:

- Affordable Housing Overlay (AHO) modifications (Attachment A). Update the AHO to further incentivize development of affordable housing for extremely low, very low and low-income (lower income) households by amending Chapter 16.98 of the Zoning Ordinance (Housing Element program H4.D);
- New residential opportunities in nonresidential districts (Attachments B and C). Create new and/or increased opportunities for residential and/or mixed use developments with a density of up to 30 dwelling units per acre (du/ac) on sites that currently allow only nonresidential uses or lower densities (Program H4.I) and up to 60 du/ac in the C-2 zoning district by amending Zoning Ordinance and zoning map as follows:
 - Rezone properties in six nonresidential zoning districts (C-1-A, C-2-A, C-2-B, C-4, and certain C-2 and P properties) into a single new mixed use district titled C-MU (Neighborhood Mixed Use), based on existing C-2-B zoning regulations;
 - Amend the existing zoning regulations for the C-1, C-1-C and C-2 zoning districts, and certain O district parcels, to allow residential and/or mixed use development; and
 - Make associated changes to other chapters of the Zoning Ordinance for consistency and in compliance with state law;
- Multi-family zoning district amendments (Attachment D). Increase development potential for R-3 parcels around downtown and R-3 parcels with over 100,000 square feet of lot area, and increase lot coverage in the R-3 and R-4 zones (Housing Element program H4.J) by amending the Zoning Ordinance and zoning map as follows:
 - Rezone the parcel at 320 Sheridan Drive from R-1-U to R-3 to permit multifamily development on the site, and
 - Amend the existing zoning regulations for the R-3, R-4, R-4-S, R-3-A and R-3-C zoning districts to increase the amount of lot coverage allowed for residential development;
- Ministerial review (Attachment E). Allow five Housing Element inventory sites (also referred to as "opportunity sites") that were included in previous Housing Elements but did not develop with housing ("reuse sites") ministerial processing, without any discretionary review or hearings, if they include

- residential development with at least 20 percent of units affordable to lower incomes, by amending Chapter 16.08 of the Zoning Ordinance (Housing Element program H4.Q);
- Residential overlay (Attachment F). Create a new Residential Overlay to allow and encourage new or additional residential development on four Housing Element inventory sites without requiring removal of existing development and/or where the underlying zoning may otherwise not allow residential uses, by adding Chapter 16.95 (Residential Overlay) to the Zoning Ordinance (Housing Element program H4.T); and
 - Family day care homes (Attachment G). Establish family day care homes as a permitted use in any residential district by amending Chapters 16.04 and 16.08 of the Zoning Ordinance (Housing Element program H2.F).

At the Nov. 28 meeting, the City Council received a presentation from staff, heard public comment, reviewed and discussed the proposed amendments, and introduced ordinances with the modifications described in the following sections. The modifications introduced by the City Council and several staff-initiated minor “clean up” revisions made for clarity and consistency are shown in tracked changes in the attached ordinances. The minor edits include 1) correcting the grammar for clarity in a preamble clause in Attachment A; 2) changing a word from “a” to “the” for consistency in Municipal Code §16.98.040 (a)(3)(B) of Attachment A; and 3) updating the minimum lot dimensions of the R-3 properties around the Specific Plan area to be consistent with the proposed minimum lot area and with those other R-3 properties citywide in Municipal Code §16.20.030, Table 1. The revisions directed by the City Council are summarized as follows:

AHO

- Remove a long term bicycle parking reduction incentive from Municipal Code §16.98.060(c); and
- Modify the open space incentive to indicate open space may be reduced by the amount necessary to accommodate increased density offered under the AHO in Municipal Code §16.98.060(g).

New residential opportunities in nonresidential districts

- Maintain the C-2-S (Neighborhood Shopping District, Special) zoning district and parcels currently located in the district, and remove them from the proposed C-MU (Neighborhood Mixed Use) zoning district;
- Remove C-2-S parcels from the map of parcels to be rezoned C-MU; and
- Remove provisions to allow drive-through establishments for certain parcels in the C-MU zoning district from Municipal Code §16.40.020, because the C-2-S zoning would continue to regulate uses on those sites and there are no drive-through uses on other sites proposed to be zoned C-MU.

Multi-family zoning district amendments

- Require minimum bicycle parking at 1.5 spaces per residential unit plus 10 percent additional short-term bicycle parking for all R-3 properties in Municipal Code §16.20.030, Table 1.

Residential overlay

- Require a minimum density of 20 du/ac for residential development on sites included in the Residential Overlay in Municipal Code §16.95.030(8).

Waiving the second reading and adopting the ordinances with modifications would allow the City to implement the Housing Element zoning-related programs within the one-year timeframe specified in the adopted Housing Element, comply with state law, and provide new and expanded opportunities for housing

throughout the community.

Additional topics for future consideration

In addition to discussion of the Housing Element zoning-related amendments, the City Council requested that staff track the following additional topics for future consideration:

- Creation of an overlay and/or zoning requirements requiring neighborhood-serving retail, restaurants, and other potential uses in the C-MU district, similar to the Main Street Overlay on Santa Cruz Avenue in the Specific Plan area;
- Consideration of updated green and sustainable building provisions for applicable zoning districts city-wide;
- Evaluation of an accelerated timeline to implement updates to the City's below market rate (BMR) housing regulations (Housing Element program H4.A) and an anti-displacement strategy (Housing Element program H2.E);
- Consideration of further zoning changes to require specified amounts of certain nonresidential uses (such as retail or restaurant uses) and/or limits on the amounts of certain nonresidential uses (such as office) in certain locations, such as the Specific Plan area and/or on certain sites (such as the ministerial reuse sites that include 700 El Camino Real).

Staff is evaluating the timing and resources available to address the additional topic areas and will provide City Council with updates for future consideration and prioritization.

Impact on City Resources

As part of the fiscal year 2020-21 budget, the City Council originally appropriated nearly \$1.5 million from the general fund to support the Housing Element Update (including preparation of the SEIR), which is a City Council priority. The contract has been subsequently amended to accommodate additional revisions, meetings and outreach. Most recently Oct. 24, the City Council approved an additional budget augment for a contract total of \$1,700,212 to ensure the continued involvement of project consultants in conducting public engagement and finalizing the documents and tasks necessary to complete the project.

Environmental Review

As part of the Housing Element Update process (i.e., Housing Element and Safety Element updates and a new Environmental Justice Element, and associated changes including zoning), an SEIR was prepared. On Jan. 31, the City Council adopted Resolution No. 6808 certifying the SEIR and associated California Environmental Quality Act (CEQA) actions. On Feb. 1, a Notice of Determination (NOD) was filed.

An addendum to the SEIR was prepared to reflect the City Council's direction to study increased densities, primarily in the Specific Plan area, above those studied in the SEIR. As noted in the Addendum, the proposed General Plan, Specific Plan, Zoning Ordinance, and zoning map amendments are covered by the previously-certified SEIR and no supplemental or subsequent EIR is required for the proposed amendments because none of the circumstances requiring a supplemental EIR or subsequent EIR exist (CEQA Guidelines §15162). The addendum was included in the City Council agenda packet for the Nov. 28 public hearing and can be found through the link in Attachment H.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours before the meeting.

Attachments

- A. Ordinance amending the Affordable Housing Overlay, Chapter 16.98, of Title 16 of the Menlo Park Municipal Code
- B. Ordinance repealing Chapters 16.32, 16.39, and 16.42; amending Chapter 16.40; and rezoning C-1-A, C-2-A, C-2-B, C-4, and certain C-2 and P parcels to C-MU to create new opportunities for mixed-use development
- C. Ordinance amending Chapters 16.30, 16.36, 16.38, 16.43, and associated chapters of Title 16 of the Menlo Park Municipal Code for consistency to create new opportunities for mixed-use development
- D. Ordinance amending Chapters 16.20, 16.22, 16.23, 16.24, and 16.26 of Title 16 of the Menlo Park Municipal Code; and rezoning 320 Sheridan Drive from R-1-U to R-3 to increase residential density and maximize development proposals in the R-3 and R-4 districts
- E. Ordinance amending Chapter 16.08 of Title 16 of the Menlo Park Municipal Code to allow by-right processing for certain housing developments
- F. Ordinance creating Chapter 16.95 of Title 16 of the Menlo Park Municipal Code to establish a Residential Overlay
- G. Ordinance amending Chapters 16.04 and 16.08 of Title 16 of the Menlo Park Municipal Code to establish day care homes as a permitted use in any residential district
- H. Hyperlink – Nov. 28 City Council staff report: menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20231128-city-council-special-agenda-packet-w-pres.pdf#page=3

Report prepared by:

Tom Smith, Principal Planner

Report reviewed by:

Deanna Chow, Community Development Director

Mary Wagner, Assistant City Attorney

ORDINANCE NO. XXXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 16.98 AFFORDABLE HOUSING OVERLAY TO TITLE
16 OF THE MENLO PARK MUNICIPAL CODE TO IMPLEMENT HOUSING
ELEMENT PROGRAM H4.D TO UPDATE THE AFFORDABLE HOUSING
OVERLAY**

WHEREAS, Chapter 16.98 Affordable Housing Overlay of Title 16 of the Menlo Park Municipal Code was originally established in 2013 to encourage the development of affordable housing for very low, low and moderate income households; and

WHEREAS, the City's Affordable Housing Overlay (AHO) was established to be an alternative to the State Density Bonus Law by providing incentives and flexibility in the development regulations in exchange for the provision of affordable housing units; and

WHEREAS, the Affordable Housing Overlay (AHO) is currently applied to all properties located within the El Camino Real/Downtown Specific Plan and those properties zoned R-4-S (AHO); and

WHEREAS, the City's Regional Housing Need Allocation (RHNA) for the 2023-2031 planning period is 2,946 units, including 740 very low income units, 426 low income units, 496 moderate income units and 1,284 above moderate income units; and

WHEREAS, the City is committed to meeting its RHNA and providing opportunities for a range of housing options at all income levels; and

WHEREAS, the City completed a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, Housing Element Program H4.D (Modify the Affordable Housing Overlay (AHO)), states that the City will update the AHO to further incentive the development of affordable housing to extremely low-, very low – and low-income households; and

WHEREAS, Housing Element Program H4.D ~~states~~ requires the expansion of the ~~that the~~ expand location of the AHO beyond the current areas to encompass the housing opportunity sites and R-3 properties around the Downtown area; and

WHEREAS, Housing Element Program H4.D states the update will clarify that density bonuses and other incentives provided for under the AHO are additive with and can be combined with State Density Bonus Law; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 to review and consider the proposed amendments to Sections 16.98 of Title 16 of the Menlo Park Municipal Code and adopted Planning Commission Resolution No. 2023-__ recommending that the City Council adopt the Zoning Ordinance amendment, whereat all interested person had the opportunity to appear and comment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Repeal.

Chapter 16.98 – Affordable Housing Overlay of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby repealed in its entirety.

Section 3. Add.

Chapter 16.98 – Affordable Housing Overlay of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby added in its entirety.

Section 16.98.010	Purpose and goal
Section 16.98.020	Definitions
Section 16.98.030	Applicability
Section 16.98.040	Affordable housing requirement
Section 16.98.050	Density bonus
Section 16.98.060	Incentives and fee waivers
Section 16.98.070	Continued affordability
Section 16.98.080	Other provisions

Section 16.98.010 Purpose and goal.

The purpose of the Affordable Housing Overlay (“AHO”) zone established by this Chapter is to encourage the development of affordable housing for low, very-low and extremely-low income households. The AHO serves to implement the Housing Element goal of providing new housing that addresses affordable housing needs in the City of Menlo Park by establishing development regulations for designated housing opportunity sites. The AHO is also intended to address those housing projects which provide a greater percentage of affordable housing units than required pursuant to Chapter 16.96 (Below Market Rate Housing Program). The AHO encourages the production of affordable housing by providing density bonuses and other incentives to developers that provide affordable housing as a part of development projects. To qualify, projects must restrict housing units to certain income levels as further described in the Chapter. The AHO may be applied by itself or in combination with State Density Bonus Law to density bonuses beyond those allowable under State Density Bonus Law.

Section 16.98.020 Definitions.

- (a) “Affordable units” means residential dwelling units that are restricted to households that qualify as extremely low, very low, and low-income. For for-sale residential projects, moderate income also applies as an affordable unit.
- (b) “Mixed use” means developments consisting of residential and nonresidential uses with at least two thirds of the square footage designated for residential use.

Section 16.98.030 Applicability.

The AHO and this Chapter apply to the Menlo Park El Camino Real and Downtown Specific Plan area, properties zoned R-4-S(AHO) (High Density Residential, Special - Affordable Housing Overlay), properties zoned R-3 (Apartment) and located around the El Camino Real/Downtown Specific Plan Area as described in Chapter 16.30, and housing opportunity sites identified in the adopted Housing Element (2023-2031) as described in Appendix 7-1,

Table 2, with the exception for site #38. Properties within the AHO may, but are not required to utilize the rules and regulations of this Chapter.

Section 16.98.040 Affordable housing requirement.

- (a) To qualify for the density bonuses and incentives pursuant to this Chapter, a development project must:
 - (1) Be a 100% residential or mixed-use project;
 - (2) Provide five or more residential units;
 - (3) Provide a minimum number of affordable units as follows:
 - (A) At least 20% of the total residential units in the development shall be restricted to extremely low, very low, and low-income households in rental developments;
 - (B) At least 20% of the total residential units in thea development shall be restricted to extremely low, very low, low-income and moderate income households in for-sale and condominium developments;
 - (C) At least 25% of the total affordable units shall be restricted to very low and extremely low-income households, or at least 15% of the total affordable units shall be restricted to extremely low-income households.
- (b) The affordable units required pursuant to subsection 16.98.040(3), above, shall be calculated based on the total number of units in the development, excluding any units permitted pursuant a density bonus as set forth in section 16.98.050.

Section 16.98.050 Density Bonus.

Development projects meeting the criteria set forth in section 16.98.040 shall be eligible for a density bonus pursuant to this section.

- (a) For 100% residential or mixed-use developments meeting the criteria of 16.98.040, a density bonus shall be granted and calculated pursuant to Table 1 of this chapter.
- (b) AHO Density Bonus Not Combined with State Density Bonus. Where at least 20% of the total number of units, exclusive of any density bonus units, of a housing development are restricted as affordable units, the density bonus granted and calculated shall be pursuant to Table 1.
 - (1) The percentage of affordable units shall be calculated as a percentage of the total number of units in a project, exclusive of any density bonus units. The density bonus is the sum of the applicable density bonus based on the percentage of affordable units in the applicable income category. In no instance shall the total density bonus exceed 60%, unless a project is 100% affordable. For a 100% affordable residential project, the project is allowed a maximum density bonus of 80% for the residential units.
- (c) AHO Density Bonus Combined with State Density Bonus. Where at least 25% of the total units, exclusive of any density bonus units, of a housing development are restricted as affordable units, the density bonus granted and calculated pursuant to Table 1 may be combined with a density bonus granted pursuant to the State Density Bonus Law (Government Code section 65915 et seq.)
 - (1) When application of the AHO is combined with the provisions of State Density Bonus Law, the density bonus is additive. The percentage of affordable units shall be calculated as a percentage of the total number of units in a project, not including any density bonus units. The combined density bonus is the sum of the following: 1) the applicable density bonus based on the proposed project pursuant State Density Bonus Law and 2) one-quarter of the applicable density bonus provided by the AHO in Table 1. In no instance shall the total density bonus exceed 65%, unless a project is 100% affordable. For a

100% affordable residential project combining use of the AHO and State Density Bonus Law, the project is allowed a density of up to 150 dwelling units per acre.

- (2) A Density Bonus may only be utilized to increase density of the residential uses of a development project and shall not be utilized to increase FAR, height, or any other density metric for non-residential uses within a development project.

Table 1: Density Bonus***

Percentage of Affordable Units in a Development	Very Low Income**	Low Income	Moderate Income*
5%	20.0%	0%	0%
6%	22.5%	0%	0%
7%	25.0%	0%	0%
8%	27.5%	0%	0%
9%	30.0%	0%	0%
10%	32.5%	20.0%	5.0%
11%	35.0%	21.5%	6.0%
12%	38.75%	23%	7.0%
13%	42.5%	24.5%	8.0%
14%	46.25%	26.0%	9.0%
15%	50.0%	37.0%	10.0%
16%	50.0%	37.0%	10.0%
17%	50.0%	37.0%	10.0%
18%	50.0%	37.0%	10.0%
19%	50.0%	37.0%	10.0%
20%	51.0%	39.0%	17.0%
21%	52.0%	41.0%	18.5%
22%	53.0%	43.0%	20.0%
23%	54.0%	45.0%	21.5%
24%	55.0%	47.0%	23.0%
25%	56.0%	49.0%	24.5%
26%	57.0%	51.0%	26.0%
27%	58.0%	53.0%	27.5%
28%	59.0%	55.0%	29.0%
29%	60.0%	57.0%	30.5%
30%	60.0%	60.0%	32.0%
31%	60.0%	60.0%	33.5%
32%	60.0%	60.0%	35.0%
33%	60.0%	60.0%	36.5%
34%	60.0%	60.0%	38.0%
35%	60.0%	60.0%	39.5%
36%	60.0%	60.0%	41.0%

37%	60.0%	60.0%	42.5%
38%	60.0%	60.0%	44.0%
39%	60.0%	60.0%	45.5%
40%	60.0%	60.0%	47.0%
41%	60.0%	60.0%	48.5%
42%	60.0%	60.0%	50.0%
43%	60.0%	60.0%	51.5%
44%	60.0%	60.0%	53.0%
100%	80.0%	80.0%	80.0%

*Applicable to only home ownership units

** Or any income category which an AMI that is less than very low income AMI

***All density bonus calculations resulting in fractions of less than .5 shall be rounded down to the next whole number. All density bonus calculations resulting in fractions of .5 and up are rounded up to the next whole number.

Section 16.98.060 Incentives and fee waivers.

In addition to granting a density bonus, the City shall grant one or more “incentives” to each project that qualifies for a density bonus pursuant to this Chapter. An applicant for a housing development that qualifies for a density bonus utilizing the AHO shall be entitled to each and only the following incentives:

- (a) Floor Area Ratio. A project shall be permitted to increase the floor area ratio by an amount that proportionally corresponds to the increase in allowable density identified in section 16.98.050 above and an additional five percent or other increase reasonably sufficient to make development of very-low, low and moderate income multiple-bedroom units and family housing feasible.
- (b) Stories/Height. A project shall be permitted to increase the height up to the maximum number of feet that are necessary to accommodate the increased density afforded by the density bonus. The applicant shall demonstrate to the satisfaction of the Community Development Director, or designee, that the height increase is necessary to accommodate the increased density afforded by the density bonus. For mixed use projects the height increase is only applicable to the residential component of the project.
- (c) Parking. Unless modified herein, the parking requirements in the underlying zoning designation of the property shall apply. All fractional units shall be rounded up to the nearest whole number. The parking requirements in the AHO shall be modified for each affordable unit as follows:
 - (1) Number of spaces:
 - (A) Studio requires 0.5 parking spaces.
 - (B) A one-bedroom requires one parking space.
 - (C) A two-bedroom or larger unit requires 1.5 parking spaces.
 - (2) A senior citizen housing project as defined in Sections 51.3 and 51.12 of the Civil Code shall be required to provide no more than 0.5 parking spaces per dwelling unit.
 - (3) The spaces required for the affordable units need not be covered or located in a garage or carport.
 - (4) If two spaces are being provided for any one affordable dwelling unit, the spaces may be in tandem.
 - (5) Long term bicycle parking may be allowed a reduction of 0.5 spaces per unit.
- (d) Parcels that are adjacent to one another, share any portion of a property line, and are within the same underlying zoning district may calculate density, floor area ratio, building

coverage, paving, landscaping and required parking across the parcels, provided that there is a recorded agreement among the owner(s) of the parcels transferring development rights between the parcels such that the maximum overall density of the combined parcels is not exceeded.

- (e) Coverage. In addition to the amount necessary to physically accommodate the increased density provided for by this Chapter, any applicable maximum building coverage and/or allowable paving requirement shall be increased by five percent and the minimum open space/landscaping requirement reduced by 10 percent from the underlying zoning designation.
- (f) Setbacks. In addition to the amount necessary to physically accommodate the increased density provided for by this Chapter, required setbacks shall be reduced to five feet, except when the parcel subject to the AHO abuts a parcel zoned single-family residential, in which case the setbacks identified in underlying zoning shall control.
- (g) Open Space. ~~In addition to the amount necessary to physically accommodate the increased density provided for by this Chapter, a~~Any common and/or private open space may be reduced by ~~the amount necessary to physically accommodate the increased density provided for by this Chapter~~up to 50 percent from the underlying zoning.
- (h) Processing Fees. Those projects that provide at least 50 percent of the units in a project for low-income households or 25 percent for very-low income households may be entitled to a fee waiver for all processing fees associated with the various applications for development, subject to demonstrating that the project would not be feasible without the waiver of processing fees.
- (i) Other Fees. Those projects that provide at least 50 percent of the units in the project for low-income households or 25 percent for very-low income households may be entitled to a reduction in all other fees in an amount that corresponds to the increase in allowable density identified in section 16.98.050 above, with a maximum of 65% for a 100% affordable housing project, subject to demonstrating that the project would not be feasible without the waiver of certain impact fees. Any project requesting a reduction or waiver of the traffic impact fee, park dedication fee, building construction street impact fee, Menlo Park El Camino Real Downtown Specific Plan preparation fee, or other fee(s) in excess of that percentage reduction shall apply for the requested reduction or waiver, which shall be subject to a discretionary review and approval process. The City Council shall be the final decision maker regarding any such request.
- (j) Incentives and fee waivers granted pursuant to this section shall not be combined with any incentives or fee waivers granted pursuant to the State Density Bonus Law (Government Code 65915 et seq.)

Section 16.98.070 Continued affordability.

Prior to issuance of any building permit, the applicant shall execute an agreement with the City in a form acceptable to the City Attorney ensuring the continued affordability of the affordable units for a period of not less than 55 years and compliance with the City's Below Market Rate Housing Program Guidelines. This content may be part of a Below Market Housing Agreement.

Section 16.98.080 Additional provisions.

Development Projects approved pursuant to this chapter shall adhere to the following provisions:

- (a) Review of projects under this Chapter 16.98 shall occur concurrently with review of any other entitlements required for the project.

- (b) The affordable units must be constructed concurrently with market-rate units and shall be integrated into the project and be comparable in construction quality and exterior design to any market rate units.
- (c) The number of bedrooms in the affordable units shall be consistent with the mix of market rate units. Applicants may elect to include a higher percentage of units with more bedrooms.
- (d) The affordable units shall also comply with the City’s Below Market Rate Housing Program Guidelines.

Section 4. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 6. Publication; effective date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the twenty-eighth day of November, 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the __ day of __, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk

ORDINANCE NO. XXXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING AND RENAMING CHAPTER 16.40 (C-2-B, NEIGHBORHOOD
MIXED USE DISTRICT, RESTRICTIVE) TO C-MU, NEIGHBORHOOD MIXED
USE, AND REZONING C-1-A, ~~C-2-S~~, C-2-A, C-2-B, C-4, AND CERTAIN C-2
AND P PARCELS TO C-MU TO IMPLEMENT HOUSING ELEMENT PROGRAM
H4.I AND CREATE NEW OPPORTUNITIES FOR MIXED-USE DEVELOPMENT**

WHEREAS, beginning in 2021, the City undertook a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, previously, on December 8, 2021, the City Council conducted a public meeting and reviewed and recommended potential land use strategies for the Housing Element, and among those was a strategy to modify the city's retail/commercial zoning districts to allow for residential uses and other potential development standards to encourage the production of mixed-use developments; and

WHEREAS, the adopted Housing Element includes Policy H4.4, Mixed-Use Housing, to encourage well-designed residential mixed-use developments where residential use is appropriate to the setting, and proximate to transit and other services, within certain existing non-residential zoning districts; and

WHEREAS, the adopted Housing Element includes Policy H4.5, Redevelopment of Commercial Shopping Areas and Sites, to encourage housing development in conjunction with the redevelopment of commercial shopping areas and sites; and

WHEREAS, the adopted Housing Element includes Program H4.I, Create New Opportunities for Mixed-Use Development, to adopt Zoning Ordinance amendments (and other related actions) to allow only residential uses and/or mixed-use developments with a density of up to 30 dwelling units per acre in existing non-residential zones; and

WHEREAS, the Planning Commission held a study session on August 14, 2023, to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.I; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.I; and

WHEREAS, a strategy was identified to consolidate and rezone the properties in ~~seven-six~~ existing districts (C-1-A, ~~C-2-S~~, C-2-A, C-2-B, C-4, and certain C-2 and P properties) identified in Exhibit A-2 into a single C-MU (Neighborhood Mixed Use) zoning district (Exhibit A), and the Zoning Ordinance text amendments and rezoning would allow the development of residential uses with a density of up to 30 dwelling units per acre and/or neighborhood-serving retail and commercial uses typically on smaller parcels along Willow Road, Middlefield Road, and neighborhood collector streets, consistent with Housing Element Program H4.I; and

WHEREAS, the rezoning of properties identified in Exhibit A-2 is consistent with the General Plan land use designation of Commercial; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023 to review and consider amendments to the General Plan Land Use Element, amendments to Title 16 of the Menlo Park Municipal Code, and subsequent zoning map amendments (“rezonings”), and adopted Planning Commission Resolution No. 2023-___ recommending that the City Council adopt the amendments, where all interested persons had the opportunity to appear and comment; and

WHEREAS, after due consideration of the proposed amendments to Title 16 and the rezoning of certain properties, public comments, the Planning Commission’s recommendation, and the staff report, the City Council finds that the proposed amendments and rezoning of properties as identified herein is consistent with the General Plan and is appropriate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Repeal.

Chapter 16.32 – C-1-A Administrative and Professional District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby repealed in its entirety.

~~**Section 3.** Repeal.~~

~~Chapter 16.37 – C-2-S Neighborhood Commercial District, Special of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby repealed in its entirety.~~

Section 43. Repeal.

Chapter 16.39 – C-2-A Neighborhood Shopping District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby repealed in its entirety.

Section 54. Repeal.

Chapter 16.42 – C-4 General Commercial District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby repealed in its entirety.

Section 65. Amendment.

Chapter 16.40 – C-2-B Neighborhood Mixed Use District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby renamed C-MU Neighborhood Mixed Use and amended to read as indicated in Exhibit A.

Section 76. Zoning map amendment.

The zoning map of the City of Menlo Park is hereby amended such that certain real properties as identified in Exhibit A-2 are rezoned to the C-MU (Neighborhood Mixed Use) zoning district;

Section 137. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this

ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 148. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 159. Publication; effective date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the twenty-eighth day of November, 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the ___ day of ___, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk

Exhibits

A. Amendments to Chapter 16.40 – C-2-B Neighborhood Mixed Use District

A-2. C-MU Rezoning Map

Proposed Zoning Ordinance Text Amendments to Chapter 16.40 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Chapter 16.40 – C-2-B Neighborhood Mixed Use District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby renamed and amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

Chapter 16.40

~~C-2-BC-MU~~ NEIGHBORHOOD MIXED USE DISTRICT, RESTRICTIVE

16.40.010 Permitted uses.

Permitted uses in the ~~C-2-BC-MU~~ district, all within a building and intended to serve the neighborhood and limited to the hours between eight (8) a.m. and eight (8) p.m., including loading and unloading of any kind, are as follows:

- (1) Retail services;
- (2) Personal services;
- (3) Cafes and restaurants, excluding ~~(A) fast food restaurants, (BA) drive-in~~through restaurants, ~~(CB)~~ restaurants serving beer, wine or alcoholic beverages, and ~~(DC)~~ restaurants providing live music or entertainment;
- (44) Multiple dwellings. (Ord. 1027 § 3 (part), 2016: Ord. 936 § 3 (part), 2005: Ord. 766 § 3 (part), 1988).

16.40.015 Administratively permitted uses.

Uses allowed in the ~~C-2-BC-MU~~ district, subject to obtaining an administrative permit, are as follows:

- (1) Financial services;
- (2) Professional offices;
- ~~(3) All of the specified uses in this chapter between the hours of eight (8) p.m. and eight (8) a.m., or when not intended to serve the neighborhood. (Ord. 1027 § 3 (part), 2016: Ord. 936 § 3 (part), 2005).~~
- (3) Outdoor seating;
- (4) Live music or entertainment.

16.40.020 Conditional uses.

Conditional uses allowed in the ~~C-2-BC-MU~~ district, subject to obtaining a use permit, are as follows:

- (1) Service stations, with or without car wash and/or mini-mart;
- (2) Automotive repair with service station;
- (3) Mortuaries;
- (4) Convalescent homes;
- ~~(5) Mini warehouse storage;~~
- (5) Child day care center;
- ~~(6) Cafes and restaurants serving beer, wine, or alcoholic beverages and/or provides live music or entertainment;~~

~~(7) Cafes and restaurants, financial services, or retail services uses with a drive-through, limited to one drive-through establishment for each of the following sites (a) and (b):
 (a) San Mateo County Assessor's Parcel Number 055-395-090;
 (b) San Mateo County Assessor's Parcel Number 055-398-270 or 055-398-280;~~

~~(7877)~~ Public utilities in accordance with Chapter 16.76;

~~(8988)~~ Special uses in accordance with Chapter 16.78. (Ord. 1027 § 3 (part), 2016; Ord. 936 § 3 (part), 2005; Ord. 850 § 7 (part), 1993; Ord. 766 § 3 (part), 1988).

16.40.030 Development regulations.

Development regulations in the ~~C-2-BC-MU~~ district are as follows:

- (1) Minimum district size: twenty-five thousand (25,000) square feet;
- (2) Minimum lot area: none, except that the cumulative lot area of all property within the ~~C-2-BC-MU~~ district shall be no less than twenty-five thousand (25,000) square feet;
- (3) Minimum lot dimensions: none;
- (4) Required minimum yards: front, ten (10) feet; side, none; corner side, ten (10) feet, rear, none; except when abutting a residential district where a twenty (20) foot yard shall be provided;
- (5) Land covered by all structures shall not exceed sixty percent (60%) of a building site;
- (6) Not less than ten percent (10%) of a building site shall be occupied by ~~appropriate~~ landscaping;
- (7) Height of structures shall not exceed thirty (30) feet. For a mixed residential and nonresidential development, the maximum building height shall not exceed forty (40) feet;
- (8) In the case of conditional uses, additional regulations may be required by the planning commission;
- ~~(9) Nonresidential uses are a required component of any development in the C-MU district, except for sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households, which are subject to the provisions of Section 16.08.105;~~
- ~~(910)~~ The floor area ratio for nonresidential uses shall not exceed forty percent (40%), except that fifty percent (50%) may be allowed with use permit approval and a minimum lot size of twenty thousand (20,000) square feet;
- ~~(4011)~~ The maximum density is thirty (30) dwelling units per acre (du/ac) is thirty (30) du/ac;
- ~~(4412)~~ The floor area ratio for multiple dwelling units shall increase on an even gradient up to ninety percent (90%) for thirty (30) du/ac. The maximum floor area ratio may be allowed when the maximum number of dwelling units is proposed, even if less than thirty (30) du/ac;
- ~~(4213)~~ In a mixed residential and commercial development, the combined maximum floor area ratio shall not exceed one hundred ~~ten percent (400% 110%)~~. The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per subsections ~~(910)~~ and ~~(4412)~~ of this section;
- ~~(14)~~ In a mixed nonresidential and residential development that provides the maximum number of dwelling units per subsection (12), the combined maximum floor area ratio is one hundred-forty percent (140%). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per subsections (10) and (12) of this section;
- ~~(4315)~~ Development in the ~~C-2-BC-MU~~ district shall meet the following parking requirements:
 - (a) Parking shall not be located in any required yard adjacent to a street.

Land Use	Minimum Spaces (Per Unit or 1,000 Sq. Ft.)	Maximum Spaces (Per Unit or 1,000 Sq. Ft.)	Minimum Bicycle Parking ¹
Residential units	1 per unit	1.5 per unit	1.5 long-term ² per unit; 10% additional short-term ² for guests
Office	2	3	1 per 5,000 sq.ft. of gross floor area Minimum 2 spaces for office and research development: 80% for long-term ² and 20% for short-term ² For all other commercial uses: 20% for long-term ² and 80% for short-term ²
Research and development	4.5	2.5	
Retail	2.5	3.3	
Financial services	2	3.3	
Eating and drinking establishment	2.5	3.3	
Personal services	2	3.3	
Private recreation	2	3.3	
Child care center	2	3.3	
Other	At transportation manager discretion	At transportation manager discretion	At transportation manager discretion

1 See the latest edition of best practice design standards in Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines.

2 Long-term parking is for use over several hours or overnight, typically used by employees and residents. Short-term parking is considered visitor parking for use from several minutes to up to a couple of hours.

- (b) The electric vehicle charging spaces requirements in Section 16.72.010 apply. (Ord. 1050 § 7, 2018: Ord. 1027 § 3 (part), 2016: Ord. 766 § 3 (part), 1988).
- (c) Parking facilities may be shared at the discretion of the city's transportation manager if multiple uses cooperatively establish and operate the facilities, if these uses generate parking demands primarily during different hours than the remaining uses, and if a sufficient number of spaces are provided to meet the maximum cumulative parking demand of the participating uses at any time. An individual development proposal may incorporate a shared parking study to account for the mixture of uses, either on site or within a reasonable distance. The shared parking supply would be subject to review and approval based on the proposed uses, specific design and site conditions. Project applicants may also be allowed to meet the minimum parking requirements through the use of nearby off-site facilities at the discretion of the transportation manager.

16.40.040 Residential design standards.

Construction of any new building incorporating residential uses, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable

design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

(1) Building Setbacks and Projections within Setbacks.

- (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
- (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
- (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

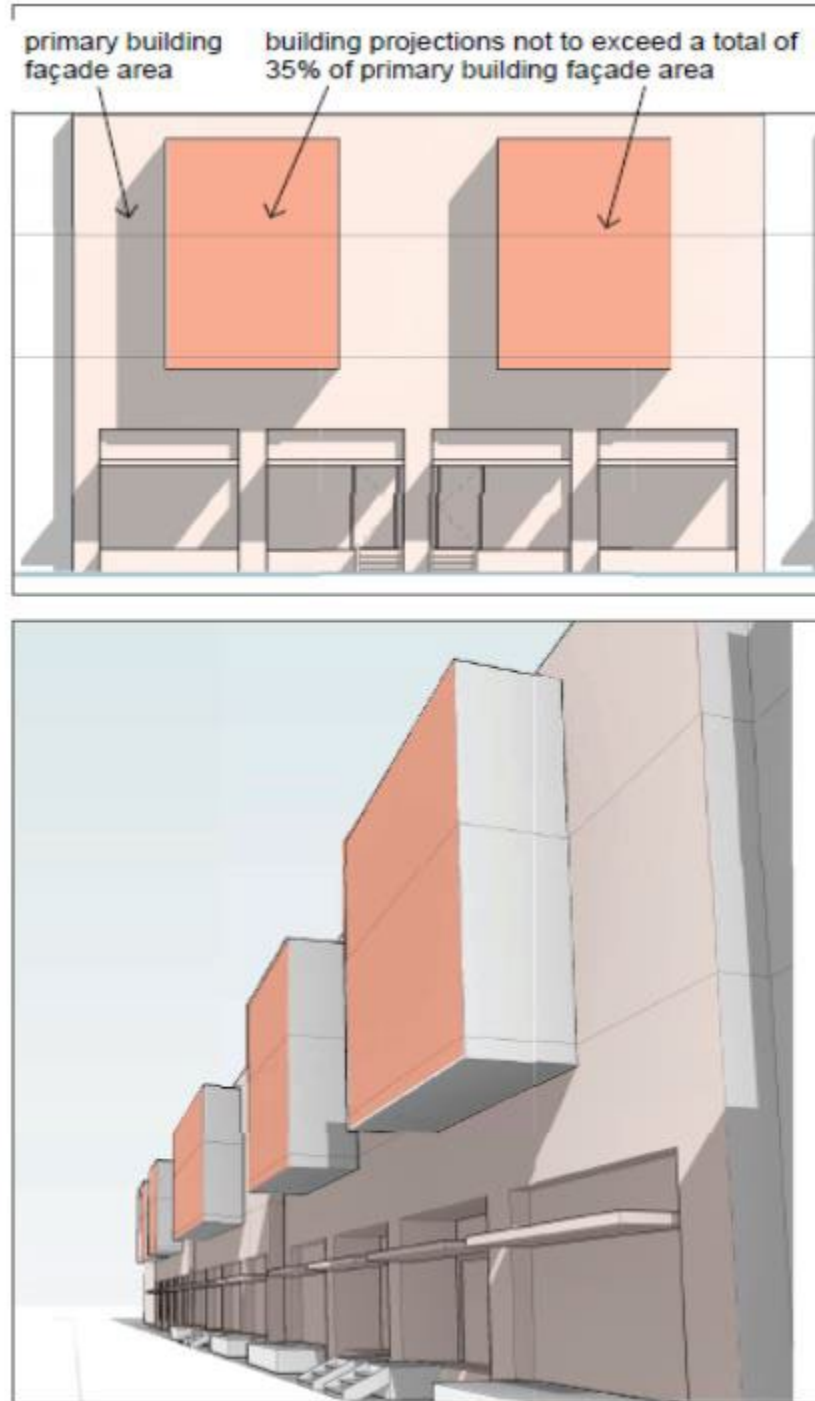


Figure 1

(2) Facade Modulation and Treatment.

- (A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
- (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.
- (3) Building Profile.
- (A) Starting at a height of twenty-five (25) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
- (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.40.040(1). (See Figure 2.)

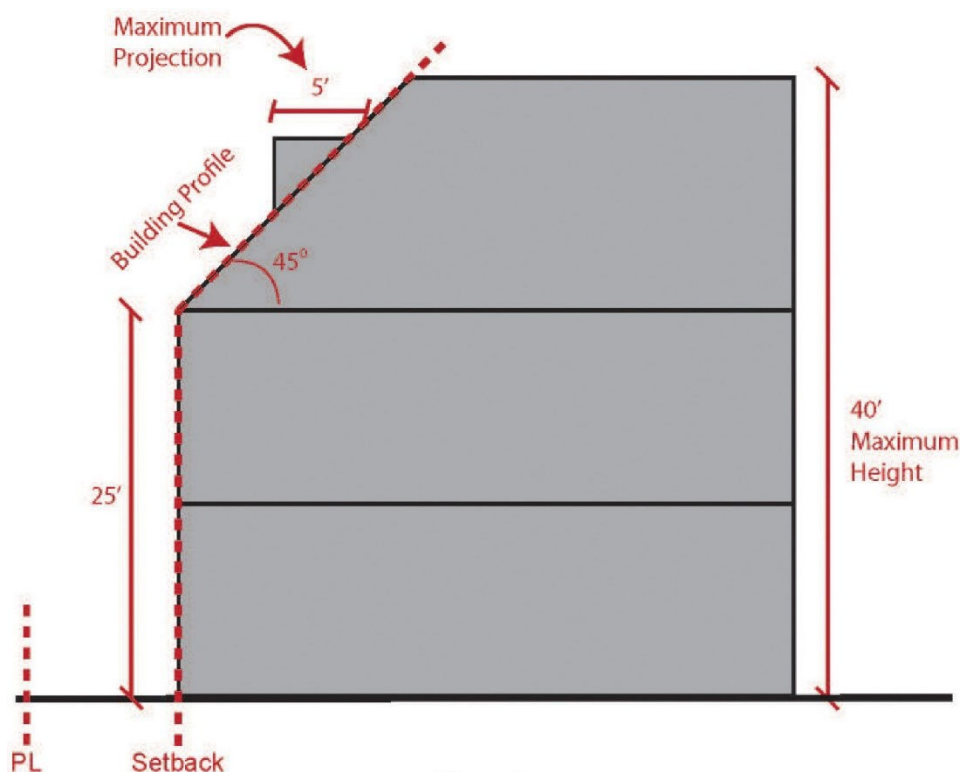


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.
- (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize materials and colors consistent with the design of the remainder of the building.

- (4) Height.
- (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.
- (A) All exterior stucco shall be completed in textures that are smooth, sanded, or fine-scraped. Heavy-figuring or rough cast stucco are not permitted.
 - (B) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (C) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (D) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.
- (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.
- (A) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (B) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).

- (iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).
- (8) Access and Parking.
 - (A) Shared entrances to parking for nonresidential and residential uses shall be used where possible.
 - (B) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
 - (C) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
 - (D) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
 - (E) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
 - (F) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.
- (9) Lighting.
 - (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
 - (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.40.050 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

- (1) Green Building.
 - (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.40.050(1)(B).
- (2) Energy.
 - (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:
 - (i) On-site energy generation;
 - (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
 - (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Tables 16.40.050(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.40.050(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.40.050(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.40.050(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

1 "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the

building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.40.050(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.40.050(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

(3) Water Use Efficiency and Recycled Water.

(A) Single pass cooling systems shall be prohibited in all new buildings.

(B) All new buildings shall be built and maintained without the use of well water.

(C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.

(D) All new buildings shall be dual plumbed for the internal use of recycled water.

(E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source assessment, the alternative water source and its proposed uses shall be

approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

(F) Potable water shall not be used for dust control on construction projects.

(G) Potable water shall not be used for decorative features, unless the water recirculates.

(4) Waste Management.

(A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.

(5) Bird-Friendly Design.

(A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.

(B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.

(C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.

(D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.

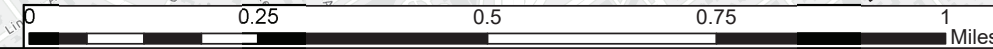
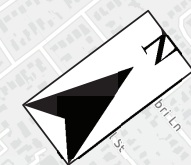
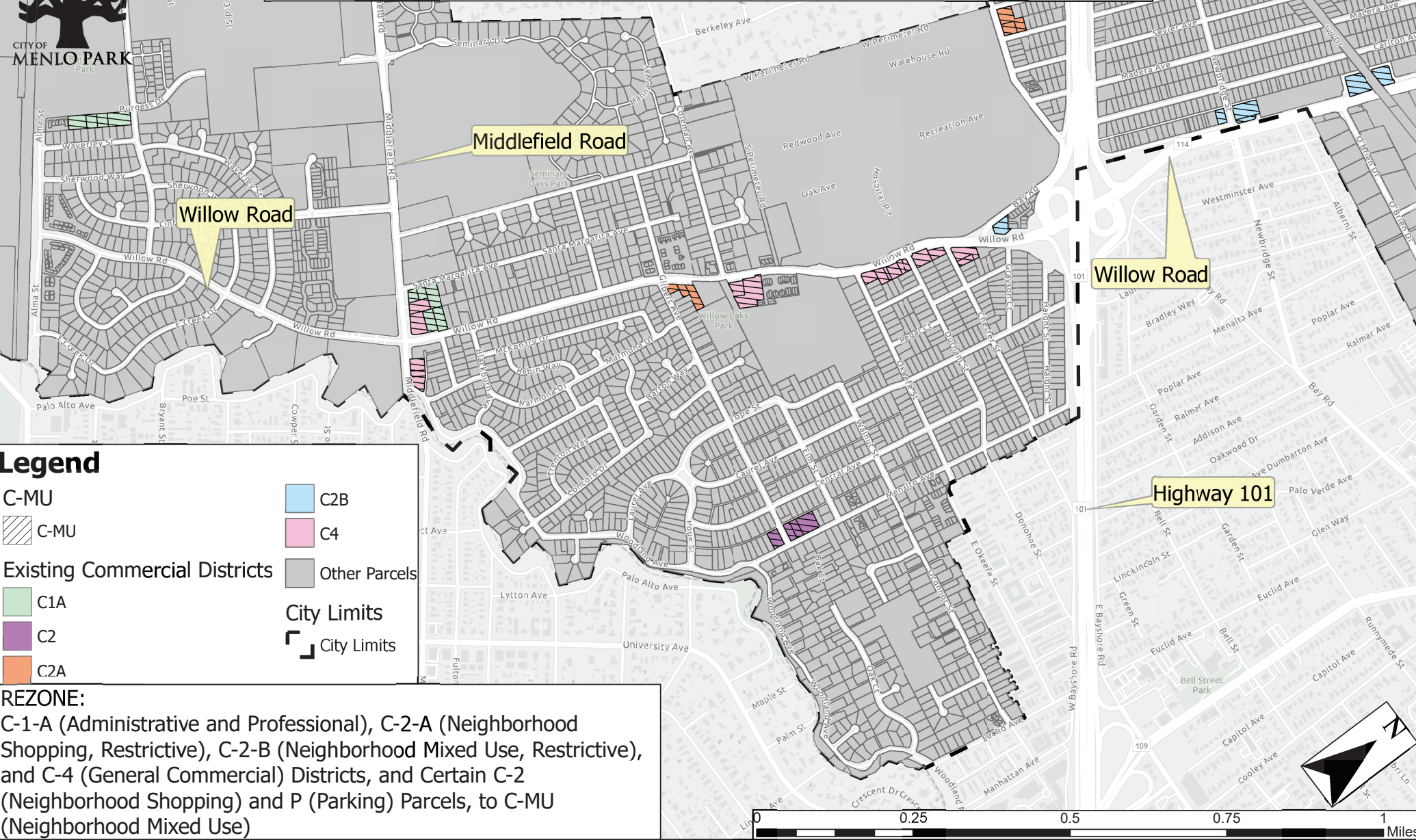
(E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.

(F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.

(G) Use of rodenticides shall not be allowed.

(H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

6th Cycle Housing Element Zoning Ordinance Amendment Proposed C-MU Zoned Properties



ORDINANCE NO. XXXX**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTERS 16.30 (C-1, ADMINISTRATIVE AND PROFESSIONAL DISTRICT, RESTRICTIVE), 16.36 (C-1-C, ADMINISTRATIVE, PROFESSIONAL AND RESEARCH DISTRICT, RESTRICTIVE), 16.38 (C-2, NEIGHBORHOOD SHOPPING DISTRICT), AND 16.43 (O, OFFICE DISTRICT) OF THE MUNICIPAL CODE; AND AMENDING ASSOCIATED ZONING ORDINANCE CHAPTERS FOR CONSISTENCY WITH THE ZONING CHANGES TO IMPLEMENT HOUSING ELEMENT PROGRAM H4.I AND CREATE NEW OPPORTUNITIES FOR MIXED-USE DEVELOPMENT**

WHEREAS, beginning in 2021, the City undertook a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, previously, on December 8, 2021, the City Council conducted a public meeting and reviewed and recommended potential land use strategies for the Housing Element, and among those was a strategy to modify the city's retail/commercial zoning districts to allow for residential uses and other potential development standards to encourage the production of mixed-use developments; and

WHEREAS, the adopted Housing Element includes Policy H4.4, Mixed-Use Housing, to encourage well-designed residential mixed-use developments where residential use is appropriate to the setting, and proximate to transit and other services, within certain existing non-residential zoning districts; and

WHEREAS, the adopted Housing Element includes Policy H4.5, Redevelopment of Commercial Shopping Areas and Sites, to encourage housing development in conjunction with the redevelopment of commercial shopping areas and sites; and

WHEREAS, the adopted Housing Element includes Program H4.I, Create New Opportunities for Mixed-Use Development, to adopt Zoning Ordinance amendments (and other related actions) to allow only residential uses and/or mixed-use developments with a density of up to 30 dwelling units per acre in existing non-residential zones; and

WHEREAS, the Planning Commission held a study session on August 14, 2023, to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.I; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.I; and

WHEREAS, an approach was identified to amend the Zoning Ordinance to allow the development of residential uses with a density of up to 30 dwelling units per acre in four existing zoning districts (C-1, C-1-C, C-2, and on certain O parcels) generally on larger sites and/or in office parks typically along Sand Hill Road and within the area bounded by Marsh Road,

Bohannon Drive, and Scott Drive, consistent with Housing Element Program H4.I and as identified in Exhibits A, B, C, and D; and

WHEREAS, the amendments to the various districts in the Zoning Ordinance to implement Program H4.I would also result in a need to amend Chapters 16.02 (General Provisions), 16.08 (Districts Established—General Regulations), 16.72 (Off-Street Parking), and 16.80 (Nonconforming Uses and Buildings) of the Municipal Code to ensure that new development complies with mitigation monitoring requirements from the Housing Element Update Subsequent Environmental Impact Report (SEIR), to regulate parking for residential uses, to exempt existing development from nonconformities that may directly result from zoning changes, and to ensure consistency throughout the Municipal Code as indicated in Exhibit E; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023 to review and consider amendments to the General Plan Land Use Element, amendments to Title 16 of the Menlo Park Municipal Code, and subsequent zoning map amendments (“rezonings”), and adopted Planning Commission Resolution No. 2023-___ recommending that the City Council adopt the amendments, where all interested persons had the opportunity to appear and comment; and

WHEREAS, after due consideration of the proposed amendments to Title 16 and the rezoning of certain properties, public comments, the Planning Commission’s recommendation, and the staff report, the City Council finds that the proposed amendments and rezoning of properties as identified herein is consistent with the General Plan and is appropriate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 82. Amendment.

Chapter 16.30 – C-1 Administrative and Professional District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as indicated in Exhibit BA.

Section 93. Amendment.

Chapter 16.36 – C-1-C Administrative, Professional and Research District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as indicated in Exhibit CB.

Section 104. Amendment.

Chapter 16.38 – C-2 Neighborhood Shopping District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as indicated in Exhibit DC.

Section 115. Amendment.

Chapter 16.43 – O Office District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as indicated in Exhibit ED.

Section 126. Amendments.

Chapter 16.02 – General Provisions, Chapter 16.08 – Districts Established—General Regulations, Chapter 16.72 – Off-Street Parking, and Chapter 16.80 – Nonconforming Uses and Buildings of Title 16 – Zoning of the City of Menlo Park Municipal Code are hereby amended to read as indicated in Exhibit FE.

Section 137. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 148. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 159. Publication; effective date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the twenty-eighth day of November, 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the ___ day of ___, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk

Exhibits

- A. Amendments to Chapter 16.30 – C-1 Administrative and Professional District, Restrictive
- B. Amendments to Chapter 16.36 – C-1-C Administrative, Professional and Research District, Restrictive
- C. Amendments to Chapter 16.38 – C-2 Neighborhood Shopping District
- D. Amendments to Chapter 16.43 – O Office District
- E. Amendments to Chapters 16.02, 16.08, 16.72, and 16.80

Proposed Zoning Ordinance Text Amendments to Chapter 16.30 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Chapter 16.30 – C-1 Administrative and Professional District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.30.010 Permitted uses.

There are no permitted uses in the C-1 district. (Prior code § 30.412(A)).

16.30.020 Conditional uses.

Conditional uses allowed in the C-1 district, subject to obtaining a use permit are as follows:

- (1) Professional, executive and administrative offices;
- (2) Research facilities;
- (3) Multiple dwellings;
- ~~(34)~~ Public utilities in accordance with Chapter 16.76;
- (45) Special uses in accordance with Chapter 16.78. (Ord. 850 § 4, 1993; Prior code § 30.412(B)).

16.30.030 Development regulations.

Development regulations in the C-1 district are as follows:

- (1) Minimum lot area: two (2) acres;
- (2) Minimum lot dimensions: one hundred fifty (150) feet width and depth;
- (3) Required minimum yards: thirty (30) feet front; twenty (20) feet rear; twenty (20) feet side;
- (4) ~~For a nonresidential development, land covered by all structures shall not exceed forty percent (40%) of a building site. For a one hundred percent (100%) residential development, land covered by all structures shall not exceed fifty percent (50%) of a building site. For a development with mixed nonresidential and residential uses, land covered by all structures shall not exceed fifty-five percent (55%) of a building site;~~
- (5) For a development with mixed nonresidential and residential uses or a one hundred percent (100%) residential development, not less than twenty-five percent (25%) of a building site shall be occupied by open space as defined in Section 16.04.500, including landscaping;
- ~~(56)~~ Height of nonresidential structures shall not exceed thirty-five (35) feet. Height of mixed nonresidential and residential structures or residential structures shall not exceed forty (40) feet;
- ~~(67)~~ In the case of conditional uses, additional regulations may be required by the planning commission;
- ~~(8)~~ Development on sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households is subject to the provisions of Section 16.08.105;
- ~~(79)~~ ~~For a nonresidential development, the floor area ratio shall not exceed thirty percent (30%);~~
- (10) The maximum density is thirty (30) dwelling units per acre (du/ac);

- (11) The floor area ratio for multiple dwelling units shall increase on an even gradient up to ninety percent (90%) for thirty (30) du/ac. The maximum floor area ratio shall be allowed when the maximum number of dwelling units is proposed, even if less than thirty (30) du/ac;
- (12) In a mixed nonresidential and residential development that provides the maximum number of dwelling units per subsection (11), the combined maximum floor area ratio is one hundred-twenty percent (120%). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per subsections (9) and (11) of this section (Ord. 863 § 4, 1994; Ord. 739 § 2 (part), 1986; Prior code § 30.412(C)).

16.30.040 Residential design standards.

Construction of any new building incorporating residential uses, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

- (1) Building Setbacks and Projections within Setbacks.
- (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
- (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
- (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

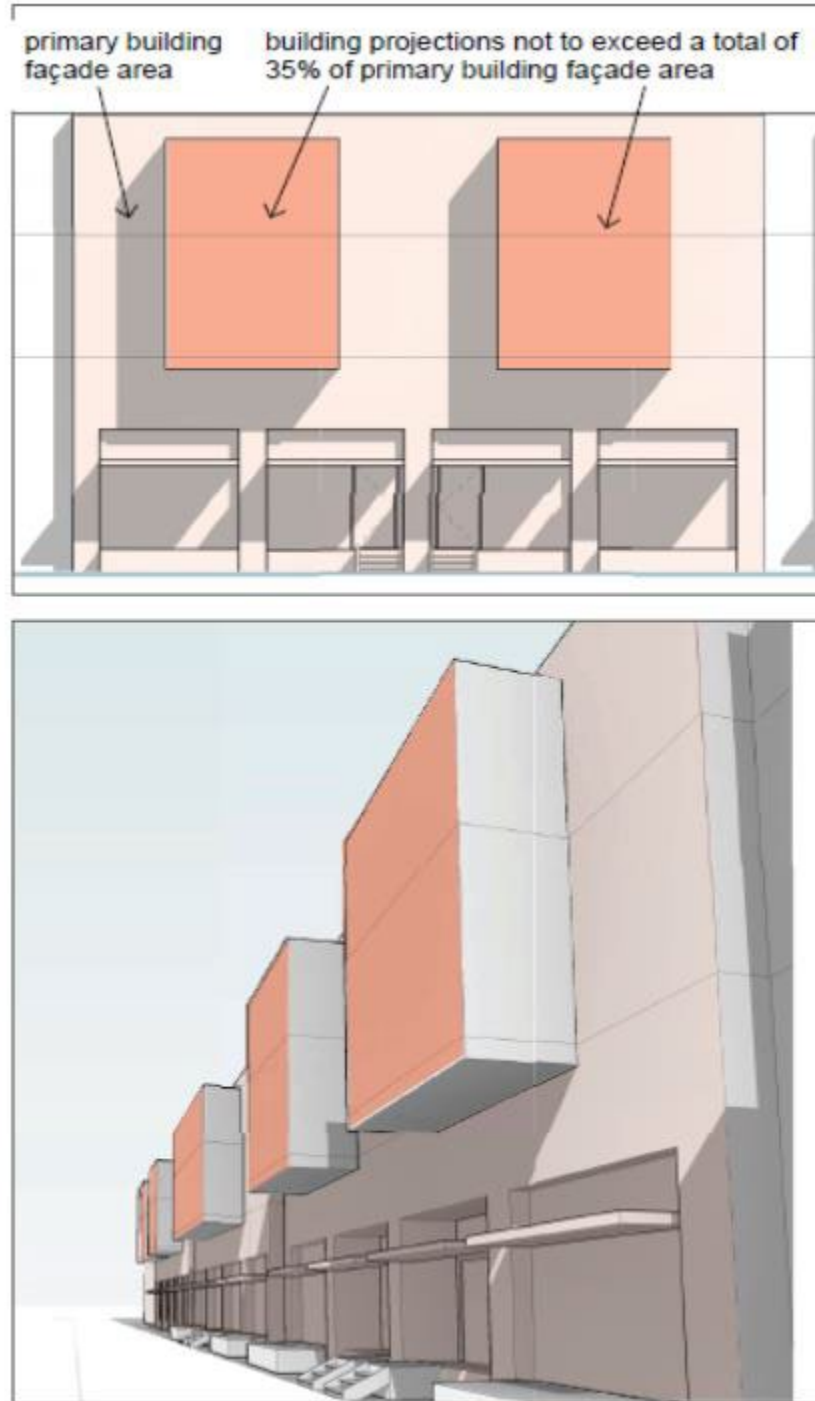


Figure 1

(2) Facade Modulation and Treatment.

- (A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
- (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.
- (3) Building Profile.
 - (A) Starting at a height of twenty-five (25) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
 - (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.30.040(1). (See Figure 2.)

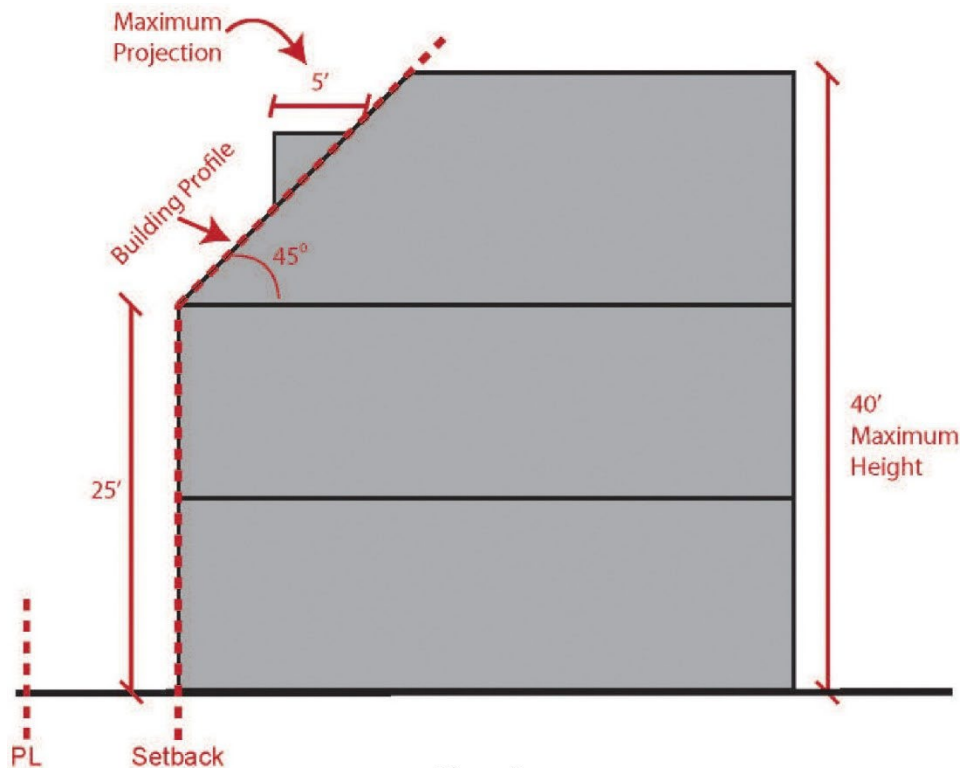


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.
 - (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize materials and colors consistent with the design of the remainder of the building.
- (4) Height.

- (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.
- (A) All exterior stucco shall be completed in textures that are smooth, sanded, or fine-scraped. Heavy-figuring or rough cast stucco are not permitted.
 - (B) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (C) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (D) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.
- (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.
- (A) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (B) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).

(iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).

(8) Access and Parking.

- (A) Shared entrances to parking for nonresidential and residential uses shall be used where possible.
- (B) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
- (C) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
- (D) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
- (E) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
- (F) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.

(9) Lighting.

- (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
- (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.30.050 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

(1) Green Building.

- (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.30.050(1)(B).

(2) Energy.

- (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:
 - (i) On-site energy generation;
 - (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
 - (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Table 16.30.050(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.30.050(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.30.050(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.30.050(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the

building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.30.050(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.30.050(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

(3) Water Use Efficiency and Recycled Water.

(A) Single pass cooling systems shall be prohibited in all new buildings.

(B) All new buildings shall be built and maintained without the use of well water.

(C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.

(D) All new buildings shall be dual plumbed for the internal use of recycled water.

(E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source assessment, the alternative water source and its proposed uses shall be

approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

(F) Potable water shall not be used for dust control on construction projects.

(G) Potable water shall not be used for decorative features, unless the water recirculates.

(4) Waste Management.

(A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.

(5) Bird-Friendly Design.

(A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.

(B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.

(C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.

(D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.

(E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.

(F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.

(G) Use of rodenticides shall not be allowed.

(H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

Proposed Zoning Ordinance Text Amendments to Chapter 16.36 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Chapter 16.36 – C-1-C Administrative, Professional and Research District, Restrictive of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.36.010 Permitted uses.

There are no permitted uses in the C-1-C district. (Prior code § 30.415(A)).

16.36.020 Conditional uses.

Conditional uses allowed in the ~~C-1-C~~GC-1-C district, subject to obtaining a use permit, are as follows:

- (1) Professional, administrative, and executive offices;
- (2) Research and development facilities;
- (3) Multiple dwellings;
- ~~(34)~~ Convalescent homes;
- (45) Public utilities in accordance with Chapter 16.76;
- ~~(56)~~ Special uses in accordance with Chapter 16.78. (Ord. 850 § 6 (part), 1993; Prior code § 30.415(B)).

16.36.030 Development regulations.

Development regulations in the C-1-C district are as follows:

- (1) Minimum lot area: three (3) acres;
- (2) Minimum lot dimensions: two hundred (200) feet width and depth;
- (3) Required minimum yards for nonresidential structures: seventy-five (75) feet front; seventy-five (75) feet rear when abutting a residential district, otherwise forty (40) feet; interior side thirty (30) feet; corner side seventy-five (75) feet;
- (4) Required minimum yards for mixed nonresidential and residential structures or residential structures: thirty (30) feet front; twenty (20) feet rear; twenty (20) feet side;
- (45) For a nonresidential development, land covered by all structures shall not exceed twenty percent (20%) of a building site; For a one hundred percent (100%) residential development, land covered by all structures shall not exceed fifty percent (50%) of a building site. For a development with mixed nonresidential and residential uses, land covered by all structures shall not exceed fifty-five percent (55%) of a building site;
- ~~(56)~~ For a nonresidential development, not less than thirty percent (30%) of a building site shall be occupied by appropriate landscaping. For a development with mixed nonresidential and residential uses or a one hundred percent (100%) residential development, not less than twenty-five percent (25%) of a building site shall be occupied by open space as defined in Section 16.04.500, including landscaping;
- ~~(67)~~ Height of nonresidential structures shall not exceed thirty-five (35) feet; Height of mixed nonresidential and residential structures or residential structures shall not exceed forty (40) feet;
- ~~(78)~~ In the case of conditional uses, additional regulations may be required by the planning commission;

- (9) Development on sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households is subject to the provisions of Section 16.08.105;
- (§10) The floor area ratio for a nonresidential development shall not exceed twenty-five percent (25%);
- (11) The maximum density is thirty (30) dwelling units per acre (du/ac);
- (12) The floor area ratio for multiple dwelling units shall increase on an even gradient up to ninety percent (90%) for thirty (30) du/ac. The maximum floor area ratio shall be allowed when the maximum number of dwelling units is proposed, even if less than thirty (30) du/ac;
- (13) In a mixed nonresidential and residential development that provides the maximum number of dwelling units per subsection (12), the combined maximum floor area ratio is one hundred-fifteen percent (115%). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per subsections (10) and (12) of this section (Ord. 739 § 2 (part), 1986; Prior code § 30.415(C)).

16.36.040 Residential design standards.

Construction of any new building incorporating residential uses, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

- (1) Building Setbacks and Projections within Setbacks.
 - (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
 - (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
 - (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

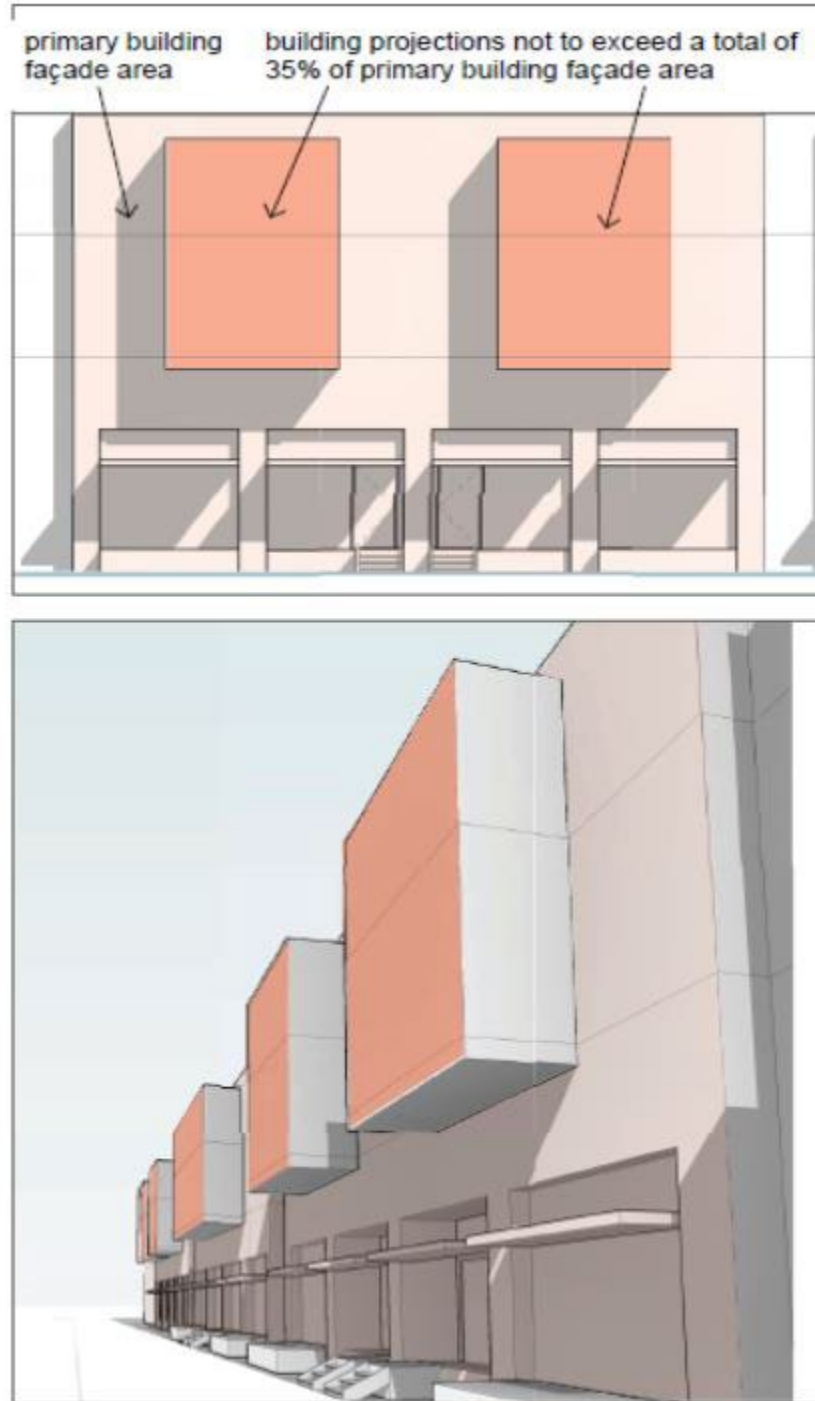


Figure 1

(2) Facade Modulation and Treatment.

- (A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
- (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.
- (3) Building Profile.
 - (A) Starting at a height of twenty-five (25) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
 - (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.36.040(1). (See Figure 2.)

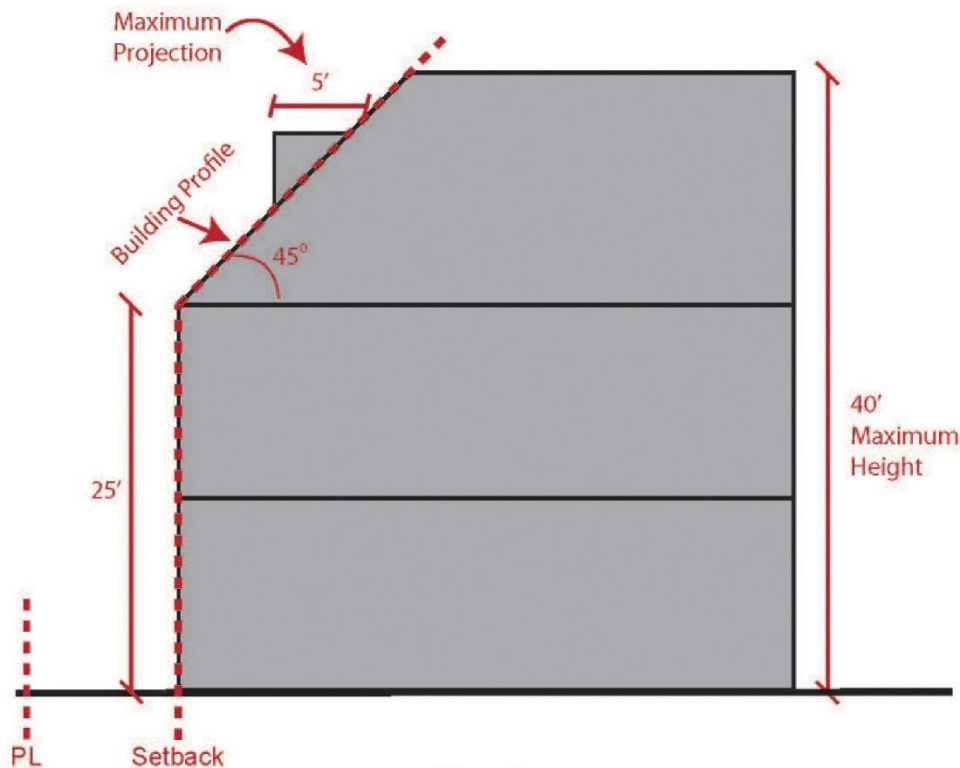


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.
 - (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize materials and colors consistent with the design of the remainder of the building.
- (4) Height.

- (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.
- (A) All exterior stucco shall be completed in textures that are smooth, sanded, or fine-scraped. Heavy-figuring or rough cast stucco are not permitted.
 - (B) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (C) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (D) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.
- (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.
- (A) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (B) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).

(iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).

(8) Access and Parking.

- (A) Shared entrances to parking for nonresidential and residential uses shall be used where possible.
- (B) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
- (C) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
- (D) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
- (E) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
- (F) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.

(9) Lighting.

- (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
- (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.30.050 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

(1) Green Building.

- (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.36.050(1)(B).

(2) Energy.

- (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:
 - (i) On-site energy generation;
 - (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
 - (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Table 16.36.050(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.36.050(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.36.050(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.36.050(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

1 "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant

must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.36.050(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.36.050(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

(3) Water Use Efficiency and Recycled Water.

(A) Single pass cooling systems shall be prohibited in all new buildings.

(B) All new buildings shall be built and maintained without the use of well water.

(C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.

(D) All new buildings shall be dual plumbed for the internal use of recycled water.

(E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source

assessment, the alternative water source and its proposed uses shall be approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

(F) Potable water shall not be used for dust control on construction projects.

(G) Potable water shall not be used for decorative features, unless the water recirculates.

(4) Waste Management.

(A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.

(5) Bird-Friendly Design.

(A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.

(B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.

(C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.

(D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.

(E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.

(F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.

(G) Use of rodenticides shall not be allowed.

(H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

Proposed Zoning Ordinance Text Amendments to Chapter 16.38 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Chapter 16.38 – C-2 Neighborhood Shopping District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.38.010 Permitted uses.

Permitted uses in the C-2 district, all within buildings, intended primarily to serve the immediate neighborhood, are as follows:

- (1) Retail services such as food, drugs, apparel, hardware, variety, restaurant;
- (2) Financial services such as bank, realty;
- (3) Professional services such as medical, dental, legal;
- (4) Personal services such as barber, beauty, launderette, dry cleaning, shoe repair. (Prior code § 30.416(A)).

16.38.020 Conditional Uses.

Conditional uses allowed in the C-2 district, subject to obtaining a use permit, are as follows:

- (1) Multiple dwellings, consistent with Section 16.38.050;
- ~~(4)~~ Service stations;
- ~~(2)~~ Special outside events such as sales and displays;
- ~~(3)~~ Public utilities in accordance with Chapter 16.76;
- ~~(4)~~ Special uses in accordance with Chapter 16.78. (Ord. 850 § 7 (part), 1993; Ord. 643(b), 1979; Prior code § 30.416(B)).

16.38.030 Development regulations, general.

Development regulations that apply to any development in the C-2 district are as follows:

- (1) Minimum lot area: three (3) acres;
- (2) Minimum lot dimensions: two hundred (200) feet width and depth;
- (3) Required minimum yards: fifteen (15) feet front; twenty (20) feet rear; twenty (20) feet side;

16.38.040 Development regulations, nonresidential.

Additional development regulations for a nonresidential development in the C-2 district are as follows:

- ~~(4)~~ Land cover by all structures shall not exceed fifty percent (50%) of a building site;
- ~~(5)~~ Not less than ten percent (10%) of a building site shall be occupied by ~~appropriate~~ landscaping;
- ~~(6)~~ Height of nonresidential structures shall not exceed fifteen (15) feet within seventy-five (75) feet of any residential district, otherwise thirty (30) feet;
- ~~(7)~~ In the case of conditional uses, additional regulations may be required by the planning commission;
- ~~(8)~~ The floor area ratio shall not exceed forty percent (40%). (Ord. 739 § 2 (part), 1986; Prior code § 30.416(C)).

16.38.050 Development regulations, residential mixed use.

An entire site may be developed with multiple dwellings within separate or mixed nonresidential and residential structures. For a mixed nonresidential and residential development, additional development regulations are as follows:

- (1) Land cover by all structures shall not exceed sixty percent (60%) of a building site;
- (2) Upon comprehensive redevelopment of a property, not less than twenty-five percent (25%) of a building site shall be occupied by open space as defined in Section 16.04.500, inclusive of common open space and private open space required per Section 16.38.060(7);
- (3) Height of mixed nonresidential and residential structures or residential structures shall not exceed sixty (60) feet;
- (4) An equivalent amount of nonresidential gross floor area that existed in the previous development on the site shall be maintained for nonresidential uses, unless a different amount is allowed through a use permit from the planning commission;
- (4) In the case of conditional uses, additional regulations may be required by the planning commission;
- (5) Development on any of the sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households is subject to the provisions of Section 16.08.105;
- (6) The maximum density is sixty (60) dwelling units per acre (du/ac);
- (7) The floor area ratio for multiple dwelling units shall increase on an even gradient up to one hundred fifty percent (150%) for sixty (60) du/ac. The maximum floor area ratio shall be allowed when the maximum number of dwelling units is proposed, even if less than sixty (60) du/ac;
- (8) In a mixed nonresidential and residential development that provides the maximum number of dwelling units per subsection (6), the combined maximum floor area ratio is one hundred ninety percent (190%). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per Section 16.38.040(5) and subsection (6) of this section.

16.38.060 Residential design standards.

Construction of any new building incorporating residential uses, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

- (1) Building Setbacks and Projections within Setbacks.
 - (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
 - (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
 - (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are

located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

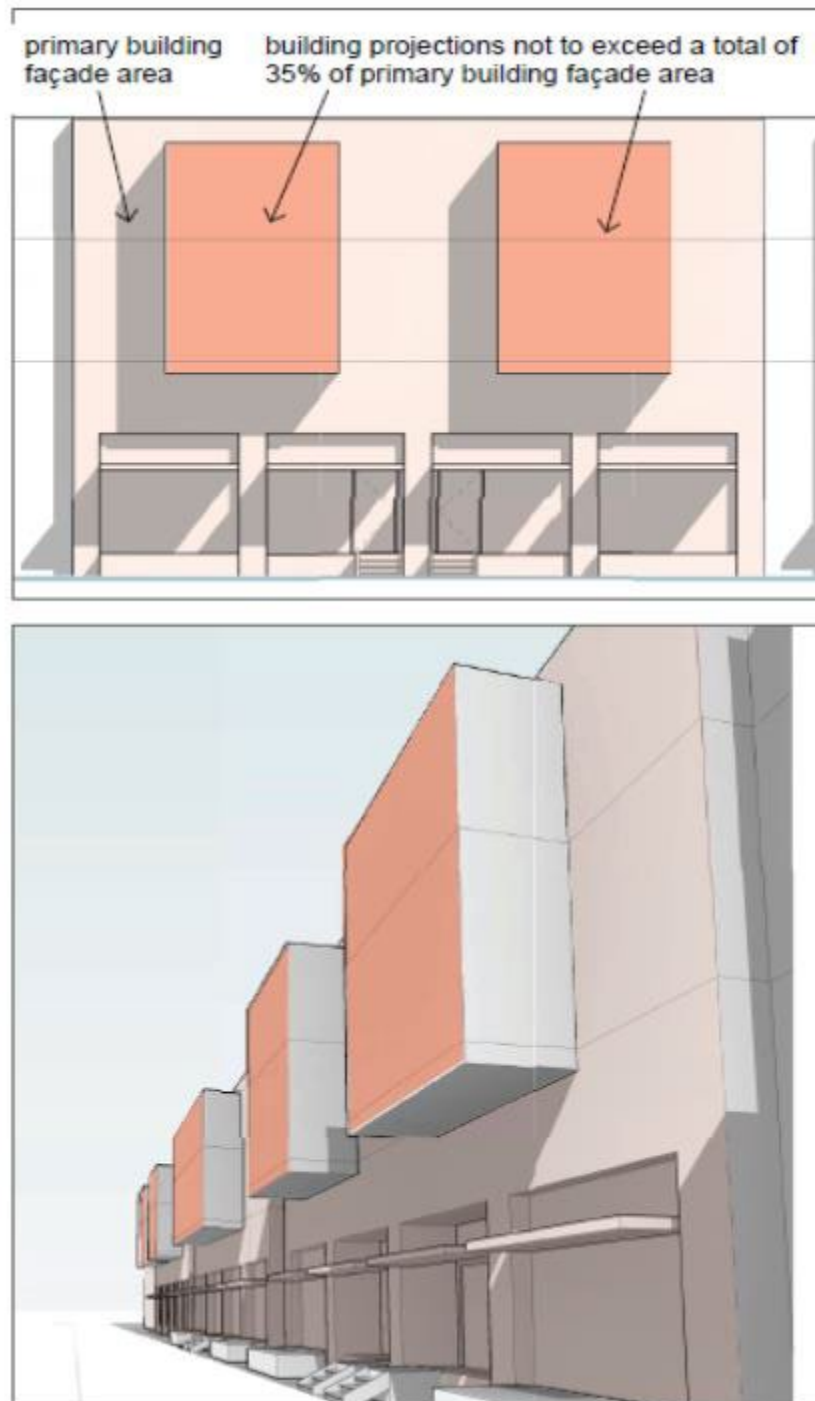


Figure 1

(2) Facade Modulation and Treatment.

(A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade

modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
- (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.

(3) Building Profile.

- (A) Starting at a height of thirty-seven and one half (37 1/2) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
- (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.38.060(1). (See Figure 2.)

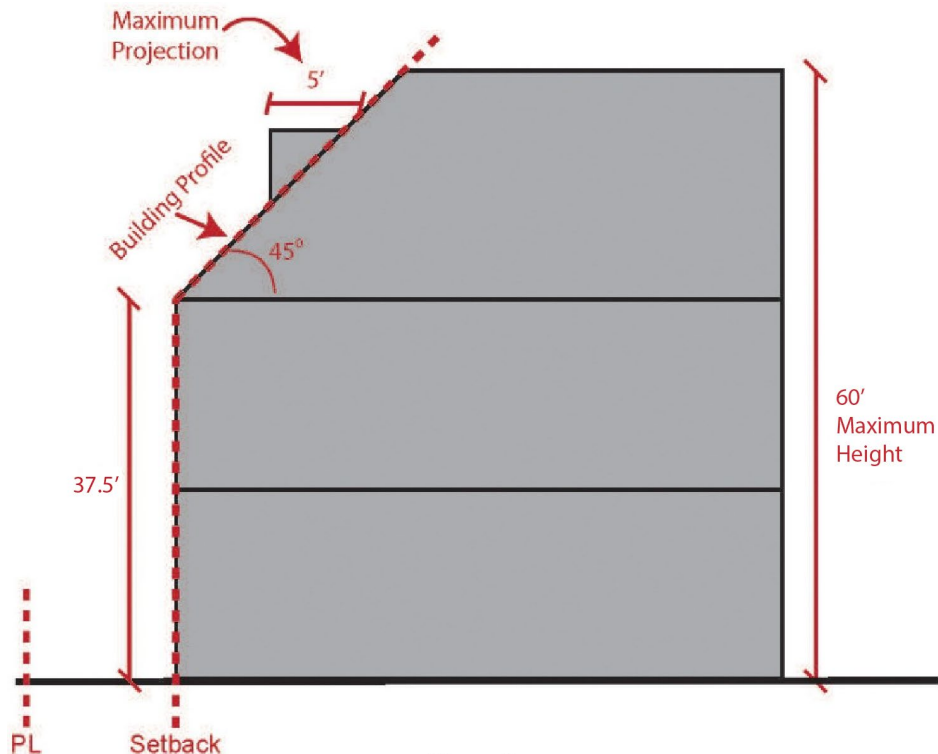


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.

- (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize materials and colors consistent with the design of the remainder of the building.
- (4) Height.

 - (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.

 - (A) All exterior stucco shall be completed in textures that are smooth, sanded, or fine-scraped. Heavy-figuring or rough cast stucco are not permitted.
 - (B) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (C) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (D) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.

 - (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.

 - (A) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (B) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:

 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).

- (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).
- (iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).

(8) Access and Parking.

- (A) Shared entrances to parking for nonresidential and residential uses shall be used where possible.
- (B) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
- (C) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
- (D) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
- (E) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
- (F) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.

(9) Lighting.

- (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
- (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.38.070 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

(1) Green Building.

- (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.38.070(1)(B).

(2) Energy.

- (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:

- (i) On-site energy generation;
- (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
- (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
- (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Tables 16.38.070(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.38.070(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.38.070(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.38.070(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					

TABLE 16.38.070(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size³	25,001 sq. ft. and above of conditioned area, volume or size³
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

1 "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.38.070(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.38.070(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

(3) Water Use Efficiency and Recycled Water.

(A) Single pass cooling systems shall be prohibited in all new buildings.

(B) All new buildings shall be built and maintained without the use of well water.

(C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to

compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.

(D) All new buildings shall be dual plumbed for the internal use of recycled water.

(E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source assessment, the alternative water source and its proposed uses shall be approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

(F) Potable water shall not be used for dust control on construction projects.

(G) Potable water shall not be used for decorative features, unless the water recirculates.

(4) Waste Management.

(A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.

(5) Bird-Friendly Design.

(A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.

(B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.

- (C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.
- (D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.
- (E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.
- (F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.
- (G) Use of rodenticides shall not be allowed.
- (H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

Proposed Zoning Ordinance Text Amendments to Chapter 16.43 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Section 16.43.010 – Purpose of Chapter 16.43 – O Office District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.43.010 Purpose.

The purpose and intent of the office district is to:

- (1) Accommodate large-scale administrative and professional office development;
- (2) Allow retail and service uses at administrative and professional office sites and nearby;
- (3) Provide opportunities for quality employment and development of emerging technology, entrepreneurship, and innovation;
- (4) Facilitate the creation of a "live/work/play" environment with goods, ~~and services,~~ and housing that support adjacent neighborhoods and the employment base;
- (5) Accommodate light industrial and research and development uses that do not pose hazards to or disrupt adjacent businesses or neighborhoods. (Ord. 1024 § 3 (part), 2016).

Section 2. Section 16.43.040 – Conditional uses of Chapter 16.43 – O Office District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.43.040 Conditional uses.

Conditional uses allowed in the office district, subject to obtaining a use permit per Chapter 16.82, are as follows:

- (1) Administrative and professional offices and accessory uses, greater than two hundred fifty thousand (250,000) square feet of gross floor area;
- (2) Hotel, in a location not specifically shown on the adopted city of Menlo Park zoning map;
- (3) Eating establishments, including alcohol, and/or establishments that are portable;
- (4) Drinking establishments, including beer, wine and alcohol. For purposes of this chapter, a drinking establishment is a business serving beverages for consumption on the premises as a primary use;
- (5) Retail sales establishments, including the sale of beer, wine and alcohol;
- (6) Movie theater;
- (7) Automobile dealership, provided that all vehicles for sale or being serviced are contained entirely in enclosed buildings;
- (8) Recreational facilities, privately operated, greater than twenty thousand (20,000) square feet of gross floor area;
- (9) Special uses, in accordance with Chapter 16.78;
- (10) Uses identified in Sections 16.43.020, 16.43.030, and 16.43.040 proposing bonus level development, in accordance with Section 16.43.060;
- (11) Corporate housing, in a location identified as O-CH on the adopted city of Menlo Park zoning map, in accordance with Section 16.43.080, or housing in accordance with Section 16.43.085;
- (12) Public utilities, in accordance with Chapter 16.76. (Ord. 1024 § 3 (part), 2016).

Section 3. Chapter 16.43 – O Office District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to add a new Section 16.43.085 – Housing to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.43.085 Housing.

Housing may be allowed within the area bounded by Marsh Road, the Dumbarton spur railway line, Bohannon Drive, and Scott Drive, identified as O district on the adopted city of Menlo Park zoning map may include housing, subject to obtaining a use permit per Chapter 16.82 and the requirements of this section. Development on any of the sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households is subject to the provisions of Section 16.08.105. Unless otherwise stated in this section, housing is subject to the office district standards at the base level.

- (1) Density. Maximum thirty (30) dwelling units per acre.
- (2) Floor Area Ratio. The floor area ratio for multiple dwelling units shall increase on an even gradient up to ninety percent (90%) for thirty (30) dwelling units per acre (du/ac). The maximum floor area ratio may be allowed when the maximum number of dwelling units is proposed, even if less than thirty (30) du/ac.
 - (A) In a mixed use development including residential uses, the combined maximum floor area ratio shall not exceed one hundred percent (135%) (plus 10% commercial). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed in Section 16.43.050 and Section 16.43.085(2).
- (3) Height. Maximum height of forty (40) feet. Properties within the flood zone or subject to flooding and sea level rise are allowed a ten (10) foot height increase.
- (4) Modulation.
 - (A) A minimum of one (1) recess of fifteen (15) feet wide by ten (10) feet deep per two hundred (200) feet of facade length is required on a building's facade from the ground level to the top of the building to provide visual variety, reduce large building volumes, and provide spaces for entryways and publicly accessible spaces.
 - (B) In addition, a minimum recess of five (5) feet wide by five (5) feet deep is required every fifty (50) feet of facade length, or building projections spaced no more than fifty (50) feet apart with a minimum of three (3) foot depth and five (5) foot width may satisfy this requirement.
 - (C) Parking is not allowed in these recesses.
- (5) Open Space. Residential developments must provide a minimum amount of open space equal to twenty-five percent (25%) of the total lot area and shall have common and private open spaces.
 - (A) One hundred (100) square feet of open space per unit shall be created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet;
 - (B) Depending on the number of dwelling units, common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum);
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) square feet total, minimum);
 - (iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) square feet total, minimum).

(6) Connections. Entrances to housing must connect to on-site pedestrian/bicycle pathways and to the public right-of-way to provide safe and easy nonvehicular means of travel.

Section 4. Section 16.43.090 – Parking standards of Chapter 16.43 – O Office District of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

Development in the office district shall meet the following parking requirements:

Land Use	Minimum Spaces (Per 1,000 Sq. Ft.)	Maximum Spaces (Per 1,000 Sq. Ft.)	Minimum Bicycle Parking¹
Office	2	3	1 per 5,000 sq. ft. of gross floor area; minimum 2 spaces For office and research development: 80% for long-term ² and 20% for short-term ² For all other commercial uses: 20% for long-term ² and 80% for short-term ²
Light industrial, research and development	1.5	2.5	
Retail	2.5	3.3	
Banks and financial institutions	2	3.3	
Eating and drinking establishments	2.5	3.3	
Personal services	2	3.3	
Private recreation	2	3.3	
Child care center	2	3.3	
Hotel	0.75 spaces per guest room	1.1 spaces per guest room	
<u>Residential units</u>	<u>1 per unit</u>	<u>1.5 per unit</u>	
Public parking lot or structure			1 space per 20 vehicle spaces
Other	At transportation manager's discretion	At transportation manager's discretion	At transportation manager's discretion

¹ See Section 16.43.130(7) and the latest edition of best practice design standards in Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines.

² Long-term parking is for use over several hours or overnight, typically used by employees and residents. Short-term parking is considered visitor parking for use from several minutes to up to a couple of hours.

Proposed Zoning Ordinance Text Amendments to Chapters 16.02, 16.08, 16.72, and 16.80 of Title 16 of the City of Menlo Park Municipal Code

Section 1. Section 16.02.070 – Mitigation monitoring of Chapter 16.02 – General Provisions of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.02.070 Mitigation monitoring.

All development, as applicable, including ministerially reviewed development seeking a building permit, shall comply with the Mitigation Monitoring and Report Program (MMRP) established through Resolution No. 6356, associated with the environmental impact report prepared for the ConnectMenlo General Plan and M-2 Area Zoning Update, adopted on the 29th day of November 2016, and the MMRP established through Resolution No. 6808, associated with the subsequent environmental impact report prepared for the Housing Element Update project, adopted on the 31st day of January 2023.

Section 2. Section 16.08.010 – Districts established—Designated of Chapter 16.08 – Districts Established—General Regulations of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.08.010 Districts established—Designated.

There are established several districts into which the city is divided and which are designated as follows:

R-E	Residential Estate District
R-E-S	Residential Estate Suburban District
R-1-S	Single Family Suburban Residential District
R-1-S(FG)	Single Family Suburban Residential District (Felton Gables)
R-1-U	Single Family Urban Residential District
R-2	Low Density Apartment District
R-3	Apartment District
R-3-A	Garden Apartment Residential District
R-3-C	Apartment—Office District
R-4	High Density Residential District
R-4-S	High Density Residential District, Special
R-L-U	Retirement Living Units District
C-1	Administrative and Professional District, Restrictive

C-1-A	Administrative and Professional District
C-1-C	Administrative, Professional and Research District, Restrictive
C-2-S	Neighborhood Commercial District, Special
C-2	Neighborhood Shopping District
C-2-A	Neighborhood Shopping District, Restrictive
C-2- <u>BMU</u>	Neighborhood Commercial District, Restrictive
C-4	General Commercial District
<u>LS</u>	<u>Life Sciences</u>
M-2	General Industrial District
M-3	Commercial Business Park
<u>O</u>	<u>Office</u>
OSC	Open Space and Conservation District
P-F	Public Facilities District
<u>R-MU</u>	<u>Residential Mixed Use</u>
FP	Flood Plain District
P	Parking District
H	Historic Site District
X	Conditional Development District
AAGP	Allied Arts Guild Preservation District
SP- ECR/D	El Camino Real/Downtown Specific Plan
AHO	Affordable Housing Overlay

(Ord. 999 §§ 3, 4, 2013; Ord. 979 § 2, 2012; Ord. 969 § 1, 2010; Ord. 919 § 1, 2003; Ord. 903 § 2, 2001; Ord. 869 § 2, 1995; Amended during 3/93 supplement; Ord. 766 § 1, 1988; Ord. 555 (part), 1973; Prior code § 30.301).

Section 3. Section 16.08.060 – Increase in building height in C-3, C-4 and M-2 districts of Chapter 16.08 – Districts Established—General Regulations of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.08.060 Increase in building height in ~~C-3, C-4 and M-2~~ districts.

Subject to obtaining a conditional development permit as provided in this title, any building in at the ~~C-3, C-4, or M-2~~ district may be erected to a height exceeding that specified for such districts; provided:

- (1) ~~In C-3 districts, the minimum building site shall be twenty thousand (20,000) square feet.~~
- (2) ~~In C-4 and M-2 districts, t~~The minimum building site shall be one (1) acre.
- (3) Off-street parking, as required in this title, shall be provided on or adjacent to the building site. (Prior code § 30.505).

Section 4. Chapter 16.08 – Districts Established—General Regulations of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to add a new Section 16.08.105 – 2023 to 2031 6th Cycle Housing Element opportunity sites to read as follows (additions in underline, deletions in ~~striketrough~~ text):

Section 16.08.105 2023 to 2031 6th Cycle Housing Element opportunity sites

Opportunity sites identified in Appendix 7-1, Table B of the 2023 to 2031 6th Cycle Housing Element for very low and low income households are subject to the following provisions:

- (1) In mixed nonresidential and residential developments, residential uses shall be a minimum fifty percent (50%) of the total floor area ratio of the mixed use development;
- (2) One hundred percent (100%) residential development is allowed for the amount of developable acreage identified in Appendix 7-1, Table B of the Housing Element;
- (3) For housing developments in which at least twenty (20) percent of the units are affordable to extremely low, very low, and/or low income households, owner-occupied and rental multifamily residential development shall be ministerially reviewed, without discretionary review or hearing.

Section 5. Section 16.72.030 Professional district uses of Chapter 16.72 – Off-Street Parking of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.72.030 Professional district uses.

Professional district uses are as follows:

- (1) ~~C-1 and C-1-A districts~~ nonresidential uses: One (1) space per two hundred (200) square feet of gross floor area, not in any required yard abutting a street;
- (2) C-1-C district nonresidential uses: One (1) space per two hundred fifty (250) square feet of gross floor area, not in any required yard abutting a street and not in the exterior one-half (1/2) of any required yard or loading area. (Ord. 979 § 8 (part), 2012; Ord. 897 § 2, 2000; Prior code § 30.520(B));
- (3) C-1 and C-1-C districts residential uses: one (1) space per dwelling unit minimum, one and one-half (1 1/2) spaces per dwelling unit maximum.

Section 6. Section 16.72.040 C-2, C-2-A, and C-4 district uses of Chapter 16.72 – Off-Street Parking of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.72.040 C-2, ~~C-2-A,~~ and C-4 district uses.

C-2, ~~C-2-A~~, and C-4 district uses are as follows:

- (1) ~~Nonresidential uses: s~~Six (6) spaces per one thousand (1,000) square feet of gross floor area, not in any required yard or loading area;
- (2) ~~Residential uses: One (1) space per dwelling unit minimum, one and one-half (1 1/2) spaces per dwelling unit maximum.~~ (Ord. 1027 § 4, 2016; Ord. 979 § 8 (part), 2012; Ord. 769-A § 1, 1988; Ord. 579 Art. II, 1975: Prior code § 30.520(C)).

Section 7. Chapter 16.80 – Nonconforming Uses and Buildings of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to add a new Section 16.80.140 – Exemption from the C-MU district to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

Section 16.80.140 Exemption from the C-MU district

- (a) Properties within the C-MU district that are regulated by a use permit or conditional development permit (CDP) as of January ____, 2024 shall continue to be regulated by said permit(s). Such permit(s) shall lapse upon comprehensive redevelopment of the property, or property owners may apply to modify or cancel said permit(s) in accordance with the requirements of this title.
- (b) No building exempt under subsection (a) of this section shall be subject to amortization by reason of a building that is nonconforming due to the development standards of the C-MU district, as specified in subsection (a) of this section.
- (c) Any building exempt under subsection (a) of this section may be restored to its condition at the time of destruction if the building or office use is destroyed by fire, explosion, or other catastrophe, but such restoration shall comply with:
 - (1) The building codes in effect at the time of restoration; and
 - (2) The requirements of Section 16.80.040 with respect to nonconformities other than a nonconformity created as a result of the development standards of the C-MU district specified in subsection (a) of this section.

ORDINANCE NO. XXXX

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTERS 16.20 (R-3), 16.22 (R-4), 16.23 (R-4-S), 16.24 (R-3-A), AND 16.26 (R-3-C) OF TITLE 16 OF THE MENLO PARK MUNICIPAL CODE AND AMENDING THE MENLO PARK ZONING MAP TO REZONE THE FORMER FLOOD SCHOOL PARCEL AT 320 SHERIDAN DRIVE (APN 055-303-110) FROM THE R-1-U ZONING DISTRICT TO THE R-3 ZONING DISTRICT TO IMPLEMENT HOUSING ELEMENT PROGRAM H4.J, INCREASE RESIDENTIAL DEVELOPMENT DENSITY AND MAXIMIZE DEVELOPMENT PROPOSALS, AND DETERMINE THAT THE AMENDMENTS TO THE MUNICIPAL CODE AND ZONING MAP WERE CONSIDERED WITHIN THE HOUSING ELEMENT UPDATE SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

WHEREAS, Chapters 16.20, 16.22, 16.23, 16.24 and 16.26 of Title 16 of the Menlo Park Municipal Code establish development regulations for higher density housing permitted in the City of Menlo Park; and

WHEREAS, in 2021, the City began a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, Housing Element Policy H4.2, Housing to Address Local Housing Needs, establishes that the City will strive to provide opportunities for new housing development to meet the City's share of its Regional Housing Needs Allocation (RHNA) and to provide an adequate supply and variety of housing opportunities to meet the needs of Menlo Park's workforce and special needs populations; and

WHEREAS, Housing Element Policy H4.3, Variety of Housing Choices, establishes that the City will strive to achieve a mix of housing types, densities, affordability levels, and designs distributed throughout the city; and

WHEREAS, Housing Element Program H4.J, Increase Residential Density and Maximize Development Proposals, states that the City will update the Zoning Ordinance to accommodate the City's RHNA and to increase development potential in the R-3 and R-4 zones (inclusive of the R-3-A, R-3-C, and R-4-S zoning districts); and

WHEREAS, the City Council held a study session on June 6, 2022 to provide feedback on the Housing Element Site Inventory and directed staff to include the former Flood School parcel at 320 Sheridan Drive (APN 055-303-110) as an opportunity site and to provide an increase in residential development density to a maximum of 20 dwelling units per acre; and

WHEREAS, the site at 320 Sheridan Drive (APN 055-303-110), identified in Exhibit A, is Site #38 within the Housing Element Site Inventory and is currently zoned R-1-U and rezoning the site to R-3 will increase potential for higher residential development density; and

WHEREAS, the Planning Commission held a study session on August 14, 2023 to discuss the proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown

Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.J; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss the proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.J; and

WHEREAS, amendments to the City of Menlo Park Municipal Code and zoning map are necessary to implement Housing Element Program H4.J; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023, to review and consider the proposed amendments to Chapters 16.20, 16.22, 16.23, 16.24 and 16.26 of Title 16 of the Menlo Park Municipal Code and rezoning the former Flood School site at 320 Sheridan Drive (APN 055-303-110) from the R-1-U zoning district to the R-3 zoning district and adopted Planning Commission Resolution No. 2023-__ recommending that the City Council adopt the Zoning Ordinance amendment, whereat all interested persons had the opportunity to appear and comment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Amendment.

Chapter 16.20 – R-3 Apartment District, of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

Chapter 16.20

R-3 APARTMENT DISTRICT

Sections:

- 16.20.010 Permitted uses.**
- 16.20.020 Conditional uses.**
- 16.20.030 Development regulations.**
- 16.20.040 Mitigation monitoring.**

16.20.010 Permitted uses.

The following uses are permitted in the R-3 (apartment) district:

- (1) Single-family dwellings;
- (2) Duplexes;
- (3) Three (3) or more units on lots around the El Camino Real/Downtown Specific Plan Area;
~~ten thousand (10,000) square feet or more;~~
- (4) Accessory buildings;

- (5) Accessory structures. (Ord. 1006 § 12, 2014; Ord. 995 § 2 (part), 2013; Ord. 555 Art. 1 (part), 1974; Prior code § 30.407 (A)).

16.20.020 Conditional uses.

Conditional uses allowed in the R-3 district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit, are as follows:

- (1) Three (3) or more dwelling units on lots outside of the area around the El Camino Real/Downtown Specific Plan Area; ~~ten thousand (10,000) square feet or more;~~
- (2) Public utilities in accordance with Chapter 16.76;
- (3) Private schools and churches in accordance with Chapter 16.78;
- (4) Child day care centers in accordance with Chapter 16.78;
- (5) Home occupations in accordance with Section 16.04.340;
- (6) Foster homes;
- (7) Boardinghouses;
- (8) Convalescent homes;
- (9) Senior day care facilities. (Ord. 995 § 2 (part), 2013; Ord. 850 § 3 (part), 1993; Ord. 591 § 2, 1976; Ord. 555 Art. 1 (part), 1974; Prior code § 30.407 (B)).

16.20.030 Development regulations.

Development regulations are as follows in the R-3 district:

Table 1

		All R-3 Zoned Properties Except for Lots 10,000 Sq. Ft. or More in the Area Around the El Camino Real/Downtown Specific Plan Area	All R-3 Zoned Properties Lot Area of 10,000 Sq. Ft. or More for Property Around the El Camino Real/Downtown Specific Plan Area¹	
Minimum Lot Area		7,000 sq. ft.	10,000 sq. ft. 7,000 sq. ft.	
Minimum Lot Dimensions		70 ft. wide by 100 ft. deep (lots < 10,000 sq. ft. in area) 80 ft. wide by 100 ft. deep (lots ≥ 10,000 sf. ft. in area)	80 ft. wide by 100 ft. deep 70 ft. wide by 100 ft. deep (lots < 10,000 sq. ft. in area) 80 ft. wide by 100 ft. deep (lots ≥ 10,000 sf. ft. in area)	
Land Area Required Per Dwelling Unit		See Table 2 below	Minimum	3,333 sq. ft.
			Maximum	1,452 sq. ft.
Minimum Yards	Front	15% of lot width; min. 20 ft.	20 ft.	
	Interior Side	10 ft.	10 ft.	
	Corner Side	15 ft.	15 ft.	
	Rear	15% of lot width; min. 15 ft.	15 ft.	
	Distance between Main Buildings on Same Lot	1/2 sum of the height of the buildings, 20 ft. min.	N/A	
	Distance between Main Buildings Located on One Property and Adjacent Property	20 ft.	N/A	

	All R-3 Zoned Properties Except for Lots 10,000 Sq. Ft. or More in the Area Around the El Camino Real/Downtown Specific Plan Area	All R-3 Zoned Properties Lot Area of 10,000 Sq. Ft. or More for Property Around the El Camino Real/Downtown Specific Plan Area¹	
Maximum Floor Area Ratio	45%	Floor area ratio shall decrease on an even gradient from 75% for 30 du/ac to 35% for 13.1 du/ac	
Maximum Building Coverage	30% <u>55%</u>	40% <u>55%</u>	
Maximum Driveways and Open Parking Areas (Paving)²	20%	35% <u>20%</u>	
Minimum Open Space (Landscaping)³	50% <u>25%</u>	25% <u>25%</u>	
Height	35 ft.	13.1 du/ac	35 ft.
		20 du/ac or greater	40 ft.
Building Profile	None	Starting at a height of 28 feet, a 45-degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property or public park.	
Parking	<u>No minimum parking requirements on development projects located within a half-mile radius of a major transit stop as required by AB 2097</u>		
	2 spaces per unit, one of which must be covered, and not located in a required front or side yard	2 or more bedrooms per unit	<u>1.5</u> 2 spaces
		Up to 1 bedroom per unit	<u>1.0</u> 4-5 spaces
		Each unit must have at least one covered space. Parking spaces cannot be located in the required front yard	
<u>Minimum Bicycle Parking: 1.5 long-term⁴ per unit; 10 % additional short-term⁴ for guests</u>	<u>Minimum Bicycle Parking: 1.5 long-term⁴ per unit; 10 % additional short-term⁴ for guests</u>		

¹ For the purposes of this section, the area around the Downtown/El Camino Real is defined in three distinct areas as follows, and is only applicable to properties zoned R-3; ~~that are 10,000 sq. ft. or more:~~
 Area 1: Area bounded by University Avenue, Valparaiso Avenue, El Camino Real and Oak Grove Avenue.
 Area 2: Area bounded by Arbor Road, Santa Cruz Avenue, El Camino Real and Middle Avenue.
 Area 3: Area generally bounded by San Antonio Street and Alma Street, Encinal Avenue, Marcussen Drive and Ravenswood Avenue.

² Permeable pavers may count as 50 percent towards the paving requirement, ~~except for on lots 10,000 sq. ft. or more located around the El Camino Real/Downtown Specific Plan Area.~~

³ Minimum Open Space (Landscaping) may include both ground level improvements and other private or shared open space features (e.g., private decks and balconies, shared rooftop) which may satisfy up to 12.5% of the overall Minimum Open Space (Landscaping) requirement.

⁴ Long-term parking is for use over several hours or overnight, typically used by employees and residents. Short-term parking is considered visitor parking for use from several minutes to up to a couple of hours.

Table 2

TOTAL LOT AREA	LAND AREA REQUIRED PER DWELLING UNIT
7,000—19,999 sq. ft.	3,333 sq. ft.
20,000—29,999 sq. ft.	3,100 sq. ft.

TOTAL LOT AREA	LAND AREA REQUIRED PER DWELLING UNIT
30,000—39,999 sq. ft.	2,900 sq. ft.
40,000—59,999 sq. ft.	2,700 sq. ft.
60,000—69,999 sq. ft.	2,600 sq. ft.
70,000—79,999 sq. ft.	2,500 sq. ft.
80,000—89,999 sq. ft.	2,400 sq. ft.
90,000—99,999 sq. ft. or more	2,350 sq. ft.
100,000 sq. ft. or more	2,178 sq. ft.

- (1) Notwithstanding the provisions of Table 1 herein, any given lot in excess of five thousand (5,000) square feet in area shall be permitted a minimum of two (2) units;
- (2) Any development containing twenty (20) or more units, or encompassing one (1) acre or more, may be expected to include a quantity of moderate and/or low cost units, ranging from five percent (5%) to twenty percent (20%) of the total units, depending on the specific development;
- (3) In the case of conditional uses, additional regulations may be required by the planning commission. (Ord. 995 § 2 (part), 2013; Ord. 786 § 4, 1988; Ord. 555 Art. 1 (part), 1974; Prior code § 40.507(C)).

16.20.040 Residential design standards.

Construction of any new building incorporating residential uses with three (3) or more units, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

- (1) Building Setbacks and Projections within Setbacks.
 - (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
 - (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
 - (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

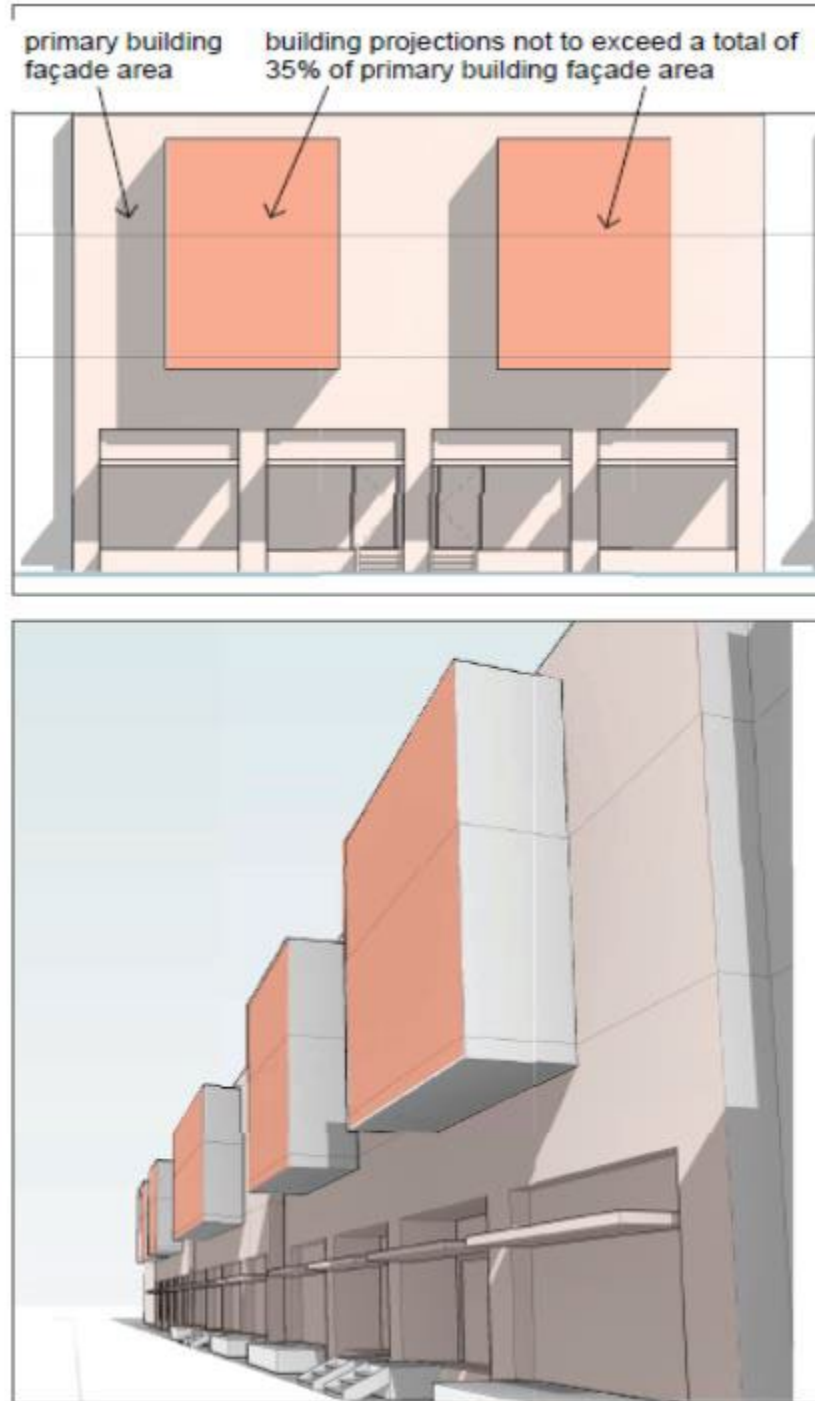


Figure 1

(2) Facade Modulation and Treatment.

- (A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
 - (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.
- (3) Building Profile.
- (A) Starting at a height of twenty-five (25) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
 - (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.20.040(1). (See Figure 2.)

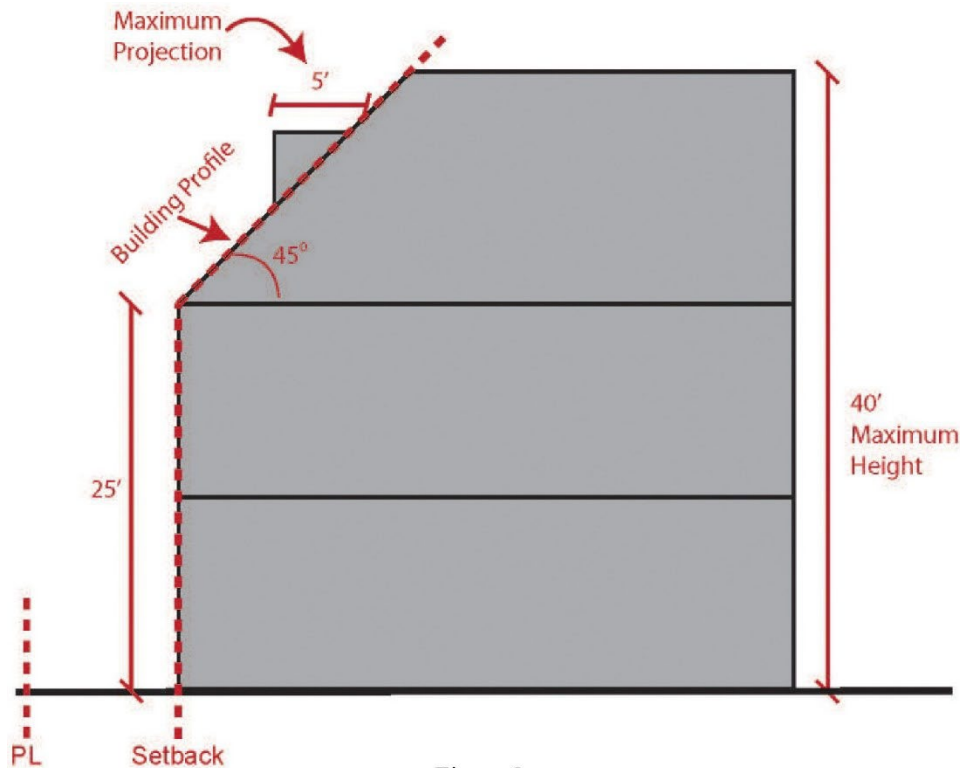


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.
 - (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize materials and colors consistent with the design of the remainder of the building.
- (4) Height.

- (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.
- (A) All exterior stucco shall be completed in textures that are smooth, sanded, or fine-scraped. Heavy-figuring or rough cast stucco are not permitted.
 - (B) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (C) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (D) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.
- (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.
- (A) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (B) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).

(iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).

(8) Access and Parking.

- (A) Shared entrances to parking for nonresidential and residential uses shall be used where possible.
- (B) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
- (C) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
- (D) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
- (E) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
- (F) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.

(9) Lighting.

- (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
- (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.20.050 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses with three (3) or more units, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

(1) Green Building.

- (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.20.050(1)(B).

(2) Energy.

- (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:
 - (i) On-site energy generation;
 - (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
 - (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Tables 16.20.050(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.20.050(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.20.050(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.20.050(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.20.050(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.20.050(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

(3) Water Use Efficiency and Recycled Water.

(A) Single pass cooling systems shall be prohibited in all new buildings.

(B) All new buildings shall be built and maintained without the use of well water.

(C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.

(D) All new buildings shall be dual plumbed for the internal use of recycled water.

(E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source assessment, the alternative water source and its proposed uses shall be approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not

available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

(F) Potable water shall not be used for dust control on construction projects.

(G) Potable water shall not be used for decorative features, unless the water recirculates.

(4) Waste Management.

(A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.

(5) Bird-Friendly Design.

(A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.

(B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.

(C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.

(D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.

(E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.

(F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.

(G) Use of rodenticides shall not be allowed.

(H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

16.20.060 Mitigation monitoring.

All development ~~zoned R-3 on lots ten thousand (10,000) square feet or more and~~ located within the identified areas around the El Camino Real/Downtown Specific Plan area shall comply, at a minimum, with the Mitigation Monitoring and Report Programs (MMRP) established through ~~Resolution No. 6149 associated with the Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments Environmental Assessment prepared for the Housing Element adopted on May 21, 2013. (Ord. 995 § 2 (part), 2013).~~ the ConnectMenlo Program Environmental Impact Report (“ConnectMenlo EIR”) certified in November 2016 and the Housing Element Update Subsequent EIR (SCH #2015062054) (“SEIR”) certified in January 2023.

Section 3. Amendment. Chapter 16.22 – R-4 High Density Residential District, Section 16.22.040 – Development regulations, Subsection 16.22.040(4), of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

- (4) Land cover by all structures shall not exceed ~~forty~~ fifty-five percent (~~40%~~ 55%);

Section 4. Amendment. Chapter 16.23 – R-4-S High Density Residential District, Special, Section 16.23.050 – Development regulations, of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

16.23.050 Development regulations.

Development regulations are as follows in the R-4-S district:

		Regulation ¹	Notes
Minimum Lot Area		20,000 sf	
Minimum Lot Width		100 ft.	See Section 16.04.430 for definition.
Minimum Lot Depth		100 ft.	See Section 16.04.420 for definition.
Density	Minimum	20 du/ac	Densities may be increased with application of the State Density Bonus Law or Affordable Housing Overlay, if applicable
	Maximum	30 du/ac	
Minimum Yards	Front	10 ft.	See Section 16.04.720 for definition.
	Interior Side	10 ft., except may be reduced to 5 ft. abutting a private access easement	See Section 16.04.740 for definition.
	Corner Side	10 ft.	
	Rear	10 ft.	See Section 16.04.730 for definition.
Maximum Floor Area Ratio		Increase on an even gradient from 60% for 20 du/ac to 90% for 30 du/ac	See Sections 16.04.315 and 16.04.325 for definitions.
Maximum Building Coverage		40% <u>55%</u>	See Section 16.04.120 for definition.
Minimum Open Space (Landscaping)		25%	See Section 16.04.500 for definition.

		Regulation ¹	Notes
Height	Maximum Building Height	40 ft.	See Section 16.04.330 for definition of height of structure.
Building Profile		Starting at a height of 25 feet, a 45-degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.	
Parking	Vehicular	2 spaces for units with 2 or more bedrooms; 1.5 spaces for 1 bedroom unit; 1 space per studio. Spaces cannot be located in required front yard setbacks or in tandem.	
	Electric Vehicle	The electric vehicle charging spaces requirements in Section 16.72.010 apply.	
	Bicycle	Long term—1 space per unit where a private garage (per unit) is not provided Short term (visitor)—1 space per every 10 units	

¹ A development regulation, except for floor area ratio and density, may be modified subject to a use permit established in Chapter 16.82. (Ord. 1050 § 6, 2018; Ord. 992 § 3 (part), 2013).

Section 5. Amendment.

Chapter 16.24 – R-3-A Garden Apartment Residential District, Section 16.24.030 – Development regulations, Subsection 16.24.030(5), of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

- (5) Land cover by all structures shall not exceed ~~thirty~~ fifty-five percent (~~30%~~ 55%) of building site;

Section 6. Amendment.

Chapter 16.26 – R-3-C Apartment—Office District, Section 16.26.010– Uses generally, of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~ text):

Permitted uses, conditional uses and development regulations are as specified in the R-3 district; provided that offices may be permitted subject to obtaining a use permit therefor, and further provided the ~~C-1-A~~ C-MU regulations shall be conformed to. ~~It is the intention in this district to permit apartments and offices but not on the same property or in the same building. (Ord. 555 Art. IV, 1974; Prior code § 30.410).~~

Section 7. Zoning Map Amendment.

The zoning map of the City of Menlo Park is hereby amended such that the former Flood School parcel at 320 Sheridan Drive (APN 055-303-110) as identified in Exhibit A is rezoned from R-1-U (Single Family Urban Residential) to the R-3 (Apartment) zoning district.

Section 8. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

INTRODUCED on the twenty-eighth day of November, 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the ___ day of ___, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

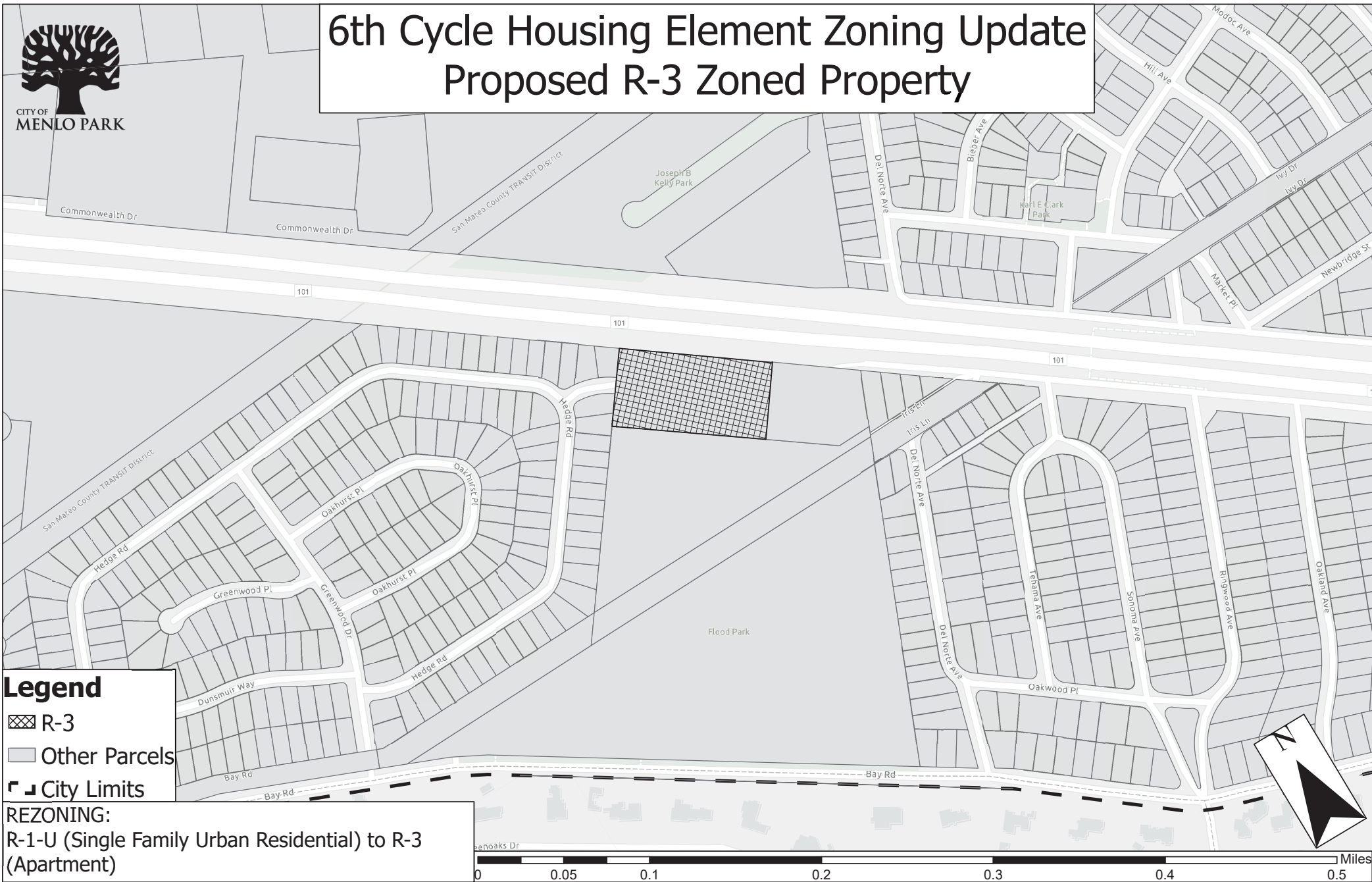
ATTEST:

Judi A. Herren, City Clerk

Exhibit
A. Map of Zoning Change



6th Cycle Housing Element Zoning Update Proposed R-3 Zoned Property



ORDINANCE NO. XXXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 16.08 OF TITLE 16 OF THE MENLO PARK MUNICIPAL
CODE TO IMPLEMENT HOUSING ELEMENT PROGRAM H4.Q AND PERMIT
RESIDENTIAL USES BY-RIGHT (MINISTERIAL REVIEW) FOR LOWER
INCOME HOUSING INVENTORY SITES FROM PREVIOUS HOUSING
ELEMENT CYCLES THAT HAVE NOT REDEVELOPED, PROVIDED A
HOUSING DEVELOPMENT WOULD INCLUDE A MINIMUM OF TWENTY
PERCENT OF UNITS AFFORDABLE TO LOWER INCOME HOUSEHOLDS**

WHEREAS, Chapter 16.08 of Title 16 of the Menlo Park Municipal Code describes various general regulations related to the application of zoning and land use in the City of Menlo Park; and

WHEREAS, beginning in 2021, the City undertook a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, California Government Code §65583.2(c) states that neither nonvacant sites identified in a prior Housing Element nor vacant sites that have been included in two or more consecutive planning periods may be deemed adequate to meet a city's housing need for lower income households in the current Housing Element planning period unless the site is zoned to accommodate a minimum density of 30 dwelling units per acre and the site is subject to a program in the Housing Element requiring rezoning to allow residential uses by right for housing developments in which at least 20 percent of the units are affordable to lower income households; and

WHEREAS, the City's 2023 to 2031 Housing Element includes five parcels (Exhibit A) as opportunity sites for lower income households that were previously within the site inventory from a prior Housing Element planning period, but have not yet developed with housing; and

WHEREAS, the five parcels are zoned to accommodate a minimum density of 30 dwelling units per acre; and

WHEREAS, Housing Element Policy H4.1, Housing Opportunity Sites, provides that the City will identify housing opportunity areas and sites where a special effort will be made to provide affordable housing consistent with other General Plan policies that would help the city meet its Regional Housing Needs Allocation (RHNA) for lower-income households, among other potential characteristics; and

WHEREAS, Housing Element Policy H4.8, Incentives for Affordable Housing Development, establishes that the City will explore incentives for qualified housing developments, such as expanding the ministerial review process, fee waivers or fee reductions, and/or reduced parking requirements, to help achieve housing goals while ensuring that potential impacts are considered and mitigated; and

WHEREAS, Housing Element Program H4.Q, Reuse Sites, states that the City will modify the Zoning Ordinance so that parcels in the site inventory identified as reuse sites allow for by-right processing (ministerial review) for housing developments that propose at least 20 percent of the

units to be affordable to lower-income households, in accordance with Government Code §65583.2(c); and

WHEREAS, the Planning Commission held a study session on August 14, 2023, to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.Q; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.Q; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023, to review and consider the proposed amendments to Chapter 16.08 of Title 16 of the Menlo Park Municipal Code and adopted Planning Commission Resolution No. 2023-__ recommending that the City Council adopt the Zoning Ordinance amendment, where all interested person had the opportunity to appear and comment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Amendment.

Chapter 16.08 – Districts Established—General Regulations of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strike through~~ text):

16.08.075 Housing Element lower income site inventory reuse sites.

Residential developments shall be processed ministerially, without discretionary review or hearing, if at least twenty (20) percent of the units are affordable to extremely low, very low, and/or low income households. Reuse sites are identified by the following San Mateo County assessor's parcel number (APN) as of the date of the adoption of the ordinance codified in this chapter: 061412440, 071102130, 061422350, 071288560, and 071333200. All regulations of the underlying zoning district and zoning ordinance shall apply. No part of this section shall be read to oppose or otherwise interfere with state housing law.

Section 3. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 5. Publication; Effective Date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the twenty-eighth day of November 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the __ day of __ 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

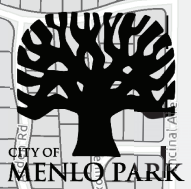
Jen Wolosin, Mayor

ATTEST:

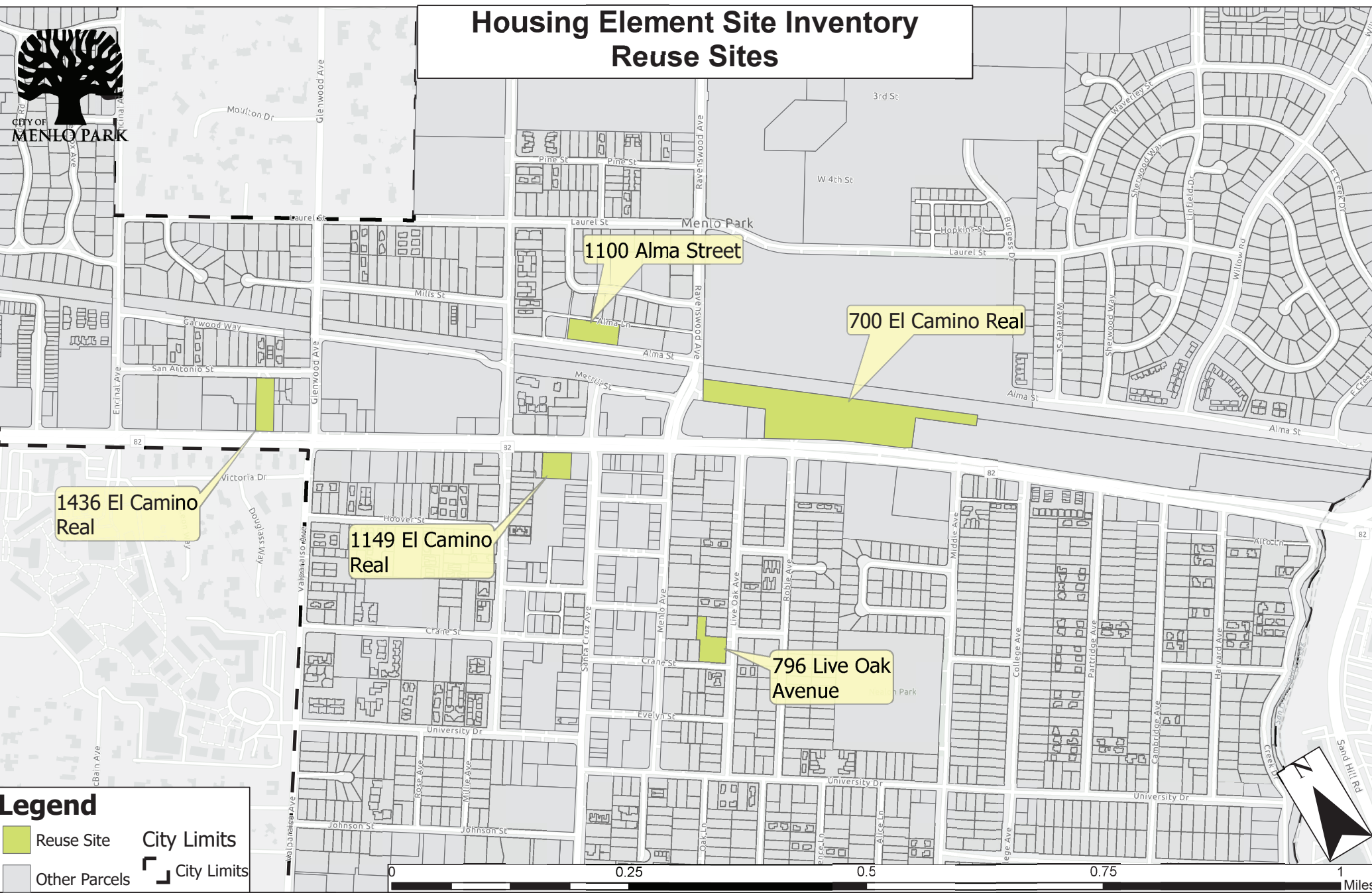
Judi A. Herren, City Clerk

Exhibits

A. Map of Reuse Sites



Housing Element Site Inventory Reuse Sites



1100 Alma Street

700 El Camino Real

1436 El Camino Real

1149 El Camino Real

796 Live Oak Avenue

Legend

- Reuse Site
- Other Parcels
- City Limits
- City Limits

ORDINANCE NO. XXXX**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING TITLE 16 OF THE MENLO PARK MUNICIPAL CODE TO ADD
CHAPTER 16.95 TO IMPLEMENT HOUSING ELEMENT PROGRAM H4.T AND
ESTABLISH A RESIDENTIAL OVERLAY TO ALLOW RESIDENTIAL
DEVELOPMENT ON CERTAIN PARCELS WHERE NEW OR ADDITIONAL
RESIDENTIAL DEVELOPMENT MAY OTHERWISE NOT BE FEASIBLE**

WHEREAS, Title 16 of the Menlo Park Municipal Code establishes zoning districts and provides regulations and standards related to the application of zoning and land use in the City of Menlo Park; and

WHEREAS, beginning in 2021, the City undertook a multi-year process with extensive public outreach, community engagement, and public hearings to update the City's General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, Housing Element Policy H4.3, Variety of Housing Choices, states that the City will strive to achieve a mix of housing types, densities, affordability levels and designs distributed throughout the city, including non-traditional and innovative housing approaches on the financing, design, and construction of different types of housing that meet local housing needs; and

WHEREAS, Housing Element Policy H4.6, Retention and Expansion of Multifamily Sites at Medium and Higher Density, seeks to protect and expand the supply and availability of multifamily and mixed use infill housing sites; and

WHEREAS, Housing Element Program H4.T, Residential Overlay, establishes that the City will develop a Residential Overlay on certain sites to allow and encourage new or additional residential development without requiring removal of the existing development and/or where the underlying zoning may otherwise not permit residential uses; and

WHEREAS, the Planning Commission held a study session on August 14, 2023, to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.T; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H4.T; and

WHEREAS, the regulations and standards of the Residential Overlay identified in Exhibit A would allow and encourage new or additional residential development on certain parcels (Exhibit B), up to a certain acreage, without requiring removal of the existing development and/or where the underlying zoning may otherwise not permit residential uses, consistent with Housing Element Program H4.T; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023, to review and consider the proposed amendment to

add Chapter 16.95 to Title 16 of the Menlo Park Municipal Code and adopted Planning Commission Resolution No. 2023-__ recommending that the City Council adopt the Zoning Ordinance amendment, where all interested persons had the opportunity to appear and comment; and

WHEREAS, after due consideration of the proposed amendment to Title 16, public comments, the Planning Commission's recommendation, and the staff report, the City Council finds that the proposed amendment as identified herein is consistent with the General Plan and is appropriate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Amendment.

Chapter 16.95 – Residential Overlay is hereby added to Title 16 – Zoning of the City of Menlo Park Municipal Code to read as indicated in Exhibit A.

Section 3. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 5. Publication; Effective Date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in

a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the twenty-eighth day of November 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the __ day of __ 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk

Exhibits

- A. Amendments to Add Chapter 16.95 – Residential Overlay
- B. Map of Residential Overlay Sites

Proposed Zoning Ordinance Text Amendments to Add Chapter 16.95 (Residential Overlay) to Title 16 of the City of Menlo Park Municipal Code

Section 1. Chapter 16.95 – Residential Overlay is hereby added to Title 16 – Zoning of the City of Menlo Park Municipal Code:

**Chapter 16.95
RESIDENTIAL OVERLAY**

16.95.010 Purpose.

The purpose of the Residential Overlay zone is to allow and encourage new or additional residential development on certain parcels, up to a certain acreage, without requiring removal of existing development and/or where the underlying zoning may otherwise not permit residential uses.

The Residential Overlay zone can be combined with the Affordable Housing Overlay zone (Chapter 16.98).

16.95.015 Applicability.

This chapter shall apply to the following parcels identified in Table 16.95.015(A) by Assessor Parcel Number (APN), street address, and the acreage allowed for residential uses:

Table 16.95.015(A)

APN	Street Address	Residential Development Allowed (acres)
074-283-070	2200 Sand Hill Road	2.0
062-390-700	345 Middlefield Road	5.0 ¹
062-421-070	345 Middlefield Road	
074-281-120	350 Sharon Park Drive	1.0 ¹
074-281-110	350 Sharon Park Drive	
074-282-070	600 Sharon Park Drive	1.0 ¹
074-282-090	600 Sharon Park Drive	

¹ The site includes two adjacent parcels in the same zoning district comprising one development.

The Residential Overlay is intended to complement existing uses on the parcel. Complete redevelopment may occur and take advantage of the Residential Overlay pursuant to this chapter.

16.95.020 Permitted Uses.

Permitted uses in the Residential Overlay are as follows:

- (1) Multiple dwellings;
- (2) Accessory buildings and/or accessory structures associated with multifamily residential development.

16.95.030 Development regulations.

Development regulations in the Residential Overlay are as follows:

- (1) For the parcels identified in Section 16.95.015, residential development is permitted on a portion of the parcel, limited to the acreage shown in Table 16.95.015(A). The residential acreage may be located anywhere on the parcel.
- (2) If any of the parcels are subdivided prior to use for residential development, the residential development permitted on the resulting parcels shall be proportional to the subdivision (i.e., if a parcel allowing two (2) acres of residential development is split into two (2) parcels representing seventy-five percent (75%) and twenty-five percent (25%) of the original parcel area, the residential development potential would be split as one and one half (1 1/2 acres) and one half acre (1/2 acre), respectively).
- (3) If parcels 062-390-700 and 062-421-070 are redeveloped independently with two (2) separate developments, the residential development potential shall be separated with three (3) acres permitted on parcel 062-390-700 and two (2) acres permitted on parcel 062-421-070. Any other subdivision of the parcels shall result in division of the residential development potential as provided in Section 16.95.030(2).
- (4) Minimum Area. Residential development may be located in any location of the parcel with minimum dimensions of at least eighty (80) feet width, one hundred (100) feet depth.
- (5) Setbacks. Residential development shall be located at least 10 feet from all property lines and at least 20 feet from any existing buildings on the property.
- (6) Building Coverage. A residential building may cover up to fifty-five percent (55%) percent of the developable area identified in Table 16.95.015(A). The non-buildable area may be used for parking, circulation, open space, and/or landscaping for the residential development.
- (7) Height. Height of residential structures on sites with two (2) acres or less of developable acreage in Table 16.95.015(A) shall not exceed forty (40) feet. Height of residential structures on sites with more than two (2) acres of developable acreage in Table 16.95.015(a) shall not exceed fifty (50) feet.
- (8) Density. Any development that includes residential uses shall have a minimum density of 20 dwelling units per acre. The maximum density for sites with two (2) acres or less of developable acreage in Table 16.95.015(A) is thirty (30) dwelling units per acre (du/ac). The maximum density for sites with more than two (2) acres of developable acreage in Table 16.95.015(A) is forty (40) du/ac.
- (9) Floor Area Ratio. The floor area ratio for multiple dwelling units shall increase on an even gradient up to one hundred twenty percent (120%) for forty (40) du/ac. The maximum floor area ratio may be allowed when the maximum number of dwelling units is proposed.
- (10) Parking. One (1) space per dwelling unit minimum, one and one half (1 1/2) spaces per dwelling unit maximum.
 - (A) Parking facilities may be shared if multiple uses cooperatively establish and operate the facilities, if these uses generate parking demands primarily during different hours than the remaining uses, and if a sufficient number of spaces are provided to meet the maximum cumulative parking demand of the participating uses at any time. An individual development proposal may incorporate a shared parking study to account for the mixture of uses, either on site or within a reasonable distance. Project applicants may also be allowed to meet the minimum parking requirements through the use of nearby off-site facilities. The shared parking supply and off-site parking would be subject to review and approval as part of the development review process based on the proposed uses, specific design and site conditions.

16.95.040 Residential design standards.

Construction of any new building incorporating residential uses, residential additions of ten thousand (10,000) square feet or more of gross floor area to any existing building, and conversion of more than fifty percent (50%) of the gross floor area of an existing nonresidential building to residential uses shall adhere to the following design standards, subject to architectural control established in Section 16.68.020. For residential additions, the applicable design standards apply only to the new construction. Design standards may be modified subject to approval of a use permit or a conditional development permit per Chapter 16.82.

- (1) Building Setbacks and Projections within Setbacks.
 - (A) Building projections, such as balconies and bay windows, at or above the second floor shall not project beyond a maximum of five (5) feet into the setback area.
 - (B) Where a property is contiguous to a single-family zoned property, no projections into the setback are permitted for balconies or decks at or above the second floor.
 - (C) The total area of all horizontal and vertical building projections shall not exceed thirty-five percent (35%) of the building facade area, and no one projection shall exceed fifteen percent (15%) of the facade area on which the projections are located. Where such projections enclose interior living space, eighty-five percent (85%) of the vertical surface of the projection shall be windows or glazed. (See Figure 1.)

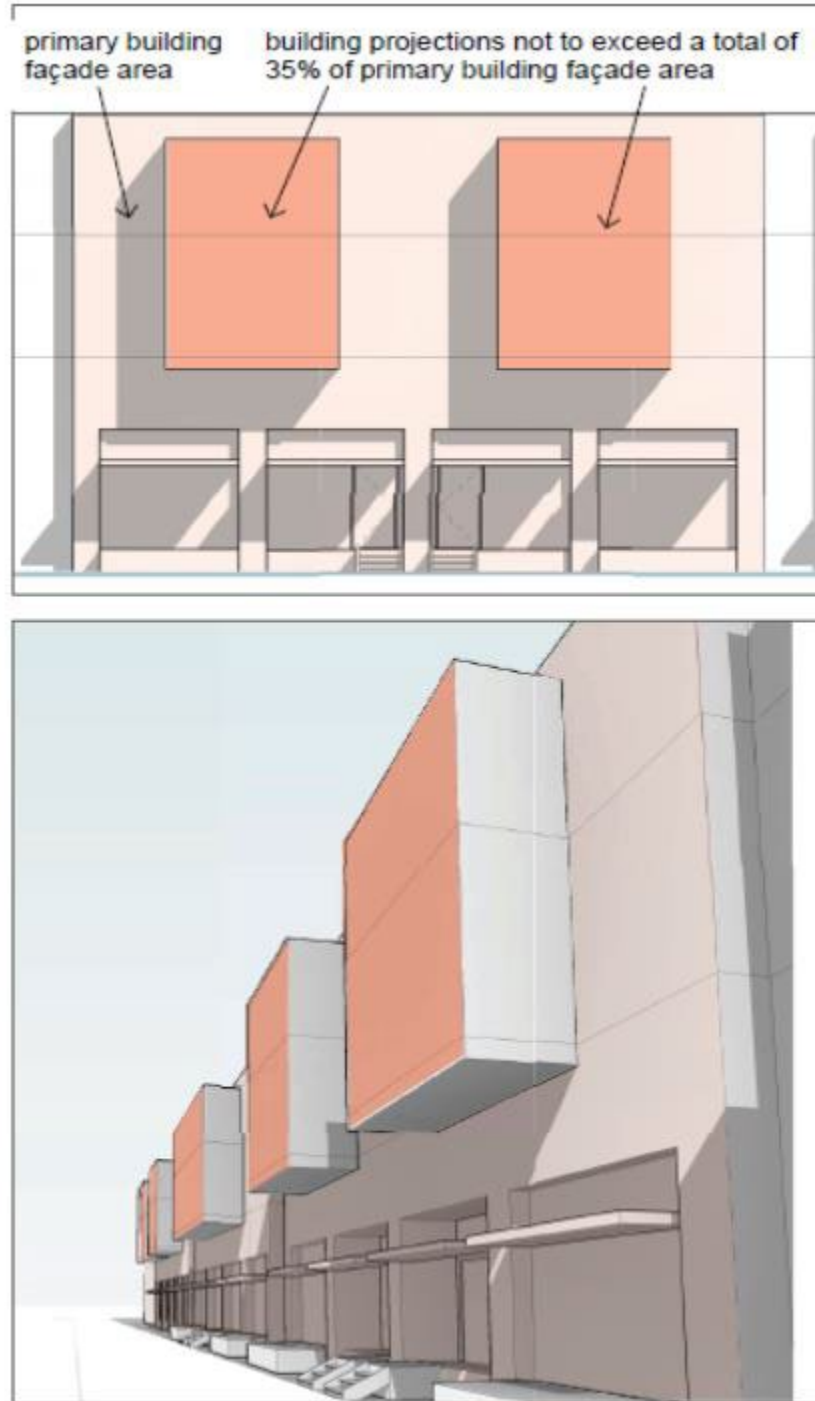


Figure 1

(2) Facade Modulation and Treatment.

- (A) Building facades facing public rights-of-way or public open spaces shall not exceed fifty (50) feet in length without a minor building facade modulation. At a minimum of every thirty-five (35) feet of facade length, the minor vertical facade modulation shall be a minimum two (2) feet deep by five (5) feet wide recess or a minimum two (2) foot setback of the building plane from the primary building facade.

- (B) Building facades facing public rights-of-way or public open spaces shall not exceed one hundred (100) feet in length without a major building facade modulation. At a minimum of every seventy-five (75) feet of facade length, a major vertical facade modulation shall be a minimum of six (6) feet deep by twenty (20) feet wide recess or a minimum six (6) foot setback of building plane from primary building facade for the full height of the building.
 - (C) In addition, the major building facade modulation shall be accompanied with a four (4) foot minimum height modulation and a major change in fenestration pattern, material and/or color.
- (3) Building Profile.
- (A) Starting at a height of twenty-five (25) feet, a forty-five (45) degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.
 - (C) Horizontal building and architectural projections, like balconies, bay windows, and dormer windows, that extend beyond the forty-five (45) degree building profile shall comply with the standards for building setbacks and projection in Section 16.40.040(1). (See Figure 2.)

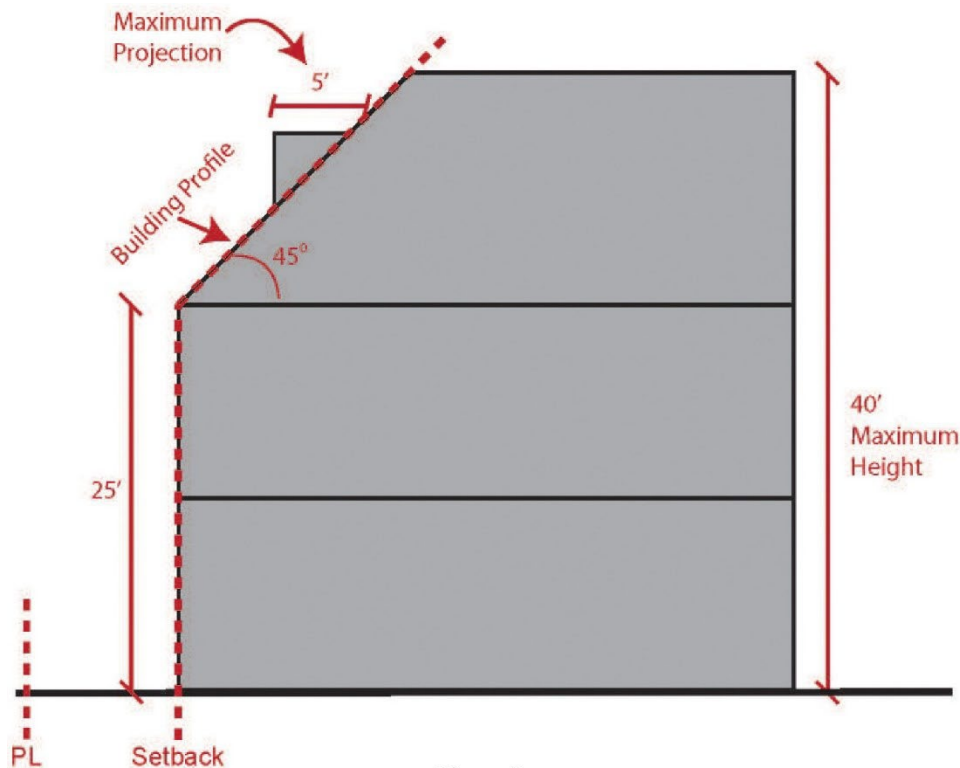


Figure 2

- (D) Vertical building projections like parapets and balcony railings shall not extend more than four (4) feet beyond the forty-five (45) degree building profile.
 - (E) Rooftop elements that may need to extend beyond the forty-five (45) degree building profile due to their function, such as stair and elevator towers, shall utilize the same materials and colors as the remainder of the building.
- (4) Height.

- (A) Vertical building projections such as parapets and balcony railings may extend up to four (4) feet beyond the maximum building height.
 - (B) Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed fourteen (14) feet beyond the maximum building height.
 - (C) Towers, cupolas, spires, chimneys, and other architectural features not exceeding ten percent (10%) of the roof area may exceed the maximum building height limit by a maximum of ten (10) feet.
- (5) Exterior Materials.
- (A) Stucco on the exterior facade shall be limited to no more than fifty percent (50%) of the entire area of an elevation, inclusive of all windows and doors.
 - (B) All exterior windows located in solid walls shall be inset by a minimum of two (2) inches from the face of the exterior finishes.
 - (C) When simulated divided light windows are included in a development, the windows shall include mullions on the exterior of the glazing and contain internal dividers (spacer bars) between the window panes.
- (6) Building Design.
- (A) When a building is adjacent to a public street or other public space, the building shall provide entries, access points or features oriented to the street that are visible from the public right-of-way or public space and provide visual cues to denote access into the building. For larger residential buildings with shared entries, the main entry shall be through prominent entry lobbies or central courtyards facing the street.
 - (B) Utilities, including meters, backflow prevention devices, etc., shall be concealed or integrated into the building design to the extent feasible, as determined by the public works director.
 - (C) Projects shall include dedicated, screened, and accessible space for recycling, compost, and solid waste storage and collection.
 - (D) Trash and storage shall be enclosed and screened from public view.
 - (E) Materials and colors of utility, trash, and storage enclosures shall match with the primary building.
 - (F) Roof-mounted equipment shall meet the requirements of Section 16.08.095.
- (7) Open Space.
- (A) A minimum of twenty-five percent (25%) of any landscaping removed for residential development shall be replaced either on the residential development parcel or elsewhere on the original parcel. The replacement landscaping may be counted toward the required common open space for a development.
 - (B) Residential developments shall have a minimum of one hundred (100) square feet of open space per unit created as common open space or a minimum of eighty (80) square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of six (6) feet by six (6) feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to one and one-quarter (1.25) square feet for each one (1) square foot of private open space that is not provided.
 - (C) Depending on the number of dwelling units, additional common open space shall be provided to meet the following criteria:
 - (i) Ten (10) to fifty (50) units: minimum of one (1) space, twenty (20) feet minimum dimension (four hundred (400) sf total, minimum).
 - (ii) Fifty-one (51) to one hundred (100) units: minimum of one (1) space, thirty (30) feet minimum dimension (nine hundred (900) sf total, minimum).

- (iii) One hundred one (101) or more units: minimum of one (1) space, forty (40) feet minimum dimension (one thousand six hundred (1,600) sf total, minimum).
- (8) Access and Parking.
 - (A) Service access and loading docks shall be located on local or interior access streets and to the rear of buildings.
 - (B) Aboveground garages shall be screened (with perforated walls, vertical elements, landscaping or materials that provide visual interest at the pedestrian scale) or located behind buildings that are along public streets.
 - (C) Surface parking lots shall be buffered from adjacent buildings by a minimum six (6) feet of paved pathway and/or landscaped area.
 - (D) Surface parking lots shall be screened with landscaping features such as trees, planters, and vegetation.
 - (E) Surface parking lots shall be planted with at least one (1) tree with a minimum size of a twenty-four (24) inch box for every eight (8) parking spaces. Required plantings may be grouped where carports with solar panels are provided.
- (9) Lighting.
 - (A) Exterior lighting fixtures shall use fixtures with low cut-off angles, appropriately positioned, to minimize glare into dwelling units and light pollution into the night sky.
 - (B) Lighting in parking garages shall be screened and controlled so as not to disturb surrounding properties, but shall ensure adequate public security.

16.95.050 Residential green and sustainable building.

In addition to meeting all applicable regulations specified in Title 12 (Buildings and Construction), the following provisions shall apply to construction of any new building incorporating residential uses, residential additions to any existing building, and alterations of residential buildings. Implementation of these provisions may be subject to separate discretionary review and environmental review pursuant to the California Environmental Quality Act.

- (1) Green Building.
 - (A) Any new construction, addition or alteration of a building with residential uses shall be required to comply with Table 16.40.050(1)(B).
- (2) Energy.
 - (A) For all new construction, the project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of the following measures:
 - (i) On-site energy generation;
 - (ii) Purchase of one hundred percent (100%) renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - (iii) Purchase and installation of local renewable energy generation within the city of Menlo Park in an amount equal to the annual energy demand of the project;
 - (iv) Purchase of certified renewable energy credits and/or certified renewable energy offsets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of thirty percent (30%) of the maximum feasible on-site energy generation, as determined by an on-site renewable energy feasibility study and any combination of the measures in subsections (2)(A)(ii) to (iv) of this section. The on-site renewable energy feasibility study shall demonstrate the following cases at a minimum:

- a. Maximum on-site generation potential.
- b. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment).
- c. Maximum solar generation potential solely on the roof area.

(B) Alterations and/or additions of ten thousand (10,000) square feet or larger where the building owner elects to update the core and shell through the option presented in Tables 16.95.050(1)(B):

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through any combination of measures listed in subsections (2)(A)(i) to (iv) of this section.

TABLE 16.95.050(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ³	25,001 sq. ft. and above of conditioned area, volume or size ³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.95.050(2)(B)	Designed to meet LEED Gold ID+C1 or update core and shell of entire building to current California Energy Code ² and meet Section 16.95.050(2)(B)
Electric Vehicle (EV) Charging Spaces	The electric vehicle charging spaces requirements in Section 16.72.010 apply.					
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

1 "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the

building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.95.050(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.95.050(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building owner must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building owner fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

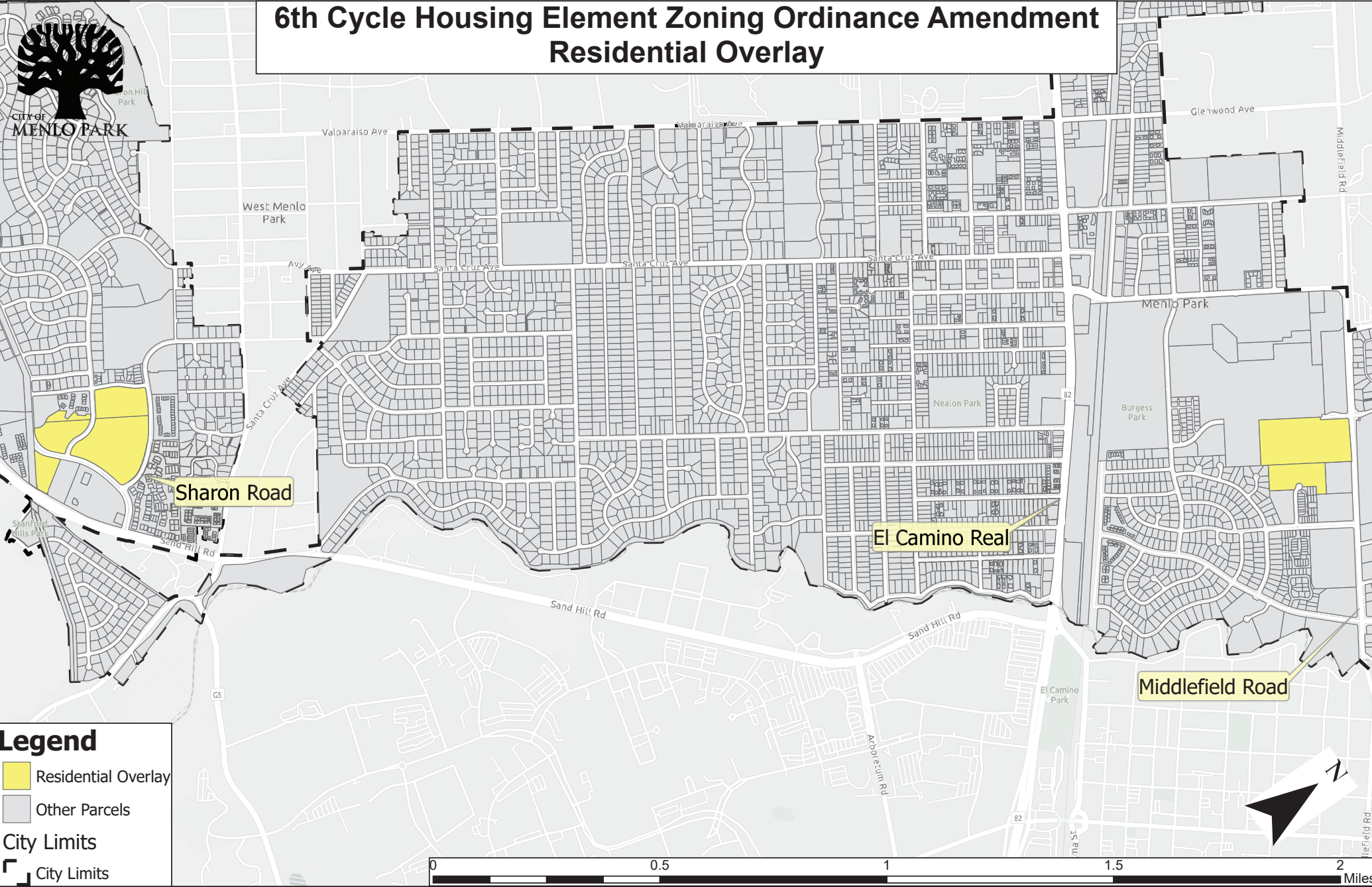
(3) Water Use Efficiency and Recycled Water.

- (A) Single pass cooling systems shall be prohibited in all new buildings.
- (B) All new buildings shall be built and maintained without the use of well water.
- (C) Applicants for a new building more than one hundred thousand (100,000) square feet or more of gross floor area shall prepare and submit a proposed water budget and accompanying calculations following the methodology approved by the city. For all new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area, the water budget shall account for the potable water demand reduction resulting from the use of an alternative water source for all city approved nonpotable applications. The water budget and calculations shall be reviewed and approved by the city's public works director prior to certification of occupancy. Twelve (12) months after the date of the certification of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city's public works director, shall be implemented. Twelve (12) months after city approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city's public works director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.
- (D) All new buildings shall be dual plumbed for the internal use of recycled water.
- (E) All new buildings two hundred fifty thousand (250,000) square feet or more in gross floor area shall use an alternate water source for all city approved nonpotable applications. An alternative water source may include, but is not limited to, treated nonpotable water such as graywater. An alternate water source assessment shall be submitted that describes the alternative water source and proposed nonpotable application. Approval of the alternate water source assessment, the alternative water source and its proposed uses shall be

approved by the city's public works director and community development director. If the Menlo Park Municipal Water District has not designated a recycled water purveyor and/or municipal recycled water source is not available prior to planning project approval, applicants may propose conservation measures to meet the requirements of this section subject to approval of the city council. The conservation measures shall achieve a reduction in potable water use equivalent to the projected demand of city approved nonpotable applications, but in no case shall the reduction be less than thirty percent (30%) compared to the water budget in subsection (3)(C) of this section. The conservation measures may include on-site measures, off-site measures or a combination thereof.

- (F) Potable water shall not be used for dust control on construction projects.
 - (G) Potable water shall not be used for decorative features, unless the water recirculates.
- (4) Waste Management.
- (A) Applicants shall submit a zero-waste management plan to the city, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from the demolition, construction and occupancy phases of the building. For the purposes of this chapter, "zero waste" is defined as ninety percent (90%) overall diversion of nonhazardous materials from landfill and incineration, wherein discarded materials are reduced, reused, recycled, or composted. Zero-waste plan elements shall include the property owner's assessment of the types of waste to be generated during demolition, construction and occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration.
- (5) Bird-Friendly Design.
- (A) No more than ten percent (10%) of facade surface area shall have non-bird-friendly glazing.
 - (B) Bird-friendly glazing includes, but is not limited to, opaque glass, covering the outside surface of clear glass with patterns, paned glass with fenestration, frit or etching patterns, and external screens over nonreflective glass. Highly reflective glass is not permitted.
 - (C) Occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during nonwork hours and between ten (10) p.m. and sunrise.
 - (D) Placement of buildings shall avoid the potential funneling of flight paths towards a building facade.
 - (E) Glass skyways or walkways, freestanding (see-through) glass walls and handrails, and transparent building corners shall not be allowed.
 - (F) Transparent glass shall not be allowed at the rooflines of buildings, including in conjunction with roof decks, patios and green roofs.
 - (G) Use of rodenticides shall not be allowed.
 - (H) A project may receive a waiver from one (1) or more of the items listed in subsections (5)(A) to (F) of this section, subject to the submittal of a site specific evaluation from a qualified biologist and review and approval by the planning commission.

6th Cycle Housing Element Zoning Ordinance Amendment Residential Overlay



Legend

- Residential Overlay
- Other Parcels

City Limits

- City Limits

ORDINANCE NO. XXXX**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTERS 16.04 AND 16.08 OF TITLE 16 OF THE MENLO PARK
MUNICIPAL CODE TO IMPLEMENT HOUSING ELEMENT PROGRAM H2.F
AND ESTABLISH LARGE FAMILY DAY CARE HOMES AS A PERMITTED USE
IN A LEGAL DWELLING UNIT IN ANY RESIDENTIAL DISTRICT**

WHEREAS, Sections 16.04.164, 16.04.165, and 16.08.085 of Title 16 of the Menlo Park Municipal Code define and regulate how child care facilities based out of private residences (“child day care homes” or “family day care homes”), are permitted in the City of Menlo Park; and

WHEREAS, a large family day care home for the care or instruction of up to 14 children is currently subject to noticing requirements and the potential for a public hearing, and requires a permit with approval from the Community Development Director; and

WHEREAS, the City’s requirements for large family day care homes are not in conformance with California Health and Safety Code Section 1597.45, which requires that large family day care homes be allowed as a permitted use within any residential zoning district; and

WHEREAS, beginning in 2021, the City undertook a multi-year process with extensive public outreach, community engagement, and public hearings to update the City’s General Plan Housing Element as part of the Housing Element Update project, and adopted a Housing Element on January 31, 2023; and

WHEREAS, Housing Element Policy H2.6, School District and City Service Maintenance, establishes that the City will work with school districts and child care providers to maintain quality service as demand increases; and

WHEREAS, Housing Element Program H2.F, Childcare Allowances, states that the City will update the Zoning Ordinance to allow large family day care homes by-right in all residential zoning districts in conformance with state law; and

WHEREAS, the Planning Commission held a study session on August 14, 2023, to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H2.F; and

WHEREAS, the City Council held a study session on August 22, 2023 to discuss proposed General Plan, Zoning Ordinance, zoning map, and El Camino Real/Downtown Specific Plan amendments necessary to implement the programs within the Housing Element, including Program H2.F; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 23, 2023 that was continued to November 6, 2023, to review and consider the proposed amendments to Sections 16.04.164, 16.04.165, and 16.08.085 of Title 16 of the Menlo Park Municipal Code and adopted Planning Commission Resolution No. 2023-__ recommending that the City Council adopt the Zoning Ordinance amendments, whereat all interested persons had the opportunity to appear and comment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MENLO PARK:

Section 1. Findings.

The above recitals are hereby declared to be true and correct findings of the City Council of the City of Menlo Park.

Section 2. Amendment.

Chapter 16.04 – Definitions of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.04.164 Child day care center. “Child day care center” means any child care facility other than a large ~~child~~ family day care home or small ~~child~~ family day care home as defined by Section 16.04.165. (Ord. 1030 § 2, 2017).

16.04.165 Child Family day care home. “~~Child~~ Family day care home” means both a “small ~~child~~ family day care home” and a “large ~~child~~ family day care home” as further defined herein. A “small ~~child~~ family day care home” means a ~~private single family~~ residence licensed by the appropriate state or county agency for the day care or instruction of no more than six (6) children, or up to eight (8) children without an additional adult attendant, if all of the following conditions are met: (1) at least one (1) child is enrolled in and attending a kindergarten or elementary school and a second child is at least six (6) years of age; (2) no more than two (2) infants are cared for during any time when more than six (6) children are cared for; (3) the licensee notifies each parent that the facility is caring for two (2) additional school-age children and that there may be up to seven (7) or eight (8) children in the home at one (1) time; and (4) the licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented. A “large ~~child~~ family day care home” means a ~~private single family~~ residence licensed by the appropriate state or county agency for the day care or instruction of no more than twelve (12) children, or up to and including fourteen (14) children, if all of the following conditions are met: (1) at least one (1) child is enrolled in and attending a kindergarten or elementary school and a second child is at least six (6) years of age; (2) no more than three (3) infants are cared for during any time when more than twelve (12) children are cared for; (3) the licensee notifies each parent that the facility is caring for two (2) additional school-age children and that there may be up to thirteen (13) or fourteen (14) children in the home at one (1) time; and (4) the licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented. (Ord. 1030 § 3, 2017; Ord. 546 § 1(1), 1973).

Section 3. Amendment.

Chapter 16.08 – Districts Established—General Regulations of Title 16 – Zoning of the City of Menlo Park Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~ text):

16.08.085 Child Family day care homes.

(a) A small ~~child~~ family day care home, as ~~the same is defined in this title~~ Section 16.04.165, may be a home occupation and as such is a permitted use in a legal dwelling unit in any residential district.

~~(b) A large child family day care home, as the same is defined in this title, may be a home occupation and as such is a permitted use in a legal dwelling unit in any residential district. requires a permit. A person who desires to obtain a permit for a large child day care home ("applicant") must follow the process described below in order to use their home as a large child day care home:~~

~~(1) The city must provide notice of the proposed use to adjoining property owners within a one hundred (100) foot radius of the exterior parcel boundaries of the large child day care home. Notice shall be given not less than ten (10) calendar days prior to the date on which the decision will be made on the application.~~

~~(2) A public hearing is required if one (1) is requested by the applicant or any other affected party.~~

~~(3) If a public hearing is not required, the community development director, or his/her designee, shall approve a permit for a large child day care home if the property on which the proposed large child day care home is located and applicant comply with all of the following conditions and standards:~~

~~(A) The applicant must possess a current and valid large family child care home license from the state of California, Department of Social Services. The city's permit shall not become effective until such time as the state license is obtained. If said license is suspended or revoked by the state for any reason, the city's permit for a large child day care home shall immediately be suspended or revoked to the same extent.~~

~~(B) The applicant must reside at the property and the use must be clearly incidental and secondary to the use of the property for residential purposes.~~

~~(C) The property is not bordered on more than one (1) side by a child day care home or child day care center.~~

~~(D) The property is not located adjacent to a business that uses, sells or stores significant amounts of hazardous materials or creates high noise levels or fumes.~~

~~(E) Residences with sole access from major arterial and/or collector streets must provide an off-street drop-off/pick-up area. The residential driveway may be used as the drop-off/pick-up area, provided such use does not cause a backup of vehicles on the street.~~

~~(F) The large child day care home operation shall not result in cars blocking neighbors' driveways or backing up traffic on the street.~~

~~(G) Provisions have been made to provide, at a minimum, one (1) off-street parking space per employee of driving age not living at the residence. The residential driveway is acceptable if the parking space will~~

~~not conflict with any required child drop-off/pick-up area and does not block the public sidewalk or right-of-way.~~

~~(H) The applicant must comply with all applicable regulations of the fire marshal regarding health and safety requirements.~~

~~(I) Any permanently installed playground apparatus (swings, jungle gym, etc.) shall conform to setback requirements for accessory structures in that particular residential zoning district.~~

~~(J) Outdoor playtime shall be limited to the hours from nine (9) a.m. to seven (7) p.m.~~

~~(K) Outdoor play areas shall be set back at least five (5) feet from adjoining residential dwellings and enclosed with a minimum six (6) foot fence. A six (6) foot wood or masonry fence is required along the boundaries with residential uses.~~

~~(L) A minimum of seventy-five (75) square feet of outdoor space for each child over two (2) years old that is not located in any required front or street side yard. This area must be either owned or leased by the applicant and cannot be shared with any other property owners unless written permission is granted by the other property owners. This requirement may be waived if the applicant can demonstrate that there is a public park, school or other public area open within five hundred (500) feet of the child day care home.~~

~~(M) Hours of operation shall be limited to the hours of six (6) a.m. to seven (7) p.m., Monday through Friday. Additional hours may be allowed subject to approval of a use permit.~~

~~(N) The community development director or designee may consider and specify other reasonable conditions that relate to parking, traffic, noise, and spacing and concentrations of large child day care homes that might otherwise have an adverse effect on adjacent properties.~~

~~(4) If a public hearing is requested, the community development director or his or her designee shall give notice to residents and property owners within three hundred (300) feet of the proposed large child day care home and shall conduct a public hearing. The decision of the community development director or his or her designee shall be limited to and based on the criteria set forth in subsection (b)(3) of this section.~~

~~(5) The applicant or other affected person may appeal the decision of the community development director or his or her designee to the planning commission within fifteen (15) days from the date of the notice of decision in accordance with Chapter 16.86, Appeals; provided, that the criteria for upholding or denying decision of the community development director or his or her designee shall be limited to and based on the criteria set forth in subsection (b)(3) of this section. (Ord. 1030 § 4, 2017; Ord. 546 § 1(3), 1973).~~

Section 4. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. Compliance with CEQA.

The City Council hereby finds that the action to adopt this Ordinance was considered within the Subsequent Environmental Impact Report (SCH #2015062054) (SEIR) for the Housing Element Update project, certified by Council Resolution No. 6808, adopted January 31, 2023. No supplemental or subsequent EIR is required because none of the circumstances requiring a supplemental or subsequent EIR exist (CEQA Guidelines Section 15162):

- (a) No substantial changes are proposed in the project which will require major revisions of the previous SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Zoning Ordinance and Zoning Map amendments do not create any additional environmental impacts.
- (b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken. The SEIR was certified in January 2023, and no substantial evidence has been submitted showing any change in the circumstances applicable to the project.
- (c) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SEIR was certified as complete, has been submitted to the City.

Section 6. Publication; Effective Date.

This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the twenty-eighth day of November 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the ___ day of ___ 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-260-CC

Consent Calendar: **Adopt a resolution approving a grant of utility easement to West Bay Sanitary District at 100 Terminal Ave. and determine this action is categorically exempt under California Environmental Quality Act Guidelines §15305 Class 5 exemption for minor alterations in land use limitations**

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to grant a utility easement to West Bay Sanitary District at the Belle Haven Community Campus (BHCC) site, located at 100 Terminal Ave., and determine this action is categorically exempt under California Environmental Quality Act (CEQA) Guidelines §15305, Class 5 exemption for minor alterations in land use limitations.

Policy Issues

Improvements within city property that are constructed, operated, maintained, repaired and owned by entities other than the city require the conveyance of property rights. City Council approval is required to grant easements on city-owned property.

Background

On Dec. 16, 2019, Meta (formerly known as Facebook) submitted a proposal for the funding and development of a newly constructed multigenerational center to incorporate the former Belle Haven Branch Library, Belle Haven Youth Center, Menlo Park Senior Center, and Onetta Harris Community Center into a single new multiservice facility. On Jan. 12, 2021, the City Council approved the architectural control, use permit, and funding and improvement agreement for the project, which also included City funding to rebuild the Belle Haven Pool and other project enhancements such as recycled water. Construction began in November 2021 and is anticipated to be completed in early 2024. During construction of the new facility, new utilities were installed to service the building, including potable water, recycled water, sewer, electric and communication. Aside from potable water, the utilities will be owned by entities other than the City. West Bay Sanitary District and PG&E are requiring easements for their utilities crossing the BHCC site, as further described below.

Analysis

West Bay Sanitary District plans to bring recycled water to northern Menlo Park with a Bayfront Recycled Water project, which includes a new recycled water facility at the former treatment plant behind Bedwell Bayfront Park. West Bay Sanitary District staff recently issued a request for qualifications (RFQ) to design this work, and their construction is anticipated to be completed in September 2026.

As part of the Facebook Campus Expansion project, 2,800 feet of recycled water pipe was installed on Chilco Street, and will be used to distribute recycled water from the Bayfront Recycled Water facility to the Bayfront area in the future. The BHCC project installed approximately 500 feet of 12-inch recycled water pipe extending from Chilco Street, through the BHCC city-owned property, to Terminal Avenue. This effort provided an important extension of the existing recycled water infrastructure as well as direct connections to BHCC. This infrastructure is critical, as BHCC is constructed with dual plumbing so that the site can utilize recycled water for toilet flushing and irrigation when it becomes available.

Easements are not required when utility main lines are installed within streets right-of-way. However, when utility main lines cross through private property or property owned by other public agencies, the property owner must grant an easement to the utility company to allow it to maintain and operate its facilities. The property at 100 Terminal Avenue is owned by the City; therefore, the City must grant West Bay Sanitary District an easement for the recycled (also known as reclaimed) water line on the site. An easement will also need to be granted to PG&E; this item will be presented to City Council in early 2024.

Impact on City Resources

There is no direct impact on City resources associated with the action of this staff report.

Environmental Review

The proposed grant of utility easement is Categorically Exempt under §15305, Class 5, minor alterations in land use, of the current State of CEQA Guidelines.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Resolution

Report prepared by:
Theresa Avedian, Senior Civil Engineer

Report reviewed by:
Tanisha Werner, Assistant Public Works Director - Engineering

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
GRANTING AN EASEMENT TO WEST BAY SANITARY DISTRICT AT 100
TERMINAL AVENUE**

WHEREAS, in January 2021, the City Council approved the architectural control, use permit, and funding and improvement agreement for the Belle Haven Community Campus (BHCC) project located at 100 Terminal Avenue, and

WHEREAS, new utilities were installed to service the building, some of which require easements because their mainlines are crossing through the City-owned property, and

WHEREAS, a new recycled water main was constructed to provide the necessary infrastructure to bring recycled water to BHCC when it becomes available, and

WHEREAS, BHCC was constructed with dual plumbing so recycled water can be used for irrigation and toilet flushing when it becomes available, and

WHEREAS, the use of recycled water at BHCC meets the City's green and sustainable goals for water use efficiency and recycled water, and

WHEREAS, West Bay Sanitary District is the owner of the recycled water system, and is requiring an easement for the new recycled water main, and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park approves the grant of an easement to West Bay Sanitary District for a recycled water main on the property located at 100 Terminal Avenue as shown in Exhibit A, with the form of easement as shown in Exhibit B, and

BE IT AND IT FURTHER RESOLVED by the City Council of the City of Menlo Park that said grant of easement is exempt under current California Environmental Quality Act Guidelines Section 15305, Class 5 exemption for minor alterations in land use limitations.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this __ day of December, 2023.

Judi A. Herren, City Clerk

Exhibit:

- A. Plat and legal description
- B. Grant of easement

EXHIBIT "A" RECLAIMED WATER FACILITIES EASEMENT

SAID PARCEL IS LOCATED

IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

BEING A PORTION OF LOT 2, BLOCK 43, TRACT 525 BELLE HAVEN CITY, AS RECORDED IN BOOK 23 OF MAPS, AT PAGE 6 ON SEPTEMBER 18, 1940, IN THE OFFICE OF THE SAN MATEO COUNTY RECORDER.

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 2, SAID CORNER ALSO BEING THE NORTHEASTERLY CORNER OF LOT 3 OF SAID BLOCK AND TRACT.

THENCE RUNNING ALONG THE NORTHERLY BOUNDARY LINE OF SAID LOT 2 NORTH 85°00'40" EAST A DISTANCE OF 10.87 FEET TO THE **TRUE POINT OF BEGINNING**, THENCE FOLLOWING SAID NORTHERLY BOUNDARY LINE NORTH 85°00'40" EAST A DISTANCE OF 10.00 FEET, THENCE LEAVING SAID NORTHERLY BOUNDARY LINE OF LOT 2 SOUTH 04°57'03" EAST A DISTANCE OF 3.19 FEET, THENCE SOUTH 29°07'17" EAST A DISTANCE OF 7.36 FEET, THENCE SOUTH 05°00'54" EAST A DISTANCE OF 134.25 FEET, THENCE SOUTH 10°46'42" EAST A DISTANCE OF 89.76 FEET TO THE SOUTHERLY BOUNDARY LINE OF LOT 2 AND THE NORTHERLY RIGHT OF WAY OF TERMINAL AVE. THENCE RUNNING ALONG THE SOUTHERLY BOUNDARY LINE OF SAID LOT 2 NORTH 73°35'38" WEST A DISTANCE OF 11.24 FEET, THENCE LEAVING SAID SOUTHERLY BOUNDARY LINE OF LOT 2 NORTH 10°46'42" WEST A DISTANCE OF 85.13 FEET, THENCE NORTH 05°00'54" WEST A DISTANCE OF 90.56 FEET, THENCE SOUTH 84°51'59" WEST A DISTANCE OF 4.21 FEET, THENCE NORTH 05°08'01" WEST A DISTANCE OF 10.00 FEET, THENCE NORTH 84°51'59" EAST A DISTANCE OF 4.23 FEET, THENCE NORTH 05°00'54" WEST A DISTANCE OF 32.06 FEET, THENCE NORTH 29°07'17" WEST A DISTANCE OF 7.37 FEET, THENCE NORTH 04°57'03" WEST A DISTANCE OF 5.33' FEET TO A POINT ALONG THE NORTHERLY BOUNDARY LINE OF SAID LOT 2 AND THE **TRUE POINT OF BEGINNING**;

CONTAINING 2,367 SQUARE FEET, OR 0.054 ACRES, MORE OR LESS.

AS SHOWN ON EXHIBIT B, A PLAT TO ACCOMPANY THE LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART HEREOF.



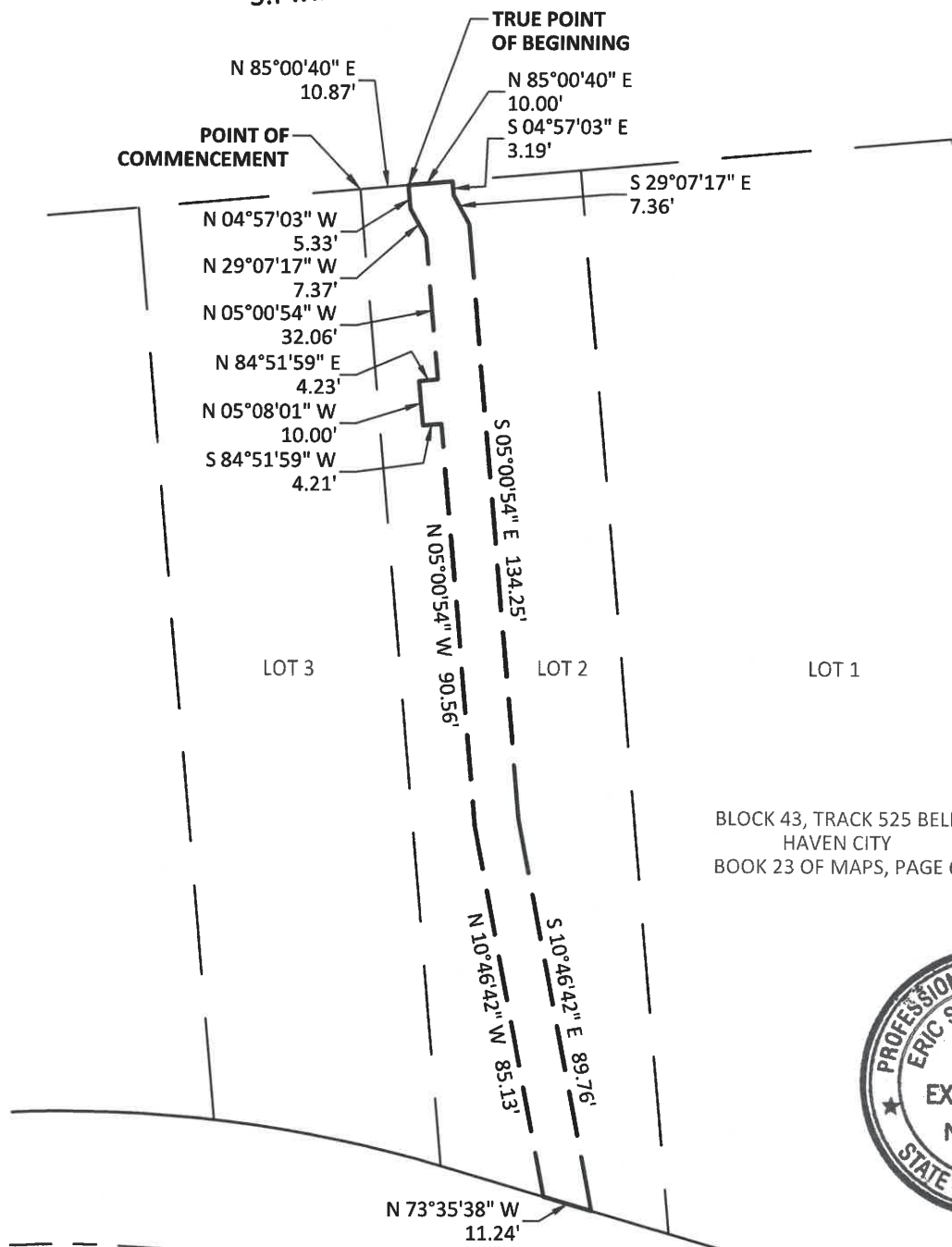
ERIC S. GILBERTSEN, PLS NO. 7545

15 FEB 2023
DATE



EXHIBIT A RECLAIMED WATER FACILITIES EASEMENT	DATE:	02/10/2023
	DRAWN BY:	TAS
CITY OF MENLO PARK / SAN MATEO COUNTY / CALIFORNIA	CHECKED BY:	ESG
	PROJECT NO.	2100-142
	SHEET:	1 OF 2

S.P.R.R.



BLOCK 43, TRACK 525 BELL
HAVEN CITY
BOOK 23 OF MAPS, PAGE 6



SCALE: 1"=40'

LEGEND:

- LOT LINE
- CENTER LINE
- RIGHT-OF-WAY LINE
- PROPOSED RECLAIMED WATER EASEMENT



2250 Douglas Blvd., Suite 200
Roseville, CA 95661
O: 916.772.7688
F: 916.772.7699
www.kpff.com

EXHIBIT B RECLAIMED WATER FACILITIES EASEMENT	DATE: 02/10/2023
	DRAWN BY: TAS
CITY OF MENLO PARK / SAN MATEO COUNTY / CALIFORNIA	CHECKED BY: ESG
	PROJECT NO. 2100-142
	SHEET: 2 OF 2



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-261-CC

Consent Calendar: Adopt a resolution authorizing the city manager to submit applications for all CalRecycle grant and payment programs for which the City of Menlo Park is eligible

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) authorizing the city manager to submit applications for all California Department of Resources, Recycling and Recovery (CalRecycle) grant and payment programs.

Policy Issues

CalRecycle releases several grant and payment programs throughout the year and requires the City Council to pass a resolution authorizing city staff to apply for those programs. An example of a grant program is the Senate Bill (SB) 1383 Local Assistance Grant Program and an example of a payment program is the Beverage Container City/County Payment Program.

Background

In September 2016, SB 1383 (Lara, Chapter 395, Statutes of 2016) established statewide methane emissions reduction targets in an effort to reduce emissions of short-lived climate pollutants in various sectors of California's economy. It includes statewide goals to reduce the disposal of organic waste (food scraps, yard debris, paper products, etc.) by 50% by Jan. 1, 2020 and by 75% by Jan. 1, 2025 and recover edible food for human consumption.

To accomplish statewide goals, SB 1383 regulations include prescriptive requirements for jurisdictions, including the City of Menlo Park, related to recycling and organics collection, inspection, and enforcement policies and programs and edible food recovery. The City is a South Bayside Waste Management Authority (SBWMA) member agency and proactively collaborates closely with CalRecycle, as well as regional partner agencies, including Recology of San Mateo County and the County of San Mateo, to implement SB 1383 programs in accordance with state guidelines and requirements.

One of the state requirements is to adopt an ordinance by Jan. 1, 2022 to support establishment of enforceable SB 1383-related requirements for organic waste generators, haulers, and other entities subject to the City of Menlo Park's authority. As a result, Nov. 16, 2021, the City Council adopted Ordinance No. 1079 enacting Chapter 7.04 [Solid Waste, Recyclables and Organic Waste Disposal] of Title 7 [Health and Sanitation]. Additionally, the state requires the City to meet an annual procurement target of recovered organic waste product, such as mulch and compost, and purchase at least 30% postconsumer recycled content paper products. Thus, on Dec. 14, 2021, the City Council adopted Resolution No. 6704 to amend the City's purchasing policy to incorporate the new state procurement requirements under SB 1383.

Analysis

On Sept. 14, CalRecycle released and started accepting applications for a noncompetitive SB 1383 Local Assistance Grant program (Grant), where \$90 million in funds will be disbursed to all approved applicants on a per capita basis. The goal of the Grant is to provide one-time aid to local jurisdictions in the implementation of the SB 1383 regulations. Eligible activities and costs for the Grant include:

- Capacity planning;
- Collection;
- Edible food recovery;
- Education and outreach;
- Enforcement and inspection;
- Program evaluation/gap analysis;
- Procurement requirements; and
- Record keeping.

If awarded, the City is estimated to receive \$75,000 in grant funding. Staff intends to use this funding to standardize three-stream waste stations in city facilities, to continue participating in the countywide San Mateo Resource Conservation District Compost Broker project, and to purchase recycled organic products to help meet the City's procurement requirements.

As part of the application process, the City is required to submit a resolution approved by the City Council authorizing the city manager to submit applications for all CalRecycle grant and payment program.

Impact on City Resources

There is no impact on City resources to apply to this grant opportunity. Failure to pass this resolution would preclude the City from applying for this opportunity and other CalRecycle grants.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378 and 15061(b)(3) as it is an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Resolution

Report prepared by:
Joanna Chen, Management Analyst II

Reviewed by:
Brittany Mello, Administrative Services Director

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO SUBMIT APPLICATIONS FOR ALL
CALRECYCLE GRANT AND PAYMENT PROGRAMS FOR WHICH THE CITY
OF MENLO PARK IS ELIGIBLE**

WHEREAS, Public Resources Code sections 48000 et seq., 14581, and 42023.1(g), authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant and payment programs in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority, CalRecycle is required to establish procedures governing the administration of the payment programs; and administration of the application, awarding, and management of the grant programs; and

WHEREAS, CalRecycle's procedures for administering payment and grant programs require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the payment and grant program.

NOW, THEREFORE, BE IT RESOLVED, that the City of Menlo Park is authorized to submit an application to CalRecycle for any and all grant and payment programs offered; and

BE IT FURTHER RESOLVED that the City Manager, or their designee is hereby authorized and empowered to execute in the name of the City of Menlo Park all documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure funds and implement the approved grant or payment project; and

BE IT FURTHER RESOLVED that these authorizations are effective from the date of adoption through December 5, 2028.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of December, 2023.

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date:

12/5/2023

Staff Report Number:

23-262-CC

Consent Calendar:

Authorize the city manager to execute three-year master agreements with multiple consulting firms for on-call transportation services

Recommendation

Staff recommends that the City Council authorize the city manager to execute three-year master agreements (Attachment A) with an option to renew for three additional years with multiple consulting firms for on-call transportation services.

Policy Issues

The proposed action is consistent with the City's purchasing policies. Use of multiyear master agreements assists the delivery of capital improvement projects and community programs/services in a timely manner. It also serves as a risk management tool to quickly address external pressures that limit staff capacity, such as development growth, new priorities and staff vacancies.

Background

The transportation division of the public works department is responsible for promoting the safe movement of people and goods throughout Menlo Park by maintaining and enhancing a functional and efficient transportation network. The division oversees areas such as shuttle service, pedestrian and bicycle facilities, traffic signals, streetlights, street signs, striping and the overall roadway network.

Transportation challenges, including multimodal safety, maintenance of existing infrastructure, traffic congestion, neighborhood cut-through traffic, and regional coordination are significant concerns in Menlo Park. Menlo Park has consistently experienced complex, regional transportation problems due to its proximity to major highways and the Dumbarton Bridge. As more employees return to in-person work and with the number of regional development and employment centers on the Peninsula, peak period traffic congestion and vehicle miles traveled will increase, stressing the importance to provide alternative modes to commuting by single occupant vehicle while also addressing the City's Climate Action Plan goals.

The transportation division currently has 12 transportation-focused projects that require significant community engagement, staff coordination and leadership. These projects also add workload demands beyond the typical day-to-day operations of the division, such as supporting numerous development reviews, overseeing management of traffic control through construction zones, coordinating City's shuttle and safe routes to school programs, implementing the Vision Zero Action Plan, addressing general resident concerns and maintaining traffic signals, street lighting, pedestrian infrastructure and bicycle infrastructure.

To address these challenges and ensure timely and continued delivery of transportation related City Council priorities, projects and services, staff recommends that the City Council authorize the city manager to execute three-year master agreements (including an option to extend three additional years) with multiple

transportation consulting firms.

Analysis

In past years and currently, the City Council has authorized the city manager to execute master agreements with consulting firms to provide specialized expertise and augment staffing resources that are experiencing higher demand due to external market and community pressures. Master agreements have been established by the City for services such as transportation, engineering, surveying, inspection and testing, and other specialized tasks. The last transportation master agreements were established Nov. 13, 2018.

Master agreements are an efficient tool for providing technical staff support and shorten the time needed to identify qualified firms, while adhering to the City purchasing policies. This enables the City to quickly respond to community demands by using these consulting firms' services on an as-needed basis for a specific activity. These services are temporary, and obtained only for the length of time needed to complete the tasks.

Master agreements that involve on-call professional services provide a list of qualified and vetted consulting firms. Once a master agreement is in place with the listed firms, staff interact with these firms on an as-needed basis to find the appropriate level of expertise and knowledge to carry out a specific task or service. Once staff identify a specific firm from the list for the task, the City establishes a purchase order for a not-to-exceed amount and a funding source that has already been budgeted.

Some of the past and current projects where the City has used consultants from the last round of master agreements include:

- Grant applications and design services for the Willow Road pedestrian and bicycle safety project
- Safe Routes to School program support
- Middle Avenue Complete Streets project design
- Updating the Transportation Impact Analysis Guidelines
- El Camino Real crossing improvements design

The master agreement is the same document as the City's standard services agreement and requires the consultant to provide proof of insurance and to hold the City harmless for the work performed. The agreements will be for three years with an option to extend for three additional years.

In August 2023, staff advertised a request for qualifications (RFQ) for on-call transportation planning and engineering services. Fifteen submittals were received and reviewed based on their responsiveness to the RFQ, application of innovative approaches, and past experience. Upon review and evaluation of the submittals, staff identified nine firms that provide a wide range of specialties and project experience. Staff recommends entering into agreements with the following nine firms ensuring a large pool of experienced personnel and the highest availability of services:

- Alta Planning and Design
- BKF
- Hexagon Transportation Consultants, Inc.
- Fehr & Peers
- Kimley-Horn
- Kittelson and Associates
- Parametrix, Inc.
- Steer

- W-Trans

Some of the on-call services that could be provided by the above list of transportation consultants include:

- Traffic signal design
- Conducting traffic engineering studies
- Multimodal transportation planning, operations analysis and concept design
- Transportation impact analysis
- Travel demand modeling support
- Capital project planning, design, and/or construction management
- Transportation demand management program support
- Transit planning to assist with the City's shuttle services
- Cut-through traffic analysis and traffic calming planning and design
- Project management support
- Parking analysis and management best practices
- Cost estimating and project prioritization support
- Developing solutions to safety challenges, including addressing hot spots and developing systemic safety treatments
- Grant application support and project administration
- Construction support
- Review of traffic control plans

Establishing master agreements with these firms will assist in mitigating risks associated with increased community demand for addressing transportation issues, current and future staff vacancies and ability to deliver products and services in a timely manner.

Impact on City Resources

The contract amount for services will vary for each project, depending on the scope of work/services, the number and type of professionals/technicians used, and the public input needed. The hourly rates for services typically range from \$100 to \$300, depending on the area of expertise and experience required to deliver the requested products. The costs of these services are budgeted in the program or capital project for which the services are needed. No additional appropriations are being requested at this time.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Agreements

Staff Report #: 23-262-CC

Report prepared by:
Kristiann Choy, Senior Transportation Engineer

Report reviewed by:
Hugh Louch, Assistant Public Works Director – Transportation

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND ALTA PLANNING AND DESIGN, INC.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and ALTA PLANNING AND DESIGN, INC., hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Emily Duchon
Alta Planning and Design, Inc.
304 12TH STREET, SUITE 2A,
OAKLAND, CA 94607
(734) 678-7096
emilyduchon@altago.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT “B” - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

5. Rates

Alta is flexible in our approach to working with the City to structure task order-specific projects for transportation planning and engineering services work, providing the best value to Menlo Park.



Alta Planning + Design 2023-2028 Billing Rates

Labor Classification	2023	2024	2025	2026	2027	2028
Administration	\$157	\$158	\$163	\$168	\$173	\$178
Art Director	\$127	\$128	\$132	\$136	\$140	\$144
Civic Data Analyst	\$107	\$108	\$112	\$115	\$118	\$122
Civic Data Analyst II	\$117	\$118	\$122	\$125	\$129	\$133
Data Science Group Leader	\$175	\$176	\$181	\$187	\$192	\$198
Design Associate	\$139	\$140	\$144	\$149	\$153	\$158
Designer - Level I	\$102	\$103	\$106	\$109	\$112	\$116
Designer - Level II	\$90	\$91	\$94	\$97	\$100	\$103
Digital Director	\$163	\$164	\$169	\$175	\$180	\$185
Engineer - Level I	\$133	\$134	\$138	\$142	\$146	\$151
Engineer - Level II	\$110	\$111	\$115	\$118	\$121	\$125
Engineering Associate	\$171	\$172	\$177	\$182	\$188	\$193
Graphic Designer - Level I	\$101	\$102	\$105	\$108	\$111	\$114
Intern	\$76	\$77	\$80	\$82	\$85	\$87
Planner - Level I	\$116	\$117	\$120	\$124	\$127	\$131
Planner - Level II	\$95	\$96	\$99	\$101	\$105	\$108
Planning Associate	\$165	\$166	\$171	\$176	\$182	\$187
Principal	\$222	\$223	\$230	\$237	\$244	\$251
Principal - Owner	\$393	\$394	\$405	\$418	\$430	\$443
Project Coordinator	\$127	\$128	\$132	\$136	\$140	\$144
Senior Design Associate	\$175	\$176	\$181	\$187	\$192	\$198
Senior Designer	\$123	\$124	\$128	\$131	\$135	\$139
Senior Engineer	\$149	\$150	\$154	\$159	\$163	\$168
Senior Engineering Associate	\$233	\$234	\$241	\$248	\$256	\$263
Senior Graphic Designer	\$114	\$115	\$119	\$122	\$126	\$130
Senior Planner	\$127	\$128	\$132	\$136	\$140	\$144
Senior Planning Associate	\$205	\$206	\$212	\$218	\$225	\$232
Web Developer	\$113	\$115	\$118	\$121	\$125	\$129

Rates are presented in US Dollars (US\$) and **are subject to change at any time.**

Rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.

Subconsultants and reimbursable expenses will be charged at cost.

Mileage will be charged at the provisional standard rate.

In-house reproductions will be charged as follows:

Color copies	\$0.65/ page
Black and white copies	\$0.20/page
24" x 36" large format plot	\$17.50/sheet
36" x 48" large format plot	\$32.50/sheet

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND BKF ENGINEERS
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and BKF ENGINEERS, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

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All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Brian Scott
BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065
650-482-6300
bscott@bkf.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT “B” - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

EXHIBIT A-1 - HOURLY RATES

BKF ENGINEERS PROFESSIONAL SERVICES RATE SCHEDULE

EFFECTIVE JANUARY 1, 2024

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal	\$302.00
Senior Associate Principal	\$280.00
Associate Principal	\$273.00
Senior Project Manager Senior Technical Manager	\$265.00
Project Manager Technical Manager	\$260.00
Engineering Manager Surveying Manager Planning Manager	\$239.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$222.00
Project Engineer Project Surveyor Project Planner	\$195.00
Design Engineer Staff Surveyor Staff Planner	\$170.00
BIM Specialist I, II, III	\$170.00 - \$195.00 - \$222.00
Technician I, II, III, IV	\$162.00 - \$172.00 - \$189.00 - \$203.00
Drafter I, II, III, IV	\$127.00 - \$139.00 - \$150.00 - \$167.00
Engineering Assistant Surveying Assistant Planning Assistant	\$106.00
FIELD SURVEYING	
Survey Party Chief	\$222.00
Instrument Person	\$190.00
Survey Chainperson	\$143.00
Utility Locator I, II, III, IV	\$116.00 - \$164.00 - \$197.00 - \$224.00
Apprentice I, II, III, IV	\$88.00 - \$118.00 - \$130.00 - \$138.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$290.00
Senior Construction Administrator	\$253.00
Resident Engineer	\$188.00
Field Engineer I, II, III	\$170.00 - \$195.00 - \$222.00
FUNDING & GRANT MANAGEMENT	
Director of Funding Strategies	\$208.00
Funding Strategies Manager	\$190.00
Funding/Research Analyst I, II, III, IV	\$130.00 - \$150.00 - \$160.00 - \$176.00
PROJECT ADMINISTRATION	
Project Coordinator	\$142.00
Senior Project Assistant	\$122.00
Project Assistant	\$108.00
Clerical Administrative Assistant	\$90.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.
- The rates shown are subject to periodic increases, including January 1st of each year. Rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FEHR & PEERS
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and FEHR & PEERS, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Geoff Rubendall
Fehr & Peers
345 California Street, Suite 450
San Francisco, CA 94104
(415) 348-0300
g.rubendall@fehrandpeers.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

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Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

Rates



2023-2024

(July 2023 through June 2024)

Hourly Billing Rates

Classification	Hourly Rate
Principal	\$250.00 - \$395.00
Senior Associate	\$215.00 - \$310.00
Associate	\$185.00 - \$275.00
Senior Engineer/Planner	\$160.00 - \$235.00
Engineer/Planner	\$135.00 - \$185.00
Senior Engineering Technician	\$150.00 - \$225.00
Senior Project Accountant	\$170.00 - \$210.00
Senior Project Coordinator	\$130.00 - \$190.00
Project Coordinator	\$115.00 - \$175.00
Technician	\$130.00 - \$170.00
Intern	\$100.00 - \$135.00

- *Other Direct Costs / Reimbursable expenses are invoiced at cost plus 10% for handling.*
- *Personal auto mileage is reimbursed at the then current IRS approved rate (65.5 cents per mile as of Jan 2023).*
- *Voice & Data Communications (Telephone, fax, computer, e-mail, etc.) are invoiced at cost as a percentage of project labor.*
- *Individual hourly billing rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.*
- *Upper limit of hourly billing rate changes are also subject to increase on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.*
- *Staff promotions from one billing category to another are subject to one time rate changes. Fehr & Peers will inform City of any applicable promotions and subsequent rate changes for approval.*

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND HEXAGON TRANSPORTATION CONSULTANTS, INC.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and HEXAGON TRANSPORTATION CONSULTANTS, INC., hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Gary Black
Hexagon Transportation Consultants, Inc.
100 Century Court, Suite 501
San Jose, CA 95112
408-971-6100
gblack@hextrans.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

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Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

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Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

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1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

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The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

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This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

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This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT “B” - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.




Hexagon 2023 Billing Rates

<u>Professional Classification</u>	<u>Rate per Hour</u>
President	\$330
Principal	\$285
Senior Associate II	\$265
Senior Associate I	\$245
Associate II	\$220
Associate I	\$195
Planner/Engineer II	\$165
Planner/Engineer I	\$135
Admin/Graphics	\$120
Assistant Planner/Engineer	\$110
Technician	\$80



Direct expenses are billed at actual costs, with the exception of mileage, which is reimbursed at the current rate per mile set by the IRS.



Rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND KIMLEY-HORN AND ASSOCIATES, INC.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and KIMLEY-HORN AND ASSOCIATES, INC, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Mike Mowery
Kimley-Horn and Associates, Inc.
4637 Chabot Drive, Suite 300
Pleasanton, CA 94588
925-398-4852
mike.mowery@kimley-horn.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

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Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

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CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

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FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

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A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

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- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

5. RATES

EXHIBIT A-1 - HOURLY RATES



Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	Rate
Analyst I	\$135 - \$175
Analyst II	\$180 - \$220
Professional	\$225 - \$260
Senior Professional I	\$265 - \$325
Senior Professional II	\$330 - \$380
Senior Technical Support	\$180 - \$295
Technical Support	\$110 - \$175
Support Staff	\$90 - \$150

Effective through June 30, 2024.

Subject to annual adjustment thereafter, not to exceed 3%.

Other Direct Costs: Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at actual cost. Mileage

will be billed at the Federal Rate.

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND KITTELSON AND ASSOCIATES, INC.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and KITTELSON AND ASSOCIATES, INC., hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Damian Stefanakis
Kittelson & Associates, Inc
155 Grand Avenue, Suite 505
Oakland, CA 94612
510-839-1742
dstefanakis@kittelson.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

5. RATES

Billing rates for Kittelson, effective as of August 2023, are provided in the table below.

KITTELSON HOURLY RATE SCHEDULE

CLASSIFICATION	HOURLY BILLING RATE*
Senior Principal Engineer/Planner	\$284.36
Principal Engineer/Planner	\$246.57
Associate Engineer/Planner	\$227.80
Senior Engineer/Planner	\$182.52
Engineer/Planner	\$158.38
Transportation Analyst	\$139.92
Technician I	\$100.07
Technician II	\$121.23
Senior Technician	\$139.84
Associate Technician	\$174.46
Office Support	\$104.37
Data Analyst/ Software Technician	\$150.49
Senior Data Scientist/Developer	\$216.34
REIMBURSABLE COSTS	
Mileage	(Actual GSA Rate, no markup)
Travel & Meals	(Reimbursement for actual, not to exceed GSA limits)
Outside Services	(Reimbursement for actual, no markup)

*Average classification rates are shown above and were developed using Kittelson's audited overhead rate and profit. These rates will be invoiced for the first year of the contract and then escalated on the contract anniversary date by the lessor of the San Francisco Bay Area Consumer Price Index or 3%.

6. REFERENCES

Gail Payne, City of Alameda

PHONE: 510-747-6892

EMAIL: gpayne@alamedaca.gov

PROJECT: Alameda Citywide Roundabout Analysis

Sue-Ellen Atkinson, City of San Mateo

PHONE: 650-522-7288

EMAIL: seatkinson@cityofsanmateo.org

PROJECTS: San Mateo Transportation Impact Analysis Guidelines, Transportation Master Plan and Transportation Impact Fee Program Update, Peninsula Heights TIA

Pratyush Bhatia, City of Dublin

PHONE: 925-833-6630

EMAIL: pratyush.bhatia@dublin.ca.gov

PROJECT: Dublin On-Call Transportation Engineering Services

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND PARAMETRIX, INC.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and PARAMETRIX, INC., hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

David Parisi
Parametrix, Inc.
800 Bancroft Way, Suite 203
Berkeley, CA 94710
415-649-6009
dparisi@parametrix.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

4. KEY PERSONNEL

Key team members who will interact with City of Menlo Park staff include David Parisi, Andrew Lee, Ronny Kraft, Andres Gonzales, and Jimmy Jessup. These staff members will form a pool of potential project managers, support one another, and work with Parisi's traffic engineering, civil engineering, and transportation planning specialists. Resumes for these personnel are included in the Appendix.

DAVID PARISI, PE, TE | Program Manager/Point of Contact



David will serve as the principal point-of-contact for the City of Menlo Park. David is a registered civil engineer and traffic engineer with over 30 years of experience in traffic engineering, transportation planning, civil engineering, and project management. He has provided project management and general engineering services to dozens of municipalities across northern California.

His experience includes leading multi-disciplinary transportation projects from inception through design and construction. These include multimodal corridor and intersection plans, area-wide circulation studies, transit projects, roadway and interchange feasibility analyses, access planning for pedestrians, bicyclists and people with disabilities, localized traffic impact evaluations, and transportation system improvements. The projects that David manages range from multi-million-dollar civil engineering projects such as the Milvia Bikeway Project, to more modest spot improvement projects identified through our various engineering on-call contracts. David founded Parisi Transportation Consulting 18 years ago.

ANDREW LEE, PE, TE | Project Manager



Andrew is a registered civil engineer and traffic engineer with 16 years of experience in traffic engineering, transportation planning, civil engineering, and project management. His work encompasses a wide variety of project types and phases, spanning from initial transportation planning and conceptual design; to detailed traffic and civil designs, plans, specifications, and cost estimates; and

Caltrans permitting. Andrew specializes in developing innovative and creative designs

for multimodal traffic, including vehicular and bicycle roundabouts, one- and two-way separated bikeways, multiuse paths, and ADA retrofits to pedestrian facilities. Andrew has over 9 years of experience at Parisi Transportation Consulting.

RONNY KRAFT | Project Manager

Ronny is an experienced consultant specializing in transportation planning, project management, mobility management, field data collection, market research, GIS analysis



and cartographic design, and community engagement. She has both short- and long-range transportation planning experience in conducting existing conditions analyses, transit performance analyses, developing service alternatives, and program development. Her experience working on the Peninsula is extensive, having served as planning staff to the Grand Boulevard Initiative, SamTrans Mobility Management Program,

and lead on various community-based transportation planning efforts.

ANDRES GONZALES, PE | Project Manager

Andres is a registered civil engineer with four years of experience. His work includes Complete Streets planning and design, roadway safety design for facilities ranging from



local roads to freeway ramp intersections, and Safe Routes to School assessments. Andres was the lead engineer for the Milvia Bikeway Project and is leading the design for the \$13M, five-mile-long Vallejo Bay Trail Vine Trail project and for several active transportation design projects at BART stations. He has participated in all stages of project development including field work, operational analysis, conceptual planning and

engineering analysis, and preparation of plans and technical reports. Andres holds a BS in Civil Engineering from California Polytechnic University in San Luis Obispo.

5. RATES

JIMMY JESSUP, EIT | Project Manager



Jimmy is a transportation engineer specializing in project management and quality assurance. He leverages his 15 years of experience as a systems engineer and project manager in various energy industries to approach transportation planning with a close attention to project framing, technical analysis, and aligning decisions to identify practical solutions.

While working for an alternative energy firm, Jimmy assured process design and industry standards compliance of hydrogen refueling station developments in California. Jimmy has served various roles in developing grant applications for infrastructure and alternative energy contexts, including proposal management, technical support, and quality control. He has navigated permitting and lease engagements with local approval authorities, led performance monitoring and assurance activities of construction projects, and stewarded numerous stakeholder engagement processes.

Paris’s hourly rate schedule is shown below. We understand that rates will be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.

Please note that reimbursable expenses could include, but not be limited to, transportation charges, reproduction services, shipping expenses, and subcontractor fees (e.g., traffic counts). Mileage charges will be charged at the prevailing IRS rate per mile.

Name	Hourly Rate
PROJECT MANAGERS	
David Parisi	\$325.00
Ronny Kraft	\$241.26
Andrew Lee	\$221.62
Jimmy Jessup	\$141.78
Andres Gonzalez	\$165.35
OTHER SUPPORT STAFF	
Jeremy Thornton	\$154.71
Jennifer Shriber	\$141.78
Brianna Adams	\$141.78
Maclean Grosel	\$141.78
Martin Lezama-Lopez	\$122.78
Venera Charlize Mandanas	\$122.78
Sharanya Varma	\$116.97
David Hoffman	\$116.69

OTHER SUPPORT STAFF



Jennifer Shriber



Maclean Grosel



Bri Adams



David Hoffman



Sharanya Varma



Martin Lezama-Lopez



Venera Charlize Mandanas



Jeremy Thornton

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND STEER DAVIES AND GLEAVE INC. DBA STEER
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and STEER DAVIES AND GLEAVE INC. DBA STEER, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Alasdair Dawson
Steer Davies & Gleave Inc. DBA Steer
1111 Broadway, Suite 300, Office #04-131
Oakland, CA 94607
617-391-2318
Alasdair.Dawson@steergroup.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

5 Rates

The table below indicates Steer’s hourly charge out rates covering the first bench year proposed in the RFQ (October 1, 2023-September 30, 2024). We understand that rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.

Grade	Hourly Rate (\$)
Director II	350
Director	320
Associate Director II	295
Associate Director	270
Associate II	250
Associate	220
Principal Consultant II	200
Principal Consultant	180
Senior Consultant II	170
Senior Consultant	150
Consultant II	145
Consultant	135
Assistant Consultant II	130
Assistant Consultant	125
Intern	85

Any other direct costs or needs would be negotiated with the City based on specific contract needs.

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND WHITLOCK AND WEINBERGER TRANSPORTATION, INC. DBA W-TRANS
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and WHITLOCK AND WEINBERGER TRANSPORTATION, INC. DBA W-TRANS, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: On-Call Transportation Services</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed the amount as described in Exhibit "A," Scope of Services – Hourly Rates. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea A. Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Mark Spencer
Whitlock and Weinberger Transportation, Inc. DBA W-Trans
414 13th Street, 5th Floor
Oakland, CA 94612
510-444-2600
m Spencer@w-trans.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through June 30, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

Rate Schedule



Fee Schedule

2023-2024 Staff Billing Rates

Position	Billing Rate (per hour)
Senior Principal	\$290 – \$375
Principal	\$225 – \$300
Senior Engineer/Planner	\$185 – \$230
Engineer/Planner	\$170 – \$200
Associate Engineer/Planner	\$150 – \$175
Assistant Engineer/Planner	\$130 – \$155
Technician/Administrative	\$115 – \$145
Intern	\$30 – \$80
Field Technician	\$30 – \$75

Expense Charges

Item	Charge
Mileage	\$0.72/mile*
Services and Expenses	10% surcharge

These rates are valid for work performed prior to December 31, 2024. Work performed after January 1, 2025, and any subsequent year may be billed at the revised rates established for that year.

Rates shall be renewed on a yearly basis pursuant to the San Francisco Bay Area Consumer Price Index and shall not exceed 3%.



STAFF REPORT

City Council

Meeting Date:

12/5/2023

Staff Report Number:

23-263-CC

Consent Calendar:

Amend the agreement with APTIM Environmental and Infrastructure, LLC for the operation, maintenance and reporting of the Bedwell Bayfront Park Landfill gas and leachate collection and control systems and determine this action is categorically exempt under California Environmental Quality Act Guidelines §15301 exemption for existing facilities

Recommendation

Staff recommends that the City Council authorize the city manager to execute an amendment to the agreement (Attachment A) with APTIM Environmental and Infrastructure, LLC (APTIM) for the operation, maintenance and reporting of the Bedwell Bayfront Park Landfill gas and leachate collection system improvements in the amount of \$250,000 for an additional six-month term and determine this action is categorically exempt under California Environmental Quality Act Guidelines (CEQA) §15301 exemption for existing facilities.

Policy Issues

The agreement is consistent with Goal LU-7 (Land Use) of the general plan land use element, which is intended to “promote the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park’s residents, businesses, workers and visitors.”

Background

Landfill history

The Bedwell Bayfront Park Landfill (Bedwell Landfill) is a Class III non-hazardous solid waste management facility located at the north end of the City on San Francisco Bay at Bayfront Expressway and Marsh Road. The site is surrounded on three sides by the Don Edwards San Francisco Bay National Wildlife Refuge. Originally referred to as the Marsh Road Landfill, San Mateo County first established solid waste operations at the site in 1957. In 1968, the City of Menlo Park (City) took over the responsibility of the landfill until its closure in 1984. In 1982, the City began the development of Bedwell Bayfront Park on the 160-acre site, of which the landfill covers 155 acres.

The critical aspect of maintaining the closed landfill includes managing the gases that are produced as the waste decomposes (primarily methane) and the water that infiltrates the refuse (known as leachate). The Bedwell Landfill typically generates about 127 million standard cubic feet of landfill gas a year. About 3.5 million gallons of leachate are extracted from the landfill and discharged to the sanitary sewer annually through the systems and regulatory permitting requirements described below.

Gas collection and control system

To comply with Bay Area Air Quality Management District (Air District) regulatory requirements and as part of the landfill closure plan, the City covered the refuse with clay. A landfill gas wellfield was installed in two phases, with the first phase built in 1984 and the second phase in 1987. Currently, the wellfield consists of 72 gas extraction wells and a network of gas collection pipes embedded just beneath the surface of the landfill cap.

Leachate collection and treatment system

The City also has the responsibility to monitor, collect samples and dispose of the leachate generated from the landfill in accordance with a permit to operate issued by the Regional Water Quality Control Board (Water Board). Leachate is groundwater that has migrated through landfill material and requires treatment through the sanitary sewer system. The monitoring system consists of seven groundwater monitoring wells, two surface water monitoring locations, six leachate wells, five piezometers, the 12 leachate extraction sumps and one leachate monitoring location at a sanitary sewer manhole.

On-going improvements

On Sept. 20, 2022 the City Council awarded a contract to Blue Flame Crew West, LLC for the construction of the Bedwell Landfill gas and leachate collection systems improvements. While the core construction scope has been completed, the contractor encountered several unknown existing conditions that must be remediated to maintain the proper functioning of the landfill system. The construction work is therefore still ongoing.

APTIM agreement amendments 1 and 2

The initial five-year contract with APTIM (Attachment A) for the operations, maintenance and regulatory reporting of the Bedwell Landfill gas and leachate systems expired June 30, 2022. On June 28, 2022, the City Council approved a one-year extension of the APTIM contract in anticipation of the construction of improvements to the gas and leachate systems by Blue Flame Crew West, LLC. On June 27, the City Council approved a six-month extension of the APTIM contract, which expires Dec. 31

Analysis

Over the past three years, APTIM has been working with City staff and the regulatory agencies on the plans for the construction of the landfill improvements. APTIM has been an integral part of the design team, and is very familiar with the system and regulatory requirements. In addition, as the unknown conditions were discovered during construction, APTIM has assisted in some of the temporary repairs and has provided construction and regulatory assistance support for other repairs. Staff recommends that the APTIM agreement be extended for additional six months until June 30, 2024. This will provide consistent support to the design team and the contractor during the construction work and until permanent repairs are installed, as well as maintaining coordination with the regulatory agencies (Air District and Water Board).

On Oct. 26, APTIM submitted a proposal for the recommended six-month extension of the Bedwell Landfill operation and maintenance services. The scope of work includes the tasks listed in Table 1 below.

Table 1: Scope of work tasks	
Task	Description
1	Leachate and gas system routine monitoring, operating and maintenance services
2	Groundwater/leachate sampling and analysis
3	Groundwater/leachate monitoring reports
4	Gas system reporting
5	Project management
6	On call maintenance and repair work

Tasks 1 through 6 above are also included in amendments 1 and 2 of the APTIM agreement and cover the following regulatory reporting requirements:

- Semiannual groundwater sampling, laboratory analysis and reporting
- Semiannual surface water sampling, laboratory analysis and reporting
- Quarterly leachate sampling, laboratory analysis and reporting
- Monthly gas system flare operations, inspection and maintenance
- Gas system weekly, monthly, quarterly monitoring and annual maintenance and reporting

APTIM’s proposed routine service fee for the six-month contract extension is \$92,820 or \$15,470 monthly. This is slightly lower than the monthly fee of \$16,245 under the APTIM agreement amendment 2 fee for the previous six month extension. APTIM has also proposed a budget allowance of \$75,000 to cover on call maintenance and repair work, including rental of air compressor equipment until a permanent solution is constructed. Finally, due to unforeseen conditions uncovered during construction in quarter 3 (Q3) and quarter 4 (Q4) of 2023, \$82,180 of additional funding is requested to cover additional on call maintenance and repair work that was not anticipated.

Staff will issue a request for proposals for a new five-year operations and maintenance contract in spring 2024 and a new operations and maintenance contract will begin in 2024 and run through 2029.

Impact on City Resources

The proposed fiscal year 2023-24 operating budget includes sufficient funding for the extension of this agreement. Landfill post closure funds will be utilized to continue to operate and maintain the Bedwell Bayfront Park Landfill leachate and gas collection system. The breakdown of the \$250,000 extension cost is illustrated below in the following table:

Table 2: Cost breakdown	
Cost	Description
\$92,820	Routine operations and maintenance work (Tasks 1-4 in Table 1)
\$75,000	Budgeted cost for non-routine tasks (Tasks 5 and 6 in Table 1)
\$82,180	Costs of non-routine tasks due to unforeseen construction conditions that occurred during July 2023 – December 2023
\$250,000	Total six-month extension cost

Environmental Review

This project is categorically exempt pursuant to the CEQA Guidelines §§15301(c) and 15301(d) Existing Facilities.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. APTIM agreement amendment 3

Report prepared by:

Paige Saber, Senior Civil Engineer - Engineering

Reviewed by:

Tanisha Werner, Assistant Public Works Director - Engineering

AGREEMENT AMENDMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Amendment #: 2117.3

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND APTIM ENVIRONMENTAL AND INFRASTRUCTURE, LLC

THIS THIRD AMENDMENT is made and entered into this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and APTIM ENVIRONMENTAL AND INFRASTRUCTURE, LLC, hereinafter referred to as "FIRST PARTY."

1. Section 4. COMPENSATION AND PAYMENT of Agreement No. 2117, ("Agreement"), Section 4. COMPENSATION AND PAYMENT [amendment to section] is hereby amended to read as follows:

"CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$1,693,570 as described in Exhibit "A", A-1, A-2, A-3 and A-4 Scope of Services. This compensation shall be based on the rates described in Exhibit "A, A-1, A-2, A-3 and A-4". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable."

2. Section 24. TERM OF AGREEMENT of Agreement No. 2117, ("Agreement"), Section 24. TERM OF AGREEMENT [amendment to section] is hereby amended to read as follows:

"This Agreement shall remain in effect for the period of January 1, 2017 through June 30, 2024 unless extended, amended, or terminated in writing by CITY."

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2117 remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SIGNATURE PAGE TO FOLLOW

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

**APTIM**

4005 PORT
CHICAGO HWY
CONCORD, CA
94520

APTIM.com

OCTOBER 26, 2023

ATTENTION: Paige Saber

SUBJECT: Proposed Contract 2117 Extension 3

Ms. Saber:

Aptim Environmental & Infrastructure, LLC. (APTIM) greatly appreciates this opportunity to continue our services to the City of Menlo Park Department of Public Works (City) for operation, maintenance (O&M), and reporting of the Bedwell Bayfront Park Landfill (Landfill) leachate and gas collection and control systems, and groundwater monitoring and reporting services. We have the utmost confidence in our ability to continue to meet your goals and objectives based upon the experience of our local senior staff that has been conducting the scope of work for the past few years. We have added some key staff to this project as discussed below.

Our project manager, Christopher M. Richgels, P.E., has known and worked with the Golder GCCS design team (Steve Nguyen – now with Blueflame - and Andy Wang) for a few decades now. APTIM will continue to work closely with the Golder team to maintain flare operations while the system is adjusted to the reconstruction.

APTIM is highly qualified to provide these services based on our over 30 years' experience with the Landfill, in environmental consulting, O&M of landfill leachate collection and recovery system (LCRS), gas collection and control system (GCCS), ground water monitoring and reporting, WDR compliance, and landfill regulations.

As Senior Director of Operations for APTIM, Mr. Devin Moose is authorized to sign contracts binding the firm on its behalf.

Our attached scope description further elaborates on our Team's experience and our approach to continuing this project December 2023 through June 2024. We look forward to continuing our services to the City. If you have any questions, please contact me at (630) 762-3308 or Chris Richgels at (916) 218-8375.

APTIM proposes to continue these services under Contract 2117 dated 5 April 2017

Sincerely,

Aptim Environmental and Infrastructure

Devin A. Moose
CSW OPERATIONS DIRECTOR

C (630) 762-3308
E devin.moose@aptim.com

Christopher M. Richgels, P.E.
PROJECT MANAGER

C (916) 218-8375
E christopher.richgels@aptim.com

Your Project Team

APTIM has assigned the following people to this project through 2023:

Christopher Richgels, PE, will serve as your Project Manager for the project. Mr. Richgels started his professional career in 1989 with Emcon Associates in San Jose, California and has managed private consultant design projects from conception through construction. He has over 33 years' experience in all aspects of solid waste facility management including GCCS development and expansion, groundwater remediation and monitoring.

Erik Korsmo is back on the project team as he was the project engineer for the current flare station and related flare station control systems. He assisted with the groundwater, surface water and leachate monitoring and reporting starting in the late 1990s. Mr. Korsmo also managed the O&M of the facilities landfill gas collection and control system in 2017. He also prepared conceptual redesign efforts for the GCCS reconstruction.

Scott Furlong, Regulatory Liaison and Air Quality Manager serves as a Project Manager/Environmental Lead in the Solid Waste group. He is currently involved in project management and regulatory support for landfill gas projects and landfill NSPS/NESHAP compliance in PA, CA, and LA. He will provide review and technical oversight of all GCCS reporting prepared for the project.

Ify Mordi, Regulatory Liaison and Air Quality Specialist is our new Air Quality Lead in the western Solid Waste group. Ms. Mordi provides project management and regulatory support for landfill gas projects and landfill NSPS/NESHAP compliance. Her prior experience included Air Pollution Specialist with the CARB Stationary Source Enforcement Branch and Air Quality Inspector for the San Joaquin Valley Air Pollution Control District. Her experience with regulatory agencies provides APTIM with improved capacity in addressing air quality issues from the agencies. She will provide review and technical oversight of all GCCS reporting prepared by Ms. Mills for the project.

Cassandra Tremblay, PG, your Project Geologist will continue her responsibilities ensuring the groundwater monitoring and reporting work is conducted in accordance with the latest Waste Discharge Requirements and will lead the preparation of groundwater monitoring reports for the Landfill. She will prepare the October semi-annual ground water and monthly leachate monitoring reports.

Dan Easter, PG, CEG will continue his responsibilities providing review and technical oversight of the leachate and groundwater monitoring reports. He is a Professional Geologist and Certified Engineering Geologist (California) with over 33 years of experience in project management, remedial investigations and removal actions, land-use planning, engineering geology, hydrogeology, riparian and coastal processes, geologic hazard assessments, and groundwater investigations. He has been responsible for design, implementation, and management of numerous site characterization, environmental monitoring, and remediation programs

Scott Bittinger, PG, your non-routine services geologist will prepare additional information requests for special analyses requested by the City or by the Regional Board. He is a Professional Geologist (California) with over 22 years in groundwater well design and installation, and of soil/soil vapor and groundwater cleanup projects. He will also provide

backup for field support for landfill projects, including drilling and development oversight of new monitoring wells or other evaluation and investigation programs.

Paul Weinhardt – Groundwater Monitoring Lead will continue to perform sampling/monitoring activities at the Landfill and also coordination of environmental field sampling at the landfill. His responsibilities will include scheduling of all fieldwork, coordinating with the analytical laboratory, and reviewing all field paperwork for completeness and accuracy. Mr. Weinhardt has been providing superior field services for geologists and engineers for more than 25 years. His experience includes groundwater monitoring, operations and maintenance of groundwater and soil vapor extraction systems, soil sampling, lysimeter monitoring, leachate monitoring, and well development.

Pedro Ruiz - GCCS O&M, Monitoring and Leachate System Support Lead will provide groundwater monitoring support on this project. He is a Field Technician with 25 years of experience in the environmental field. His primary responsibilities include field operation and maintenance (O&M) of groundwater treatment systems. He is an experienced field technician with skills operating environmental sampling and monitoring instruments for air, soil, and water.

Subcontractors

APTIM will continue our working relationship with :

BSK Associates

BSK Associates (BSK) will continue to provide groundwater, surface water, and leachate analytical services to APTIM as the most reasonably priced and best qualified provider of such services for this project based on their current working relationship with APTIM. The selection of an analytical laboratory is an important consideration. High quality analytical data is necessary for compliance with the WDRs.

Scope of Work

APTIM provides below a detailed description of the scope of services to be extended and construction support.

Continuing O&M Services

Continued O&M services must comply with all regulatory and updated permit requirements shown below:

Leachate, Groundwater. and Surface Water:

- ▶ Waste Discharge Requirements Order 97-073 (WDR)
- ▶ Wastewater Discharge Permit No. 220930 (SVCW)

GCCS:

- ▶ BAAQMD Permit to Operate No. A3499

Expect the Extraordinary.

Other Landfill Permits:

- ▶ San Francisco Bay Conservation and Development Commission (BCDC).
- ▶ San Mateo County Environmental Health, Solid Waste Program

Continuing Services Tasks

APTIM will provide extended services under six tasks as outlined below. Tasks 1 thru 5 will be billed as a lump sum monthly cost as is current practice. Task 6 will be billed separately on a time and expense basis under the contracted hourly and equipment rates as authorized by the city.

- ▶ Task 1 – Leachate & GCCS Routine Monitoring, Operating, and Maintenance Services
- ▶ Task 2 – Quarterly Groundwater/Leachate Sampling and Analysis
- ▶ Task 3 – Groundwater/Leachate Monitoring Reports
- ▶ Task 4 – GCCS Reporting
- ▶ Task 5 – Project Management
- ▶ Task 6 – On-Call Maintenance and Repair Work

Task 1 Leachate & GCCS Routine Monitoring, Operating, and Maintenance Services

During this extended contract period APTIM will be responsible for operating and conducting routine monitoring of the leachate system and GCCS as detailed below under Subtasks 1 a and 1 b.

Subtask 1a - Leachate

Under Subtask 1a, APTIM will perform the following tasks on a monthly basis:

- ▶ Monitor and record:
 - › Flow at all leachate flow meters,
 - › Pump run-times,
 - › Piezometer levels,
 - › Sump levels, and
 - › Other pertinent parameters and activities.
- ▶ Monitor and adjust the leachate system in accordance with the flow requirements set in Permit MWDP No. 170930 based on field measurements.
 - › Observe and record maintenance and repair needs.
 - › Perform routine maintenance on the leachate system to ensure that it is operating efficiently.
 - › Observe and record major (non-routine) repair needs.
 - › Perform other necessary tasks as required to ensure regulatory compliance; and
 - › Provide all the monitoring and operating data for the monthly reports as described under Task 3.

Subtask 1b - GCCS

Under Subtask 1b, APTIM will perform the following tasks:

- ▶ A minimum of monthly, monitor and adjust the GCCS components to ensure that the system is operated efficiently and in accordance with all permit requirements. This will meet permit and BAAQMD requirements.
- ▶ A minimum of monthly, adjust GCCS valves to ensure adequate gas flow, to reduce the migration of surface gases, and to minimize odors as needed. This will meet permit and BAAQMD requirements.
- ▶ A minimum of monthly, monitor gas wells, condensate traps, laterals headers, blowers, flare and other GCCS components. This will meet permit and BAAQMD requirements.
- ▶ Typically, on a weekly basis, APTIM and Blue Flame will monitor and record the flare operating parameters (temperature and pressure), gas quality (% methane, carbon dioxide, oxygen, balance), gas flow and temperature: blower operating parameters (temperature, pressure, valve positions, run time hours), condensate system conditions and will confirm that the flare operating parameters are being recorded on the continuous data recorder (Yokogawa). This will meet permit and BAAQMD requirements.
- ▶ Weekly conduct a general inspection of the flare station operations including:
 - › Alarm history.
 - › Current operating conditions.
 - › Condensate management system functioning properly.
 - › Air compressor system functioning properly.
 - › Data recorder functioning properly.
 - › Sump pumps functioning properly.
 - › Check well field vacuum.
 - › Verify the City's SCADA system is receiving data.
 - › Check flow and vacuum historical data since previous week to determine if any variations or shutdowns occurred; and
 - › Other general operational parameters.
- ▶ A minimum of monthly, download and review the data from the continuous data recorder (Yokogawa) to ensure flare data is being recorded properly and operations are within the requirements of the permit and BAAQMD Rules and Regulations.
- ▶ Measure and record on a monthly basis the static pressures, temperature, and percent content (methane, carbon dioxide, oxygen, balance) of the landfill gas at each of the wellheads as well as the liquid levels in the wellheads.
- ▶ Calibrate on a monthly basis the analytical equipment.
- ▶ Record / document all GCCS activities.
- ▶ Inspect and maintain the flare in accordance with the manufacturer's requirements.
- ▶ Perform routine maintenance on the GCCS to ensure that it is operating efficiently.
- ▶ Observe and record major (non-routine) repair needs.
- ▶ Ensure that the analytical equipment used is calibrated and certified.
- ▶ Any other necessary tasks as required / as needed to ensure regulatory compliance; and

- ▶ Provide all the monitoring and operating data for the monthly reports as described under Task 4.

APTIM will perform all GCCS sampling and analysis requirements pursuant to the BAAQMD through 2022. Specifically, APTIM will conduct surface emissions monitoring in September measuring the methane gas concentrations in parts per million off the surface of the Landfill within numbered grids. Exceedances will be flagged in the field and marked on the grid map. Then, prior to leaving the site, APTIM will notify the City of any exceedances such that the City may visit to investigate and schedule repairs. Since the site has historically not had emission issues, 10 and 30-day re-scans are not included in APTIM's cost proposal.

The flare gas flowmeter is calibrated on an annual basis. APTIM will provide this service in the fall per the historical schedule.

Flare source testing was recently conducted in January 2022. The source test is due every four (4) year in accordance with the BAAQMD Permit, thus will not be required again until January 2026. Flare source testing is not included in this scope of work.

In addition to the above monitoring activities, APTIM will perform adjustments to the leachate system and GCCS in case of system failure and needed repair work. APTIM will have the availability to arrive at the site and respond to equipment malfunctions and emergencies within 8 hours of the call-out service request.

Task 2 – Groundwater/Leachate Sampling and Analysis

APTIM will be responsible for the development of sampling protocols and complying with all sampling and analytical requirements required by the applicable Landfill permits. Analysis of constituents will be conducted by a certified laboratory (Pace Analytical Laboratories – formerly Pace).

APTIM will be responsible for complying with the water quality monitoring and reporting requirements required by WDR Order 97-073. These requirements include, but are not limited to:

WDR Order 97-073:

- ▶ Quarterly sampling and analysis of the leachate.
- ▶ Semi-annual sampling and analysis of the groundwater.
- ▶ Semi-annual sampling and analysis of the surface water.
- ▶ Semi-annual site inspections.
- ▶ Preparation and submittal of all monitoring reports to the applicable regulatory agencies on behalf of the City (as described under Task 3).

Further, APTIM will be responsible for complying with the leachate water quality monitoring and reporting requirements required by MWDP No. WB 120930. These requirements include, but are not limited to:

MWDP No. 170930:

- ▶ Quarterly sampling and analysis for specific constituents required by MWDP No. 170930; and
- ▶ Monthly flow measurements and reporting.

Task 3 – Groundwater/Leachate Monitoring Reports

Under Task 3 services, APTIM will prepare all monthly, semiannual, and annual monitoring reports as required by the City and in accordance with the regulatory requirements of the Landfill permits. APTIM will submit these reports to the applicable permit agencies on behalf of the City. All reports will include a description of the site and landfill systems, evaluation criteria, explanation of any calculations, certified analytical results, monitoring and inspection summaries, field and laboratory records, maps and figures, and any recommendations. All reports will be submitted in draft form to the City for review and comment, and subsequently finalized with any City comments prior to their submittal to the permitting agencies.

APTIM will be responsible for the preparation and submittal of all monitoring and analysis reports complying with the water quality reporting requirements contained in WDR Order 97-073 and MWDP No. WB 120930. Specifically, APTIM will provide the following:

WDR Order 97-073:

- ▶ Preparation and submittal of semi-annual reports due in April and October of each year. The October 2023 report will be prepared under this scope.

MWDP No. 170930:

- ▶ Preparation and submittal of monthly leachate reports.

Task 4 – GCCS Reporting

APTIM will continue preparation and submittal to the City of all monitoring and analysis reports complying with the GCCS reporting requirements of BAAQMD. Specifically, APTIM will be responsible for performing the following:

- ▶ Preparation and submittal of monthly reports to the city that include a summary of the GCCS monitoring data and maintenance activities; and
- ▶ Maintaining accurate records and access to the records / monitoring data for a period of 5 years. Data storage should be duplicated by the City and conducted at the City offices.
- ▶ Preparation of annual compliance reporting in early 2023

Task 5 - Project Management

Under Task 5, APTIM will provide project management of the above tasks as required, and will include the following:

- ▶ Coordinate and conduct meetings with City staff and permit agencies.
- ▶ Conduct site visits with City staff.
- ▶ Assist with and review permit expiration dates, application renewal processes, monitoring, and maintenance regulations.

Task 6 - On-Call Maintenance and Repair Work

APTIM will provide all the necessary labor, equipment, and materials to perform maintenance and repair work on the leachate system and GCCS on an on-call and as-needed basis. The work may be based on maintenance and repairs needs identified during routine inspections, system failures, and any other work requested by City Staff.

Non-routine work scope may include:

- ▶ Develop recommendations and cost estimates for improving the performance of the landfill environmental control systems.
- ▶ Continued support of the portable air compressor system (Equipment rental and fuel).
- ▶ Support for permanent replacement of the air compressor system.

APTIM will provide an estimated cost of the on-call work and will seek authorization from the City prior to proceeding.

Cost Estimate

APTIM's cost estimate for services extending beyond the expiration date of December 31, 2023 is presented below. Costs are presented as routine and non-routine on-call service. This work would be conducted under the current contract as extended by the City.

Please note the six-month budget includes:

- ▶ 1 ea Semi-annual groundwater sampling, laboratory analysis, and reporting event
- ▶ 1 ea Surface water sampling laboratory analysis and reporting event
- ▶ 2 ea Quarterly leachate sampling, laboratory analysis and reporting events
- ▶ 6 ea Monthly flare operations inspection and maintenance
- ▶ GCCS Weekly, monthly, quarterly monitoring, annual maintenance, and reporting tasks.

It does not include:

- ▶ 1 ea Surface emissions monitoring (September 2024).
- ▶ 1 ea Annual flow meter calibration check (Fall 2024)

Also note total cost for Tasks 1 through 5 are distributed over a 6-month extended term. These distributed costs include preparation of the spring semi-annual groundwater monitoring report (April 2023). The 2023 annual compliance reports will be due in March 2024 so is included in this proposal.

APTIM's proposed routine service fee on a six-month basis for Tasks 1-5, from January 1, 2024 to July 1, 2024 is **\$92,820**. On a monthly bill cycle as currently done, this equates to **\$15,470 billed monthly**.

For the Task 6 non-routine services APTIM recommends budgeting \$75,000 over the six-month period from January 1, 2024, to July 1, 2024. This budget recommendation assumes the rental air compressor equipment will be replaced with a permanent system in spring 2024. These tasks would be billed for labor and expenses per the contacted labor hourly rate and equipment rate schedule. Subcontractor and other direct cost would be billed per expense plus a 7.5% markup per the current contract terms.



STAFF REPORT

City Council

Meeting Date: 12/5/2023

Staff Report Number: 23-265-CC

Consent Calendar: **Authorize the city manager to execute an agreement with Surveillance Grid for implementing a city-building security camera system in an amount not to exceed \$617,194.59**

Recommendation

Staff recommends that the City Council authorize the city manager to execute an agreement (Attachment A) with Surveillance Grid for implementing a citywide building security camera system in an amount not to exceed \$617,194.59.

Policy Issues

This contract commitment exceeds the city manager’s signing authority in fiscal year 2023-24 and requires City Council approval.

Background

The Information Technology (IT) Master Plan and implementation measures were approved by the City Council May 2, 2017 (Attachment B). The objective of the IT Master Plan included developing and articulating a vision for the effective use of technology to support the work of the City, identifying tactical and actionable strategies for developing and implementing technology initiatives, and highlighting the cost benefits of doing so. The original horizon of the IT Master Plan included a five-year vision; however, the COVID-19 pandemic impacted the priority level and timeline of some items.

The IT Master Plan identified the need to upgrade existing outdated cameras at City Hall and to upgrade and enhance building security at other City buildings. It also suggested streamlining systems, as the existing systems are proprietary, and cannot be monitored or managed from a single console. Security cameras are a useful tool for preventing crimes, aiding in response, supporting investigations and prosecutions, as well as enhancing the security and safety of employees and visitors. The security camera system upgrade is one of the last specific projects remaining in the original IT Master Plan; some overarching goals related to infrastructure and data security-related efforts remain as evergreen items that will be incorporated into future strategic plans. Staff intends to prepare an informational item in early 2024 to provide an update on the IT Master Plan initiatives as a whole. Additionally, staff is planning to conduct a request for proposal (RFP) in 2024 to select an expert consultant to prepare a new IT Master Plan to identify future needed improvements and implementation strategies, including potential cost impacts.

Presently, security cameras are in place at the Menlo Park Police Department and City Hall, the Neighborhood Service Center, and the City’s two child-care centers. These cameras at City facilities have reached their end-of-life and all of the cameras require replacement. The IT Master Plan identifies requests for additional video surveillance cameras from multiple departments. Following further evaluation, all City facilities were included in the scope for the security camera project in order to have one unified, updated

system that covers all City facilities equally, rather than a piecemeal system with some facilities excluded. These facilities include City Hall and the Police Department, the Neighborhood Service Center, Council Chambers, Main Library, Arrillaga Family Gymnasium, Arrillaga Family Recreation Center, Arrillaga Family Gymnastics Center and Burgess Pool, Menlo Children's Center, Corporation Yard, and Belle Haven Child Development Center, as well as the new Belle Haven Community Campus.

Analysis

The City has several camera systems that are end-of-life and proprietary. This project seeks to standardize existing cameras across the City for both police and other City departments' needs, including the centralization of the citywide video system management, and incorporating a replacement and maintenance plan to keep the system running optimally.

On March 28, the City issued a RFP to move forward in completing this IT Master Plan project. The RFP outlined the scope of work for vendors, encompassing potential camera locations, camera specifications, criteria for a centralized video management system, and the need for support and maintenance for a period of three (3) years post-project implementation.

In total, the City received four (4) bids. During the initial screening, one of the bids failed to meet the specified requirements outlined in the RFP and was consequently rejected. The remaining three (3) bidders proceeded to the subsequent screening phase and were extended invitations to showcase their proposed technology solutions and cost proposals to staff. Criteria for vendor selection encompassed price, project plan, the proposed solution, references, and overall completeness and quality of the proposal.

During the last phase of selection, two vendors were chosen to submit their final cost proposals. Surveillance Grid provided the lowest proposal of \$617,194.59 for all building locations, including three (3) years of support and maintenance. The entire vendor selection and vetting process took approximately five months after the close of the RFP with extensive discussions, site visits and staff time.

Security camera surveillance systems prove to be highly effective in enhancing security and acting as a deterrent against criminal activities. According to research conducted by the Urban Institute, the cost of implementing video surveillance systems is outweighed by the savings and benefits resulting from reduced incidents and crimes. This study underscores the value of security cameras as a crucial tool for various stakeholders, including the police, public works, library and community services, code enforcement, policymakers, and others responsible for facility and property oversight. These stakeholders widely perceive security, surveillance, and monitoring cameras as instrumental in managing behavior, preventing crimes, aiding in rapid responses, facilitating arrests, and supporting thorough investigations and prosecutions. Additionally, video monitoring is particularly valuable in overseeing expansive, open spaces that are challenging to cover adequately with existing personnel but can be efficiently monitored and secured through video technology.

Security cameras can be applied to assist in the following items at the above-identified City facilities, including, but not limited to:

- Graffiti abatement
- Monitoring specific public areas, buildings, parking lots, parks, etc.
- Monitoring access or gated sites for in/out traffic
- Use as evidence in criminal prosecutions or potential claims and litigation.

Of note, the City of Menlo Park's Retention Schedule and California Government Code (GC §34090.6) both

require retention of the City's building security recordings for a minimum of one year.

Upon City Council approval, the IT division will align its efforts with the vendor's twelve-week project timeline. This project entails a construction phase encompassing cabling, camera setup, network installations and software configurations. The activation of buildings will occur in two distinct phases. The first phase will encompass the Menlo Park Police Department and City Hall, Neighborhood Services Center and Belle Haven Community Campus. The second phase will cover the remaining facilities, including the Council Chambers, Main Library, Menlo Children's Center, Arrillaga Family Gymnasium, Arrillaga Family Recreation Center, Arrillaga Family Gymnastics Center and Burgess Pool, Corporation Yard, and Belle Haven Child Development Center.

During the operational phase, the IT division will maintain a close collaboration with the vendor to facilitate the training of City personnel in administrative and user support for the installation. Furthermore, IT will collaborate with all departments to formulate governance policies and operational protocols.

Impact on City Resources

The implementation cost of \$564,817.54 is included in the fiscal year 2023-24 budget as part of the IT Master Plan funding. The agreement covers three years support and licensing. Year 2 and Year 3 include software costs only at an average cost of \$26,188.53 per year. Future years' costs will be covered with operational funds in future fiscal year budgets.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it does not propose a change that will result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Professional services agreement
- B. Hyperlink – IT Master Plan: menlopark.gov/files/sharedassets/public/v/1/administrative-services/documents/information-technology/20170201-information-technology-master-plan.pdf

Report prepared by:
Sandy Pimentel, Information Technology Manager

Report reviewed by:
Brittany Mello, Administrative Services Director

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND SURVEILLANCE GRID
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and SURVEILLANCE GRID, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: City security camera system</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$617,194.59 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Brittany Mello
 Administrative Services
 City of Menlo Park
 701 Laurel St.
 Menlo Park, CA 94025
 650-330-6675
 bkmello@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Warren Hackbarth
 Surveillance Grid
 16490 Vineyard Blvd Suite B
 Morgan Hill, CA 95037
 408-504-3222
 warren@surveillancegrid.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 6, 2023 through December 31, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT "A" – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's Administrative Services Department. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Information Technology Manager.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.



City of Menlo Park

Citywide Security Camera System

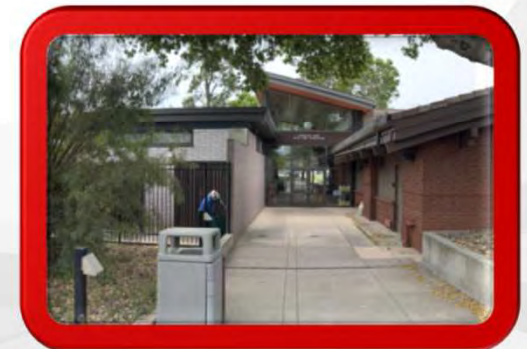


Table of Contents



Seamless SecuritySM

RFP Submitted By:
SurveillanceGRID Integration Inc,
16490 Vineyard Blvd Suite B
Morgan Hill, CA. 95037
www.surveillancegrid.com

- System Executive Summary
- Cost Summary
- Schedule predictor

Executive Summary

The options presented are based on the following:

- Motion is stored at 30 frames per second, pre and post motion , non-motion is stored at 1 FPS with two streams one 5MP/4MP based on Camera for 30 days full resolution and 2MP from day 1 to extended storage plan.
- Genetec License is Enterprise 5.11
 - Enterprise Class include all Genetec Baseline features and unrestricted scalability
 - The topology includes a server at each of the 10 locations requested in the RFP
 - PD has video access to all cameras
 - PD receives Realtime alerts and alarms
 - PD can manage all site cameras
 - Centralized management
 - Each site has access to their cameras
- GRIDASSURE SurveillanceGRID Support package includes:
 - MONITOR provides Realtime base line image profile continuously compares to actual image with Realtime alerts on degraded images, and Realtime network and radio performance with state graphical presentation and alerts
 - MAINTAIN Bi-annual camera cleaning, vendor warranty management to provide immediate replacement of failed system components, technical support phone, email, text 8am to 5PM Monday through Friday
 - RESPOND onsite technical response to production problems

Proposal



Seamless SecuritySM

	Cost	Year 2	Year 3	3 Year TCO
Cameras	\$ 91,154.29			
Materials	\$ 6,270.00			
Installation	\$ 188,431.00			
GRIDASSURE	\$ 18,161.25	\$ 25,424.75	\$ 26,950.24	\$ 52,374.99
Genetec	\$ 230,000.00			
Total	\$ 534,016.54			
Tax	\$ 30,801.00			
Total	\$ 564,817.54	\$ 25,425.75	\$ 26,951.30	\$ 617,194.59

Project timeline



Seamless SecuritySM

PROJECT TIMELINE						
Contract and Planning	Notice to proceed	Equipment Staging				
1 month	1 month	4.3 Calendar weeks				
		Network Planning and implementation				
		two weeks				
		Installation				
		Cable		Wireless Network	Cameras	Training
		6 weeks		2 weeks	2 weeks	1 week
						Turn-over
						1 week
 PROJECT ESTIMATED DURATION 12 weeks						



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-266-CC

Consent Calendar: Authorize the city manager to execute an agreement with 360S2G to provide water utility billing services and amend the agreement with Minol USA to provide transitional services for a limited term

Recommendation

Staff recommends that the City Council authorize the city manager to execute a three-year agreement with 360S2G (Attachment A) to provide water utility billing services including an option to extend the agreement for three additional one year terms and to amend the agreement with Minol USA (Minol) for three-months including an option to extend the agreement or three additional one month terms while transitioning to 360S2G (Attachment B).

Policy Issues

This agreement exceeds the city manager’s signing authority in fiscal year 2023-24 and requires City Council approval. The City Council acts as the governing body for Menlo Park Municipal Water (MPMW).

Background

MPMW supplies water to approximately half of the City’s residences and businesses through approximately 4,400 service meter connections. Since 1995, the City has contracted with vendors for water meter reading, billing and customer service for MPMW customers. Water billing services consist of the following:

1. Monthly billing – The vendor obtains water consumption information, creates and sends out monthly statements, records customer payments, maintains customer account records and integrates water rates and fees.
2. Past due collections and disconnections – Following City and State disconnection policies, the vendor sends customer notifications and provides information to a collection agency for closed accounts.
3. Data sharing – The vendor maintains customer information on a secure platform, abides by customer confidential regulations, provides monthly and annual data reports, maintains historical reports and provides access to City staff.
4. Customer service – The vendor provides a phone number and personnel to respond to customer inquiries, notifies city staff of any reports of emergencies, manages a work order system, and provides data about customer service inquiries.
5. Customer portal – The vendor provides a customer portal with account information, payments options, work orders and account history that is available to City staff and customers.

In December 2019, the City Council approved the current agreement with Minol to provide billing services. The agreement expires Dec. 31.

Analysis

On July 19, staff issued a request for proposals (RFP) seeking prospective vendors for water billing and customer service support. On Aug. 16, two proposals were received, one from 360S2G for \$261,000 for year one, which includes a one-time implementation cost of \$31,500 and the other from Minol for \$232,000 for year one. Staff conducted a panel interview with both firms, received a portal demonstration, and checked references. Based upon a thorough review, staff is recommending the selection of 360S2G as the vendor that can effectively deliver on all the tasks included in the RFP (Attachment C).

360S2G is a San Francisco-based company that provides advanced software solutions that are customizable to the City’s needs, including monthly and annual data reporting, customer notifications and account history data. They can integrate into the City’s maintenance work order system to improve response time to customer issues that may arise. They have experience with Automated Meter Infrastructure (AMI) and can fully integrate to the needs of the City’s upcoming AMI project into their software platform. The AMI project, scheduled to begin later this fiscal year, will decrease the need for meter data collection, improve the efficiency of billing operations, proactively alert customers of potential leaks or high water usage, reduce water loss and enhance customer service. 360S2G has more billing payment options, including a mobile application and the ability to conduct quality assurance surveys with customers.

In order to transition to a new billing system with 360S2G, staff is working on amending the agreement with Minol to allow for service continuity for up to six-months through June 30, 2024, with an initial three-month term followed by up to three additional months. During the transition period, staff will focus on a developing a customer outreach plan, closeout procedures with Minol and continuity of services for MPMW customers.

Impact on City Resources

There are sufficient funds in the water operations budget for fiscal year (FY) 2023-24 to cover the first six months (January – June) of the agreement with 360S2G and the amendment with Minol. The three-year cost estimate with 360S2G is \$688,480.80. Funding for future years will be included in the FY 2024-25 and FY 2025-26 budgets.

Table 1: Estimated water billing & collection expenses FY 2023-24	
Vendor	Amount
Minol (billing)*	\$171,000*
360S2G (billing)	\$131,000
Total estimated expenses	\$302,000

*This amount covers two proposals from July 2023 – December 2023 and January 2024 – March 2024. If the three one-month extensions through June 30 are executed, the total contract amount would increase by up to \$57,000, for a total amount of up to \$228,000

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. 360S2G agreement
- B. Minol amendment
- C. City of Menlo Park – Water Billing and Customer Service Support RFP

Report prepared by:

Natalie Bonham - Management Analyst II

Report reviewed by:

Eren Romero, Business Manager

Azalea Mitch, Public Works Director

PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND 360S2G
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and 360S2G, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Water billing and customer service support</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$688,480.80 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable. The parties further acknowledge and agree that this section is intended to address future CITY'S transition from contracting with FIRST PARTY to a new vendor, and that it is imperative to maintain collaborative and effective service during the transition period. Based on these priorities, the PARTIES further acknowledge and agree that unacceptable work which allows CITY to withhold payment to FIRST PARTY as described above includes but is not limited to FIRST PARTY failing to provide information covered by the Agreement requested by CITY in a timely and complete manner within 10 days of any CITY request, and/or FIRST PARTY failing to provide CITY with the requested information in a complete manner within 10 days of any CITY request. The parties further acknowledge and agree that due to the critical need for FIRST PARTY to provide uninterrupted and effective services to CITY during a transition period, that in addition to CITY'S right to withhold payment for unacceptable work, FIRST PARTY shall be liable to CITY for liquidated damages in the amount of \$500.00 per day for any failure to timely and completely provide CITY with requested information as described above.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY'S agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Amanda Gutierrez
360S2G
555 California Street
San Francisco, CA 94104
415-910-3743
amanda.g@360s2g.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

Section continues on next page

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK
It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.
18. COMPLIANCE WITH LAWS
It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.
19. BREACH OF AGREEMENT
<p>A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.</p> <p>B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.</p>
20. SEVERABILITY
The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.
21. CAPTIONS
The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.
22. LITIGATION OR ARBITRATION
In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.
23. RETENTION OF RECORDS
Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.
24. TERM OF AGREEMENT
This agreement shall remain in effect for the period of January 1, 2024 through December 31, 2026 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT “A” – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY’s Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY’s standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Department Head.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

EXHIBIT “C” – CONFIDENTIALITY AND DATA MAINTENANCE

C1.0 City Data

- a. **Ownership of City Data.** The FIRST PARTY agrees that, all CITY’S rights, including all intellectual property rights, in and to the City Data and shall remain the exclusive property of the City. FIRST PARTY’S intellectual property rights are provided under Section 27 of the Agreement.

- b. **Data Security.** FIRST PARTY shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the FIRST PARTY’S Website, (c) FIRST PARTY’S physical facilities, and (d) FIRST PARTY’S networks, to prevent unauthorized access or "hacking" of City’s Data. FIRST PARTY shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed contractors working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. FIRST PARTY will maintain appropriate safeguards to restrict access to City’s Data to those employees, agents or service providers of FIRST PARTY who need the information to carry out the purposes for which it was disclosed to FIRST PARTY. For information disclosed in electronic form, FIRST PARTY agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g. password protected) access to the City’s Confidential Information and hosted City Data. For information disclosed in written form, FIRST PARTY agrees that appropriate safeguards include secured storage of City’s Data. City’s Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. FIRST PARTY also will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect the City’s Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization’s standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

- c. **Use of City Data.** FIRST PARTY is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for FIRST PARTY’S own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by FIRST PARTY or third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

- d. **Access to and Extraction of City Data.** City shall have access to City’s Data pursuant to the terms provided under Exhibit “A-1”.

- e. **Backup and Recovery of City Data.** As a part of the Services, FIRST PARTY is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the Services. FIRST PARTY shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and maintaining the security of City Data as further described herein. FIRST PARTY's backup of City Data shall not be considered in calculating storage used by City.
- f. **Data Breach; Loss of City Data.** In the event of any Data Breach, act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by FIRST PARTY that relate to the protection of the security, confidentiality, or integrity of City Data, FIRST PARTY shall, as applicable:
- i. Notify City immediately following discovery, but no later than twenty- four (24) hours, of becoming aware of such occurrence or suspected occurrence. FIRST PARTY'S report shall identify:
 1. the nature of the unauthorized access, use or disclosure;
 2. the Confidential Information accessed, used or disclosed;
 3. the person(s) who accessed, used and disclosed and/or received protected information (if known);
 4. what FIRST PARTY has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
 5. what corrective action FIRST PARTY has taken or will take to prevent future unauthorized access, use or disclosure.
 - ii. In the event of a suspected Breach, FIRST PARTY shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;
 - iii. FIRST PARTY shall coordinate with the City in its breach response activities including without limitation:
 1. immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
 2. Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate FIRST PARTY responses to City inquiries;
 3. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
 4. Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City; e. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;
 5. Ensure that knowledgeable FIRST PARTY staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
 6. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.
 - iv. In the case of personally identifiable information (PII), (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in the CITY notifying the affected individuals;

- v. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;
- vi. Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- vii. Without limiting FIRST PARTY's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;
- viii. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and
- ix. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures FIRST PARTY will undertake to prevent a future occurrence.
- x. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain information that may include: name and contact information of FIRST PARTY'S (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps FIRST PARTY has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by FIRST PARTY.
- xi. FIRST PARTY shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to FIRST PARTY, independent of where the City Data is stored.
- xii. City shall conduct all media communications, unless at its sole discretion directs FIRST PARTY to do so, related to such Data Breach.

C2.0 Indemnification.

General Indemnification. FIRST PARTY shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with FIRST PARTY performance of the Agreement, including but not limited to, any: (i) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; or (ii) strict liability imposed by any law or regulation.. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to FIRST PARTY's obligation to indemnify City, FIRST PARTY specifically acknowledges and agrees that it has an immediate

and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to FIRST PARTY by City and continues at all times thereafter. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

C3.0 Transition Services and Disposition of Content.

Upon expiration or termination of the Services under this Agreement:

- a. FIRST PARTY may immediately discontinue the Services. FIRST PARTY shall within five (5) calendar days of the expiration or termination of the Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of FIRST PARTY. Such data transfer shall be done at no cost to the City. Once FIRST PARTY has received written confirmation from City that City's Data has been successfully transferred to City, FIRST PARTY shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 80088 or most current industry standard.
- b. FIRST PARTY shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the Services, in whole or in part, to City or to Successor Service Provider. During the transition period, City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated Services from FIRST PARTY to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; and (c) such other activities upon which the Parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

**Request For
Additional Information
For
Water Billing and Customer
Service Support**

Prepared for:
City of Menlo Park

Prepared by:
360S2G

Cost of Proposal

5.1 UTIL360 Implementation Cost

One Time software License cost			
Implementation	Brief Description	Assumptions	Cost
Total Application Software	New software license cost	NA	\$ 12,000.00
Implementation Pricing Details			
Implementation	Brief Description	Assumptions	Cost
Milestone 1 - Project Initiation	Kick starts the project by establishing the plan, scope, direction, resources, and stakeholders' goals.	NA	Included
Milestone 2 - Discovery and Requirement Analysis	Collects and produces essential data, elicits product architecture, the functional and non-functional requirements for Process Automation and Optimization. Builds a stack of tasks in priority order and project plan.	NA	
Milestone 3 - Interface and Solution Enhancements	Integrate up to 5 different systems . Integrating with Standard Application Program Interfaces (APIs) and creating import/export of the file interfaces in specific formats to exchange data with other applications.	NA	\$ 7,500.00
Milestone 4 - Data Migration	Data study, planning, mapping, conversion, migration and data-clean-up	NA	\$ 8,500.00
Milestone 5 - Implementation of Util360 Enterprise Utility Management	Implementation of proposed modules of Util360 Enterprise Utility Management: Installation, Configuration, and Testing	NA	Included
Milestone 6 - Implementation of Util360 Customer Information System (CIS Web & Mobile App)	Implementation of Customer Information System (CIS Web & Mobile App): Installation, Configuration, and Testing	NA	
Milestone 7 - Util360 Integrated Team Testing	The final quality gateway with automated test scripts includes conversion testing, system integration testing, performance testing, functional testing, and user acceptance testing.	NA	
Milestone 8 - End User Training	End-User training on Util360 implemented Solution	NA	\$ 3,500.00
Milestone 9 - User Acceptance Testing	UAT setup and UAT Support	NA	Included
Milestone 10 - Go Live	Pre-Go-Live Check and launching of the Util360 implemented Solution in the Production	NA	
		Total	\$ 31,500.00
Travel	**** We are open for in-person meeting/training and remote. Our travel details are available in the Section 2 Util360 Business Travel Policy. The travel plans will only occur based upon City's approval.	NA	\$ -

*The integration to any third party is included in the implementation and Annual fees. However, City will provide APIs for integrating to City's applications (AMI, etc.).

**Util360 product has capabilities of sending email, Push-Notifications, text/SMS, Automated voice. These features are inbuilt. However, for "text/SMS, Automated voice", we use third-party tools and they charge based upon usage.

Menlo Park Comments:

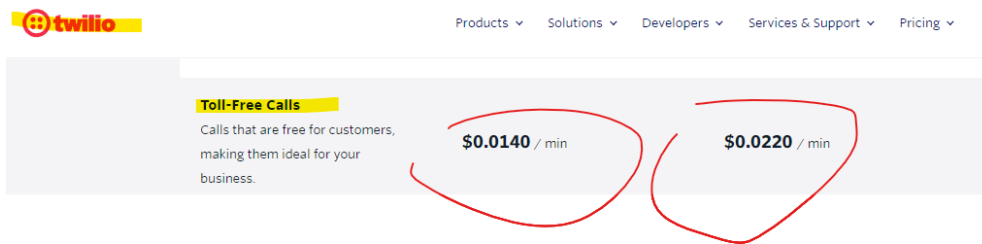
1. For Milestone 3, what is the cost to integrate into additional systems? Is there a cost per enhancement?
2. Is there any additional cost for this? Can you also provide estimated costs for text/SMS, Automated voice?

360S2G Response:

1. **Milestone 3:** The cost includes integration with 5 interfaces but will add two more additional interfaces with no more extra cost involved.

2. **IVR Cost:** The cost details are as follows:

- A. **One-Time Implementation Cost for IVR---** The cost involves setting up the system and cloud hosting. -- \$ 2,000 (Cost Waived off)
- B. **Monthly cost:**
 - a. **The IVR software and server costs:** This is included in the “Annual maintenance Cost”, hence there is no additional hosting cost for IVR.
 - b. **Mobile-Push Notifications and Util360 generated e-mail:** No additional cost for these features.
 - c. **IVR Calls and Text usage cost:** This is the only cost that will be billed to the City and will be based upon the usage. Currently, the usage costs are as follows.



Based on the total number of customers Menlo Park has, we are expecting an approximate cost of \$275 per month(Appx).

3. **Travel Cost:**

As Util360 is a cloud-hosted SaaS solution, we are expecting very few requirements for in-person meetings. The cost associated with Travel has been addressed in Section 2 of our response. However, we are not expecting our travel cost to be more than \$800 for one day’s travel and meeting.

5.2 UTIL360 Annual Maintenance Cost

Annual Software Services - Transaction Services, Web Inquiry and Payment Portal			
Util360 ----3 City's Employees License + 4300 Customer Accounts			
Module Name	Brief Description	Assumptions	Cost
Customer Information System - CIS Web-Based	Notifications (Push Notifications, Call, Text, Email)	Included	\$ 16,500.00
	Leak Alerts		
	Outage Alerts		
	Sarah- AI Based online helper		
	Bill Explainer		
	Payments Gateway Interface		
Mobile Apps (available on Multiple Platforms) for the Customers.			
Customer Information System - CIS Mobile App-Based	Notifications (Push Notifications, Call, Text, Email)	Included	
	Leak Alerts		
	Outage Alerts		
	Bill Explainer		
	Payments Gateway Interface		
	Mobile Apps (available on Multiple Platforms) for the Customers.		
Enterprise Customer Management	It sets Customer Management, Employee Management, and communication channels.	Included	
Enterprise Billing Management	It sets up Billing, Bill Estimation, Cancelling, rebilling, Bill Printing, and Rate Management.	Included.	
Enterprise Meter Data Management	It provides Meter setup, Meter Reading, Switch Meter, Meter Inventory, Backflow Device Management, and Demand Response.	Included	
Business Intelligence & Dashboard (BID)	It provides BI Analytics Console, System Events/Alerts, Reports, and Ad Hoc Reporting capabilities.	Included	
Enterprise Collections /Delinquency Management	It sets up delinquency Notice Settings, delinquent Accounts, creates a variety of payment plans and instalment agreements and connects with Agency.	Included	
Enterprise Rule Engine	It configures Utility Modules, Event/Notification Templates, Billing Cycle, Consumption Alerts, Content Management, and Schedulers/Timer Jobs.	Included	
Enterprise Payment Gateway (EPG)	EPG provides a complete, simple, and secure electronic bill presentment and payment solution.	Included	
Total Amount			\$ 16,500.00
Annual Cloud Hosting Cost			
Cloud Hosting	Secured Cloud Hosting with regular server maintenance	included	\$ 15,500.00
Cloud Storage	Secured Cloud storage for associated files and supporting document upto 10 TB	included	\$ -
Customer Support and Professional Service Fees			
Maintenance and Support	Annual support and maintenance	Included	\$ 4,500.00
UTIL -HUB (Reginal user forum) + Webinars	Unlimited access on the knowledge base	Included	Included
Total Annual Maintenance Amount			\$ 36,500.00

License Fees

The Annual maintenance cost of \$ 36,500 will remain the same from the first year to the third year.

5.3 UTIL360 Billing Print & Mailing Services Cost

Items	Description	Cost	Cost for 4,300 Customers/Month	Annual Cost
Per 2-Sided Bill, Letter Size (8.5" x 11")	2-Color	\$ 0.100	\$ 430	
	Full Color Frontpage Standard format; backpag variable format provided as IMS Word or PDF each quarter.			
Envelope for Non-AutoPay Customers	Standard #10 Envelope	\$ 0.07	\$ 301	
Postage (U.S Addresses)	Paid for by the customer on their bulk mail Account. The Costs are as defined on https://www.usps.com/	\$ 0.44	\$ 1,892	
Setup/Integration With CIS	The Costs is already taken care in the	-	Cost waived	
Option for storing bill copies for archiving purposes (ex. PDF Copy)	The Storage of billing copies will be kept for one full financial year and archival will be moved to the archival storage provided by the city.	-	Cost waived	
Other Associated Fees, Costs and Charges				
Cost per batch*	A batch job is defined as one sack or trays as per USPS specs., max it can contain 200 envelopes.	\$ 15.00	\$ 323	
Cost per job	Final check delivery and submission to the Unites States Post office	\$ 49.00	\$ 49.00	
Total		\$ 64.610	\$ 2,995	\$ 35,934

Menlo Park Comments:

1. Will the postage and printing costs increase each year? Does USPS cost increase?

360S2G Response:

- The postage fee is calculated in accordance with USPS's postage fee schedule (<https://www.usps.com/>).
- **Printing and mailing costs:** Due to recent inflation it's very difficult to predict the material cost associated with printing (Paper, Envelop, etc..). However, our proposed cost will remain the same for the first 1 year. In the second year, we may only increase based on the below guidelines.
 - a. Further, in no event shall any such adjustment exceed an amount equal to 75 percent of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) - U.S. City Average - as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most recent available previous 12-month period. As an example, if such Index increased 10 percent for a preceding 12-month period, an annual adjustment on printing and mailing costs could not exceed 7.5 percent regardless of whether or not the printing and mailing costs exceed 7.5 percent

PS: Util360 is a SMART CITY APPLICATION, and we shall ensure to promote and push online billing to reduce paper and postage costs. Util360 promotes online billing by providing customers with a secure, convenient way to view and pay their bills. Customers can access their account information 24/7, from any internet-connected device. Util360 offers several online payment options, including credit and debit cards, e-checks, and automatic bank drafts. Customers can also enroll in paperless billing to receive their bills electronically each month. Online billing is a secure, efficient way to manage your utility account.

The costs for paper billing will be reduced when the customers opt for online billing.

5.4 UTIL360 Customer Care Service Cost

Util360 Roles	Employee Title	Key Responsibilities	Hours Rate (\$)	Number of Representatives	Monthly Rates (\$)
Product Executive	Customer Care Representative - English + Spanish	<ul style="list-style-type: none"> - Providing complete information about the services to the customers. - Solving all service related issues of customers. - Keeping a proper record of customers. - Maintaining and updating the information of customers regularly. - Providing the best possible solution to the queries of customers. - Making services reports by collecting and analysing the information provided by the customers to the city. - Conducting quality assurance surveys with customers and providing feedback to the city Staff. 	\$60.00	1	\$10,560

Menlo Park Comments:

1. Would this cost increase if we requested more customer service support during the transition period?

360S2G Response

The customer-care team not only attends the call, but they are also responsible for performing bill adjustments based on the business need, handling monthly and annual reports for City executives, implementing rate change, etc...

We discussed these matters in detail keeping in perspective of excellent-customer-service and Cost-effective needs in mind, we have the following proposals.

1. We have added an additional discount and squeezed in one additional resource.

Util360 Roles	Employee Title	Key Responsibilities	Hours Rate (\$)	Discount(%)	Number of Representatives	Monthly Rates (\$)
Product Executive	Customer Care Representative - English + Spanish	<ul style="list-style-type: none"> - Providing complete information about the services to the customers. - Solving all service related issues of customers. - Keeping a proper record of customers. - Maintaining and updating the information of customers regularly. - Providing the best possible solution to the queries of customers. - Making services reports by collecting and analysing the information provided by the customers to the city. - Conducting quality assurance surveys with customers and providing feedback to the city Staff. 	\$60.00	15.00	1	\$8,976
Junior Product Executive	Customer Care Representative - English + Spanish	<ul style="list-style-type: none"> - Providing complete information about the services to the customers. - Solving all service related issues of customers. - Keeping a proper record of customers. - Maintaining and updating the information of customers regularly. - Providing the best possible solution to the queries of customers. - Making services reports by collecting and analysing the information provided by the customers to the city. - Conducting quality assurance surveys with customers and providing feedback to the city Staff. 	\$50.00	20.00	1	\$7,040
Special Discount (15%)				20.00	1	\$16,016
Net Monthly Cost					1	\$12,813

2. For the first 3-4 months we will add **one extra additional resource without any additional cost.**

Customer care service costs incurred will only reflect the total number of hours customer care is utilized. Total monthly out-of-pocket expenses for customer care will not exceed \$12,813 per month.

AGREEMENT AMENDMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620

ATTACHMENT B



Amendment #:

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND MINOL, INC.

THIS FOURTH AMENDMENT is made and entered into this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and MINOL, INC., hereinafter referred to as "FIRST PARTY."

1. Section 4. COMPENSATION AND PAYMENT of Agreement No. 2849, ("Agreement"), Section 4. COMPENSATION AND PAYMENT [amendment to section] is hereby amended to read as follows:

"CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$57,440.16 as described in Exhibit "A, A-1, A-2, A-3 and A-4" Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable. The PARTIES further acknowledge and agree that this Amendment is intended to address CITY'S transition from contracting with FIRST PARTY to a new vendor, and that it is imperative to maintain collaborative and effective service during the transition period. Based on these priorities, the PARTIES further acknowledge and agree that unacceptable work which allows CITY to withhold payment to First PARTY as described above includes but is not limited to FIRST PARTY failing to provide information covered by the Agreement requested by CITY in a timely manner within 10 days of any CITY request, and/or FIRST PARTY failing to provide CITY with the requested information in a complete manner within 10 days of any CITY request. The PARTIES further acknowledge and agree that due to the critical need for FIRST PARTY to provide uninterrupted and effective services to CITY during the transition period, that in addition to CITY'S right to withhold payment for unacceptable work, FIRST PARTY shall be liable to CITY for liquidated damages in the amount of \$500.00 per day for any failure to timely and completely provide CITY with requested information as described above."

2. Pursuant to Section 9. NOTICES of Agreement No. 2849, ("Agreement"), Section 9. NOTICES [amendment to section] to read as follows"

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Azalea Mitch
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

3. Pursuant to Section 24. TERM OF AGREEMENT of Agreement No. 2849, ("Agreement"), Section 24. TERM OF AGREEMENT [amendment to section] to read as follows:

"This agreement shall remain in effect for the period of December 15, 2019 through March 31, 2024 this is the last year allowed for renewal."

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2849 remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SIGNATURE PAGE TO FOLLOW

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I.C. Murphy, City Manger

Date

ATTEST:

Judi A. Herren, City Clerk

Date

FORTH AMENDMENT TO THE AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND MINOL, INC

THIS FOURTH AMENDMENT (“Fourth Amendment”) is entered into by and between Minol, Inc., a Colorado corporation, with its principal office located at 15280 Addison Road, Suite 100, Addison, Texas 75001 (“First Party”), and City of Menlo Park, a California municipal corporation, with its principal office located at 701 Laurel St. Menlo Park, CA 94025 (“City”), and effective as of the 30th day of November, 2023 (“Effective Date”). First Party and City may be referred to herein individually as “Party” or collectively as “Parties”.

WHEREAS, this Fourth Amendment amends the terms of the Agreement For Services Between the City of Menlo Park and Minol, Inc. between the Parties, effective December 18, 2019, (“Agreement”), and any amendments thereto; and

WHEREAS, the Agreement, and any prior amendment(s) thereof, shall be modified in accordance with this Fourth Amendment and all other terms of the Agreement shall remain unchanged; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties, intending to be legally bound, hereby agree to amend the Agreement as follows:

- I. **Term.** The Term of the Agreement shall be extended for a fourth renewal term beginning on January 01, 2024 for a period of three months, ending on March 31, 2024 (“Fourth Renewal Term”), unless amended, or terminated in writing by the Parties.
- II. **Early Termination.** Should City decide to terminate the Agreement prior to the end of the Fourth Renewal Term, the City shall be responsible for an early termination fee in an amount equal to the monthly billing fees multiplied by the number of months remaining in the Fourth Renewal Term.
- III. **Fee Schedule for Phase Two.** Per Unit Fee per monthly billing shall be amended as follows:

Per Unit Fee per monthly billing	Renewal 3 Months (January 1, 2024 through March 31, 2024): \$4.19 per unit (includes postage)	Includes invoice print and mail; postage; lockbox collections; Client customer update processing; online Client customer and Client portal access; daily or weekly payment collection reimbursements via wire; inbound Customer Service Call Center; Minol’s standard Water Utility Reporting packages, and up to three customized reports for financial system and other reporting needs.
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- IV. Renewal term does not include any integration to the Vertex One VX Smart Customer Portal and Sensus AMI meter platforms or any other additional services. Renewal term is for standard billing services only.

This Fourth Amendment shall supersede any conflicting terms in the Agreement, and any prior amendments thereto.

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Fourth Amendment.

City: City of Menlo Park

By: _____ Date: _____

Print Name: _____ Title: _____

First Party: Minol, Inc.

By: _____ Date: _____

Print Name: _____ Title: _____



Request for Proposals
(RFP)

Professional Consulting Services for:
**Water Billing and Customer Service
Support**

Proposals Due:
Wednesday, August 16, 2023 at 5:00 p.m.

Attn: Natalie Bonham, Management Analyst
Department of Public Works
701 Laurel St.
Menlo Park, CA 94025
nabonham@menlopark.gov

Statement of purpose

Menlo Park Municipal Water invites qualified firms with expertise and experience to submit proposals for water billing, reporting, and customer service. The City requires the firm to bill water users in accordance with meter reads and usage tariffs as well as perform customer service support functions.

Background information

The City of Menlo Park (City), located 30 miles south of San Francisco, owns and operates Menlo Park Municipal Water (MPMW), which provides water to half of the City through approximately 4,300 service connections. The City purchases water from the San Francisco Public Utilities Commission (SFPUC) and provides water to residential, industrial, and commercial areas. The remainder of the City receives water from the California Water Service Company, the O'Connor Tract Cooperative Water District, and the Palo Alto Park Mutual Water Company.

Water meters are manually read monthly and water bills are mailed weekly based on billing cycle schedule. The City currently uses a firm for manual meter reading and a firm for water billing and customer service. The City's focus is seeking a firm to provide clear, consistent and effective customer centered service for its customers

The City is pursuing the deployment of an Advanced Metering Infrastructure (AMI) system, which will allow the City to read meters remotely and in near real time. The City selected the Sensus FlexNet AMI System and 100% of the City's water meters will be replaced or retrofitted to be AMI compatible. Staff anticipates meter replacements/retrofits to begin in fall 2023 and completed in the spring of 2024.

Before, during or after the transition to AMI, the City intends to deploy a user-friendly customer portal geared towards water utility specific business processes and functions. The City will consider customer portal proposals from all firms. The City's goal is to have one customer portal where customers can view hourly water usage, pay bills online, and receive customized alerts. The portal must integrate tightly with the City's third party systems and the AMI Meter Data Management System (MDMS).

Additionally, the firm must be able to provide interface capabilities with other third party systems and software related to water usage and work orders including Cartegraph, Brightly Software, Open Gov and Fulcrum.

Scope of work

To respond to this RFP, firms should include a detailed description of all tasks. The City prefers that firms be able to perform all tasks listed below, including those suggested in this Scope of Work and any proposed changes, additions, or recommendations. The description of each task should include the scheduling, personnel, and costs.

With the AMI project, the City plans to transition from manual monthly meter reading to automated hourly meter reads during fiscal year 2023-2024. Firms must be able to provide consistent billing services, reporting, and customer service during the transition.

For reference, "disconnect" pertains to turning off meters (disconnect water service) and "connect" pertains to turning on meters (connect water service).

The Scope of Work shall include the following:

Task 1 – Billing services

Firm shall provide a billing system to implement the tasks as described below.

1. Firm shall produce and print customer bills on billing stock with "Menlo Park Municipal Water" and the City's logo printed on the top of the bill.
2. Firm shall provide monthly customer statements that includes customer information, account information, account billing activity, water rates, current and historical water use (12 months), customer messages, payment options and other City water policies.
3. For manually and AMI read meters, the firm shall mail or send electronically if elected by the customer, monthly bills within five (5) business days of receiving meter reads. Bills will be based on meter readings recorded by the meter reader; and in accordance with the actual meter readings and prevailing usage tariffs in effect at the time of billing as presented in the City's current water rate schedule.

4. Firm shall develop a monthly billing cycle schedule with service periods between 26-31 days. During and/or after the transition to the AMI system, the City may elect to change to monthly or 30 day billing periods.
5. Firm shall accept and process customer payments each business day between the hours of 7:30am to 5:00pm (Pacific Time zone). Customers shall have the option of paying bills by several means, including mailing the payment to firm, paying by credit card, paying in cash at authorized locations through local markets via Check Free Pay, authorizing payment via home banking, or by automatic deduction from customers' bank accounts. If paying by credit card, customers shall pay the credit card transaction fee percentage applicable to the payment.
6. If needed during a declared drought or other emergency, firm shall be able to determine monthly water budgets for each individual customer and bill for excess use charges for water use above each customer's water budget.
7. Firm shall maintain accurate customer records. The City shall have reporting access to customer account information (name, account numbers, meter numbers, service address, mailing address, consumption, water allotment, and balance due) when needed.
8. Unless a third party customer portal vendor is selected by the City, firm shall provide customers the ability to access their account through an online portal and phone app that will show the current bill, monthly water use, account information, payment history for up to 24 months, and, if applicable the monthly water budgets for the current month and the following three months. The portal and app shall also provide a graph showing 24 months' historical water consumption compared to other similar City accounts.
9. Firm shall allow customer to pay bills online or set up automatic bill payments. For customers using online bill pay and automatic bill pay, within five days of the availability of the meter reads or water bills firm shall notify customers each time a bill is available for viewing and payment. Customers whose checks, automatic bill payments or online payments are rejected for any reason will be charged a rejected payment processing fee. This fee will be added to the customer's account in addition to the original payment amount.
10. Firm shall remit collected funds to the City by direct deposit or wire transfer within one week of the collection of payments.
11. Firm shall accommodate changes in the water rates structure, discounted or low income rates, SFPUC wholesale pass through rates, and state regulation changes (i.e. revising tier structure, adding surcharges) as requested by the City at no additional charge.
12. Firm shall accommodate changes to a customer's monthly water budget as requested by the City at no additional charge.
13. Firm shall submit monthly invoices to the City's project manager in the public works department.

Task 2 – Past due collections and disconnections

1. Firm shall be responsible for notifying customers (water account holders and tenants) and collecting past due accounts. Firm shall follow the Past Due Water Bill Policy, Past Due Account Schedule and SB 998 procedures (Attachment A and B) when notifying customers and collecting on past due accounts.
2. Firm shall provide phone calls, disconnection notices to customers (water account holders and tenants) whose accounts are past due.
3. When customers contact firm's customer service line, firm's personnel will assist customers with providing information about their account, receive a payment and offer to sign up customers for a payment arrangement.
4. Firm shall remit collected funds to the City by direct deposit or wire transfer within one week of the collection of payments
5. Firm shall offer the City collection agency services for closed accounts with past due balances based on conditions set by the City.

Task 3 – Data sharing

1. Firm shall maintain 100% secure customer utility account information and payment information at all times. Contractor shall not allow unauthorized users access to utility account data, bank account and credit card numbers, and other financial customer information. If a security breach occurs that compromises the customer's personal information the Contractor must comply with Civil Code 1798.29.
2. Firm shall provide authorized City personnel unlimited access to water customers' non-confidential account information to view online or download into Excel.
3. If the City selects a third-party customer portal, firm shall provide the City's selected customer portal with access to water customer's non-confidential account information, water use data, and customer billing data. The firm will work with the customer portal's representatives to transfer historical consumption data and automate data transfers of billing data at an agreed upon frequency.
4. Firm shall provide the following monthly reports by the 10th of each month:
 - List of individual customer water use and account information
 - Consumption summary with number of accounts and customer categories
 - List of top 20 customers in each user category based on usage and corresponding account information

- List of non-residential customers with >20% usage compared to the previous month.
 - List of residential customers with >20% usage compared to the previous month
 - Income statement
 - Accounts receivable aging summary
 - Accounts receivable account information
 - List of participants and revenue loss related to the City's Rate Assistance Program
 - Closed past due account collections reports
 - Vacant usage
 - Summary of customer service provided data, including customer complaints and service provided
 - Summary of sales data showing the number of accounts billed and the revenue generated
 - Other reports as requested by the City
5. Firm shall provide annual reports that include a summary of revenue, usage, delinquent accounts and payment arrangements.
 6. Firm shall include a description of other reports that would be available for City personnel to access online and in printed form to the City after implementation of the billing system.
 7. Firm shall incorporate at least 5 years of historical usage for existing customers into the Firm's database. Data translated must be checked and verified for accuracy.
 8. Firm shall distribute six (6) City-provided insert mailings per 12 month period at no additional cost.
 9. Firm shall verify addresses by checking the USPS change of address database every month.
 10. Firm shall report all address and service changes to the City on a monthly basis.
 11. Firm shall provide a plan of recovery and/or duplication of records in case of an emergency.
 12. Firm shall retain customer records for a minimum of 5 years.

Task 4 – Customer Service

1. Firm shall provide new customers with a water customer information guidelines (provided by Firm that includes information on MPMW water rates and conditions of service).
2. Firm will provide a local or 800 telephone number for customers to call and speak to a representative of Firm.
3. Firm will provide sufficient personnel, including Spanish-speaking personnel, to respond to customer service calls within 24 hours business days.
4. Firm shall provide their customer service personnel with customer service training that includes non-discrimination polices and training requirements, such as to comply with applicable civil rights laws and regulations, and the City requires compliance with civil rights statues, including compliance nondiscrimination laws which prohibit discrimination on the basis of: (a) Race (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and prohibit: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity.
5. Firm shall notify the City of customer service emergency requests or reports received which require field work. This will include, but not be limited to; leaks, system damages, system low pressures, and water quality matters.
6. Firm shall be able to integrate with the City's automated work order system Cartegraph to be used by City personnel, and Firm customer service representatives in reporting problems, billing concerns, disconnection notifications or service requests.
7. Firm shall provide a way to track customer service inquiries and escalations via online portal or work order system.

Task 5 – Training

Firm shall provide three (3) in-person or virtual City personnel implementation trainings related to the online portal, app, data reports and customer service.

Task 6 – AMI Implementation and Integration

1. Firm shall coordinate integration with Sensus, the City and it's contractor to receive meter billing reads from the AMI system.
2. In the event that the City selects a customer portal other than the firm's customer portal, the firm shall coordinate integration of the firm's CIS and online payment provider with the City's selected customer portal. Firm shall provide access to customer information, including billing data to the City's selected customer portal.
3. During the transition to AMI, firm may be required to handle a potential increase in service calls.
4. The City may request additional notices and mailers to be sent to customers during or after the transition to AMI.

Proposal preparation and submittal

Proposals must clearly demonstrate an understanding of the City's objectives. The proposal shall not include unnecessary promotional material, and shall be brief, precise, and organized as follows:

1. Transmittal Letter
Introduce your Firm and summarize general qualifications to deliver the requested services. The letter shall be signed by an officer of the organization who is authorized to negotiate a contract with the City.
2. Team Experience
Identify and describe the qualifications and experience of key personnel to be assigned and provide brief resumes. In addition provide the number of personnel in each division and identify each person's geographic location. Include specific and detailed descriptions of similar services provided, client name and contact information (including phone and email), length of contract and number of accounts served. Include prior experience with municipal utility operations as it is considered especially relevant.
3. Proposal Overview (5 pages maximum)
Provide a narrative description of the proposal based on the scope of work. Include any issues that you believe will require special consideration. Also identify any unique approaches or strengths you have that may relate to this proposal.
4. Detail Work Plan (10 pages maximum)
Provide a description of the tasks for the implementation of the scope of work. Include the steps needed to complete the tasks and any recommended additions and identify any tasks that Firm is unable to meet. Provide assumptions used and include any assistance needed from City personnel and required hardware and software if needed. Include a timeline of the dates when Firm will be ready to begin to provide customer service and billing customers.
5. Services Cost
Provide a cost estimate, on a task-by-task basis, showing how the cost estimate was calculated. Include a document identifying personnel, hourly rates, project responsibilities, and estimated time expected for each task. The budget for Task 1 through 4 must be presented as not-to-exceed, including costs per meter and account with all overhead/expenses included in the estimated costs.

For the scope of contracted services requested, provide the total cost of the services to be provided at the account billed per week level. Base this on 4,300 billing customers a month, however, the actual number of customers billed may vary per month. This will be the amount the Firm will be paid monthly for providing all the services described in the scope of services requested above, except for mobilization.

6. Mobilization
Include total mobilization cost for Firm to set up business to start), billing customers, providing customer service, and converting 4,300 existing customers' history into the new program and provide the total cost.
7. References
Provide at least three references (name, company, title, address, telephone number, email) for which your company has provided or is currently providing similar service.
8. Additional Information
Provide information to show that your Firm is financially stable. If applicable, provide a list of contracts/agreements that were terminated for convenience or default within the past three years. List any litigation that now affects or may affect your organization's ability to perform work in the future.
9. Data and Security Recovery Plan
Provide data recovery/security plan. Describe the security architecture, how sensitive customer and financial data will be secured/encrypted at rest and in transit to ensure the privacy and confidentiality of all customers.

Electronic proposals will be received in electronic format on the City's PlanetBids Portal available at <https://pbsystem.planetbids.com/portal/46202/bo/bo-detail/107794>. Proposals will be received up to **Wednesday, August 16, 2023 at 5:00 PM**. Please note that Submitters must be pre-registered with the City's bidding system in order to submit an electronic proposal.

City staff will review the proposals and select the most qualified firm based on the following criteria:

1. Ability to perform the specific tasks
2. Qualifications of the specific individuals who will work on the project
3. The specific method or techniques to be used
4. Reasonableness of the schedule to complete each task element
5. Overall cost of the proposal

After reviewing each proposal, the City will notify each firm in writing. The City reserves the right to complete the selection process without proceeding to an interview phase, and the City may choose to select a consultant based upon information supplied in the proposal.

Tentative schedule

Issue RFP	July 19, 2023
Questions deadline	August 2, 2023 by 5 pm
Proposals Due	August 16, 2023 by 5 pm
Award of Project	September 2023

Point of contact for future correspondence

Please direct all inquiries to:
 Natalie Bonham, Management Analyst II
 701 Laurel St.,
 Menlo Park CA 94025
 650-330-2216
water@menlopark.gov

Attachments

- A. Past Due Water Bill Policy (SB 998)
- B. Past Due Account Schedule (SB 998)
- C. City Standard Agreement

Term of contract

The City intends to execute a three year contract with the most qualified contractor(s) with an option to extend on a yearly basis for up to three additional years. The contract will be awarded at the discretion of the Menlo Park City Council. The City of Menlo Park reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety this RFP. Proposals and materials submitted will become the property of the City and will not be deemed confidential or proprietary.

Payments

The firm is responsible to submit invoices at the beginning of each month identifying services performed consistent with their proposal.

Contractual terms and conditions

The firm will be required to sign the City's Standard Agreement for Services (Attachment C).

All work including data, documents, and other work products performed or prepared by the firm and all sub-consultants shall be considered the property of the City. All proposals, once submitted to the City, become public record and may be released upon request.

PAST DUE WATER BILL POLICY

Menlo Park Municipal Water
menloparkca@myutilitydirect.com
844-463-6567
Effective January 1, 2022



Purpose
This policy describes the City's process for handling past due bills including notifications, late penalties, disconnections, reconnections, alternative payment arrangements and special circumstances (low income residents and medical need for water).
Notifications
The City will provide a notice to customers of delinquency and pending termination via mailed notices, door tags, emails and/or telephone calls. The City will make a reasonable, good faith effort to contact the customer of pending disconnection by phone, mail or notification at the premises no less than 10 business days before disconnection. Customers will receive a disconnection notice or door tag notice for water bills that are past due by more than 45 days. The City will charge a \$25 door tag notice fee, which shall be applied to the customer's next water bill.
Late penalties
Customers will incur a 1.5 percent late fee if payments are not received by the bill due date.
Disconnections
Customers with past due water bills that are more than 60 days old from the original bill due date, may be disconnected and a reconnection fee may apply before reconnection. To prevent disconnections, customers may qualify for a payment arrangement or remit payment at least 1 business day before the scheduled disconnection date. Residential customers may request an exemption from being disconnected if all of the following applies: 1. The customer demonstrates low income 2. The customer demonstrates a medical need for water 3. The customer is willing to enter into a payment arrangement
Reconnections and reconnection fees
Customers shall set up an alternative payment arrangement or pay the past due amount plus the reconnection fee to reconnect water service. Reconnection fees: <ul style="list-style-type: none">• Reconnection scheduled for next business day – \$108• Reconnection scheduled for same day or after business hours – \$270
Alternative payment arrangements
Any customer who is unable to pay for water charges, within the normal payment period may request a payment arrangement to avoid disruption of service. The City will grant a payment arrangement, including but not limited to, alternative payment schedules, deferred payments, and minimum payments as specified in this policy for any customer who does not already have an active payment arrangement. Requirements to make a payment arrangement: <ul style="list-style-type: none">• Requests must be made at least one business day before the scheduled disconnection date.• Customers shall make a 10 percent good-faith payment to establish a payment arrangement and only one payment arrangement can be active at the same time.• Customers must agree to the payment arrangement verbally over the phone or in writing, comply with the terms of their payment arrangement, and remain current as charges accrue in each subsequent billing period.• Customers may request up to two payment arrangements during any calendar year. Each payment arrangement can only last up to 12 months per request. Requirements for customers in a payment arrangement: <ul style="list-style-type: none">• Customers may not request an additional payment plan of any subsequent unpaid charges while paying delinquent charges to an existing payment arrangement.• Customers on payment arrangements cannot request due date extensions. Due date extensions:

- Customers may request up to 2 due date extensions during any calendar year. Requests must be made at least 1 business day before the water bill due date. Once extended, due dates cannot be revised to a later date.

A customer who enters into and abides by a payment arrangement shall not be considered delinquent. Failure to comply with the terms of a payment arrangement will result in the customer being considered delinquent. The customer will then be subject to disconnection once the account is delinquent for 60 days and additional arrangements or extensions will not be available for any new delinquent balance, and the customer will not be granted future alternative payment arrangements until the delinquent balance has been paid.

Medical need

Customers can demonstrate a medical need for water if they can provide a written certification from their primary care provider that discontinuation of water service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where water service is provided.

Low income (residential customers only)

Customers can qualify for special provisions if they are enrolled in the rate assistance program.

To be eligible for the rate assistance program, households must meet the following criteria:

- Must be enrolled in the PG&E CARE program.
- Must provide a recent PG&E bill to verify CARE enrollment. Must show name, service address, statement date and CARE renew by date;
- Must provide the most recent Recology bill. Must show name, service address, account number, bill date and cart size; and
- Must provide the most recent Menlo Park Municipal Water bill, if applicable. Must show bill date, account number and service address.
- Service address must be the same for all three utility bills (PG&E, Recology and Menlo Park Municipal Water, but names may be different.

Special provisions:

- Customers shall pay a reconnection fee, in addition to the total amount due on the account, to restore service
- Reconnection scheduled during business hours – \$50
- Reconnection scheduled during nonoperational hours – \$150
- Customers can request the 1.5 percent late fee to be waived once every 12 months

For more information on the rate assistance program please visit menlopark.org/rateassistance

Landlord/tenant relationships

If you are renting a property that has an individual meter under the property owner's name, and the account is past due; tenants have the right to become customers.

- In order to waive the past due amount, the tenant shall provide a copy of a lease/rental agreement, rent receipts or government document indicating he/she is renting the property as verification.
- A tenant who chooses to become the customer can deduct water charges from periodic payments, such as rental payments to the property owner, if water charges are not separately stated.

Appeal process

Customers may dispute their monthly water bill by submitting a water bill protest form within 15 days from the bill date. The City shall review appeals and investigate as needed. All decisions are made by the public works director or designee. Water service shall not be discontinued while the appeal is pending.

Past Due Account Schedule

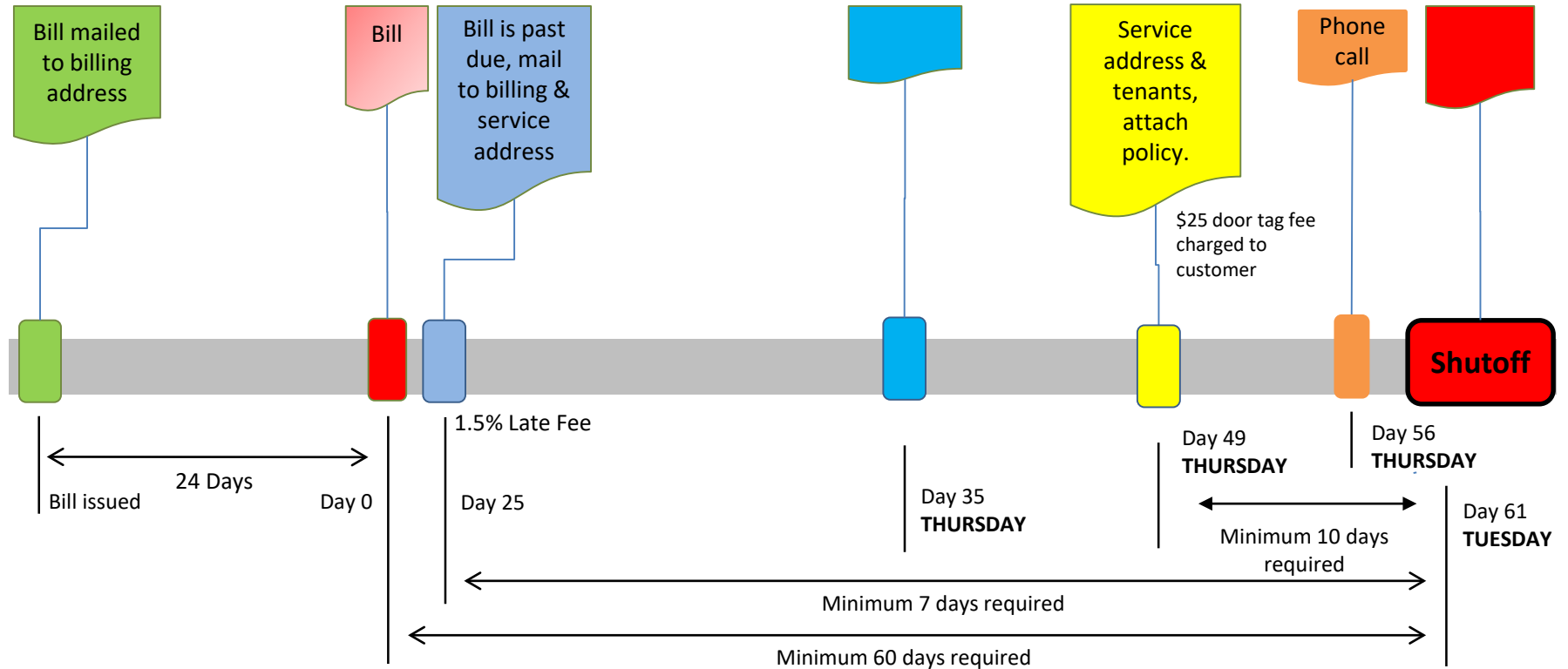
Updated April 2023

Notice #1
Letter +Translations +
policy

Notice #2
Phone Call

Notice #3
10-day Door tag +
policy

Notice #4
Phone call
ATTACHMENT B



NOTES:

- The City has 4 meter read cycles (composed of multiple routes). The goal is each cycle shall be read one week and billed by the following Friday.
- This process applies to all types of customer accounts, residential and non-residential.
- Notice #1 – Mail letter to the service & billing addresses (if different, the notice to the service address shall be labeled “Occupant”) with amount of delinquency, date payment due to avoid shutoff, process to request extension or payment arrangement, appeal bill, and link to the policy. Per [CA SB998](#), this notice shall be translated into 6 languages (English, Spanish, Chinese, Tagalog, Vietnamese, and Korean).
- Notice #2 – Automated phone call informing customer of delinquency and asking them to call customer service with any questions.
- Notice #3 – Deliver notice to service address & all tenants with the policy, which has info on landlord-tenant relationships. \$25 door tag fee applied to customer’s bill. This notice is required prior to disconnection (5 days prior) or for landlord-tenant relationships (10 days prior), or if customer cannot be reached by both phone call and mailed notice.
- Notice #4 – Automated phone call informing customer of delinquency and asking them to call customer service with any questions.
- To avoid disconnection, customers must establish payment arrangement or pay the outstanding balance by close of business the day prior to the disconnection date.
- All notice dates are calculated from bill due date and by calendar days.
- Tentative implementation is scheduled for May 2023

SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND Click here to enter text.
THIS AGREEMENT made and entered into at Menlo Park, California, this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and Click here to enter text. , hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: click here to enter text</p> <p>WHEREAS, FIRST PARTY has experience in performing said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services, attached hereto.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written notice, or as otherwise required in Exhibit "A-1." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY's timing of completion of work shall be as set forth in Exhibit "A".</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with Exhibit "A-1," Scope of Services.
4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY pursuant to the Fee Schedule as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable upon thirty (30) days' written notice to FIRST PARTY, with FIRST PARTY'S right to cure within such time period or CITY shall have the right to terminate the Agreement with all fees due to FIRST PARTY through date of termination.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number.
- D. Payments are due upon receipt of written invoices and the CITY shall have thirty (30) days upon receipt to submit payments. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges, at CITY'S sole expense. Except for invoiced payments that the CITY has successfully disputed, all late payments shall bear interest at the lesser of the rate of 1.5% per month (18% annum) or the highest rate permissible under applicable law, calculated daily and compounded monthly. CITY shall also reimburse FIRST PARTY for all costs incurred in collecting any large payments, including, without limitation attorneys' fees and court costs.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-contractors, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONTRACTOR QUALIFICATIONS

It is expressly understood that FIRST PARTY is skilled in the services necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the industry. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Nicole Nagaya
Public Works Department
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
PWDirector@menlopark.gov

Notices required to be given to FIRST PARTY shall be addressed as follows:

Name
Company
Address
City, State Zip
Phone
Email

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain a city of Menlo Park business license, for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its subcontractors for the accuracy and competency of the work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the , documents prepared by FIRST PARTY or its subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Not applicable

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. Except as provided under Exhibit "A-1", CITY may give sixty (60) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for its contractual obligations, subject to any applicable cure period prescribed herein. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, specifications, reports, estimates, and summaries as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise.
- C. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement. Conditions for termination by FIRST PARTY are provided under Exhibit "A-1".
- D. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY. An expense shall be incurred by CITY for inspections or reviews in excess of two (2) per calendar year.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY or the CITY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the non-breaching party.
- B. Either party reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event a party chooses to waive a particular breach of this agreement, it may condition same on payment by the breaching party of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

FIRST PARTY shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 15, 2019 through December 31, 2020 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Contractors, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Contractor's Scope of Work and determination by the City Manager, it is determined that Contractor IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

27. MISCELLANEOUS PROVISIONS

- A. Intellectual Property. All intellectual property rights of FIRST PARTY, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are used in the course of performing the Services [except for any Confidential Information or intellectual property of CITY] shall be owned exclusively by FIRST PARTY.
- B. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 120 days thereafter, is summarized in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 6; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group (defined hereinafter) who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 9(e) only, Receiving Party's Group shall mean the Receiving Party's subsidiaries, affiliates, employees, officers, directors, shareholders, partners, agents, independent contractors, FIRST PARTYS, sub-licensees, subcontractors, attorneys, accountants, and financial advisors, of whom shall all be subject to the same protection requirements of the Confidential Information as the Receiving Party.

C. Limited Warranty and Limitation of Liability.

1. FIRST PARTY warrants that it shall perform the Services:
 - a. In accordance with the terms and subject to the conditions set under Exhibit "A-1" of this Agreement.

- b. Using personnel of commercially reasonable skill, experience and qualifications.
 - c. In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services; provided, however that CITY provides all information timely that is required for FIRST PARTY to perform the Services in such manner.
2. FIRST PARTY's sole and exclusive liability and CITY's sole and exclusive remedy for breach of this warranty shall be as follows:
- a. FIRST PARTY shall use reasonable commercial efforts to promptly cure any such breach; provided that if FIRST PARTY cannot cure such breach within a reasonable time (but no more than 30 days) after CITY's written notice of such breach, CITY may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 16 of this Agreement.
 - b. In the event the Agreement is terminated pursuant to Section 16 above, FIRST PARTY shall within ten (10) days after the effective date of termination, provide CITY with all information and data related to the CITY's customer accounts for purposes of transitioning the Services to a new provider.
 - c. The foregoing remedy shall not be available unless CITY provides written notice of such breach within 30 days after the Client discovered, or should have discovered, the occurrence of the breach.
3. FIRST PARTY MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN THIS SECTION HEREIN. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Signature Authority, Title

Date

ATTEST:

Judi A. Herren, City Clerk

Date

EXHIBIT “A” – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide services for CITY’s Public Works Department pursuant to Exhibit “A-1”. In the event of any discrepancy between any of the terms of Exhibit “A-1” and those of this agreement, Exhibit “A-1” shall prevail.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates set forth in Exhibit “A-1”. FIRST PARTY shall be paid within thirty (30) days. Invoices shall be submitted containing all information contained in Section A5 below. Except as provided under Exhibit “A-1” in no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit “A-1.”

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. In the event that the CITY agrees to such it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Public Works Director.

A5. BILLINGS

FIRST PARTY’s bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the current invoice amount. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY’s discretion. Such expenses shall be FIRST PARTY’s sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation

B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.

B3.0 Arbitration

- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

EXHIBIT "C" – CONFIDENTIALITY AND DATA MAINTENANCE

C1.0 City Data

- a. **Ownership of City Data.** The FIRST PARTY agrees that, all CITY'S rights, including all intellectual property rights, in and to the City Data and shall remain the exclusive property of the City. FIRST PARTY's intellectual property rights are provided under Section 27 of the Agreement.
- b. **Data Security.** FIRST PARTY shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the FIRST PARTY's Website, (c) FIRST PARTY's physical facilities, and (d) FIRST PARTY's networks, to prevent unauthorized access or "hacking" of City's Data. FIRST PARTY shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed contractors working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. FIRST PARTY will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of FIRST PARTY who need the information to carry out the purposes for which it was disclosed to FIRST PARTY. For information disclosed in electronic form, FIRST PARTY agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g. password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, FIRST PARTY agrees that appropriate safeguards include secured storage of City's Data. City's Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. FIRST PARTY also will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect the City's Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
- c. **Use of City Data.** FIRST PARTY is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for FIRST PARTY'S own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by FIRST PARTY or third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
- d. **Access to and Extraction of City Data.** City shall have access to City's Data pursuant to the terms provided under Exhibit "A-1".

- e. **Backup and Recovery of City Data.** As a part of the Services, FIRST PARTY is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the Services. FIRST PARTY shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and maintaining the security of City Data as further described herein. FIRST PARTY's backup of City Data shall not be considered in calculating storage used by City.
- f. **Data Breach; Loss of City Data.** In the event of any Data Breach, act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by FIRST PARTY that relate to the protection of the security, confidentiality, or integrity of City Data, FIRST PARTY shall, as applicable:
- i. Notify City immediately following discovery, but no later than twenty- four (24) hours, of becoming aware of such occurrence or suspected occurrence. FIRST PARTY'S report shall identify:
 1. the nature of the unauthorized access, use or disclosure;
 2. the Confidential Information accessed, used or disclosed;
 3. the person(s) who accessed, used and disclosed and/or received protected information (if known);
 4. what FIRST PARTY has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
 5. what corrective action FIRST PARTY has taken or will take to prevent future unauthorized access, use or disclosure.
 - ii. In the event of a suspected Breach, FIRST PARTY shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;
 - iii. FIRST PARTY shall coordinate with the City in its breach response activities including without limitation:
 1. immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
 2. Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate FIRST PARTY responses to City inquiries;
 3. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
 4. Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City; e. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;
 5. Ensure that knowledgeable FIRST PARTY staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
 6. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.
 - iv. In the case of personally identifiable information (PII), (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in the CITY notifying the affected individuals;

- v. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;
- vi. Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- vii. Without limiting FIRST PARTY's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;
- viii. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and
- ix. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures FIRST PARTY will undertake to prevent a future occurrence.
- x. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain information that may include: name and contact information of FIRST PARTY'S (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps FIRST PARTY has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by FIRST PARTY.
- xi. FIRST PARTY shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to FIRST PARTY, independent of where the City Data is stored.
- xii. City shall conduct all media communications, unless at its sole discretion directs FIRST PARTY to do so, related to such Data Breach.

C2.0 Indemnification.

General Indemnification. FIRST PARTY shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with FIRST PARTY performance of the Agreement, including but not limited to, any: (i) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; or (ii) strict liability imposed by any law or regulation.. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to FIRST PARTY's obligation to indemnify City, FIRST PARTY specifically acknowledges and agrees that it has an immediate

and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to FIRST PARTY by City and continues at all times thereafter. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

C3.0 Transition Services and Disposition of Content.

Upon expiration or termination of the Services under this Agreement:

- a. FIRST PARTY may immediately discontinue the Services. FIRST PARTY shall within five (5) calendar days of the expiration or termination of the Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of FIRST PARTY. Such data transfer shall be done at no cost to the City. Once FIRST PARTY has received written confirmation from City that City's Data has been successfully transferred to City, FIRST PARTY shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 80088 or most current industry standard.
- b. FIRST PARTY shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the Services, in whole or in part, to City or to Successor Service Provider. During the transition period, City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated Services from FIRST PARTY to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; and (c) such other activities upon which the Parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-267-CC

Consent Calendar: **Adopt a resolution approving the proposed revisions to the Below Market Rate Housing Program Guidelines to update the below market rate residential unit for-sale process**

Recommendation

Staff recommends the City Council adopt the resolution approving the proposed revisions to the Below Market Rate (BMR) Housing Program Guidelines (Exhibit A of Attachment A) to update the BMR residential unit for-sale process.

Policy Issues

The City Council may approve changes to the BMR guidelines by way of resolution. The City's BMR housing program is intended to increase the housing supply for households that have extremely low, very low, low and moderate incomes compared to the median income for San Mateo County. The BMR Guidelines govern the administrative practices of the BMR housing program in multiple areas including, but not limited to, development requirements, in-lieu fees, unit standards, interest list procedures, etc.

Background

The City's BMR Housing Program is intended to increase the housing supply for households that have very low, low- and moderate-incomes compared to the median income for San Mateo County. Per the BMR Guidelines, the primary objective is to obtain actual housing units, either "rental" or "for sale," rather than equivalent cash. The BMR Guidelines help implement the BMR Housing Program established in Chapter 16.96 of the Municipal Code. The guidelines were originally adopted by City Council on Jan. 12, 1988. They have been revised a number of times, most recently in March 2022.

Due to recent events regarding the sale of a BMR residential unit and anticipated sale of new homeownership units, the proposed updates to the BMR Guidelines are primarily to refine and clarify the BMR sales procedures for new BMR units. Given the nature of the proposed changes and the timeliness for implementation, the updates to the BMR Guidelines are focused on BMR new sales with modest revisions made to resale sections and no revisions to the rental sections were made.

In addition, the adopted 2023-31 Housing Element includes Program H4.A and H4.B which involves revising the BMR Guidelines. Staff will be doing a more comprehensive review and update of the BMR guidelines. Both programs are to be completed within two years of adoption of the Housing Element which would be by the end of January 2025. Those proposed changes will be brought to the Housing Commission for review and recommendation and the City Council for final action in the future. As the City commences the Housing Element program implementation phase, City Councilmembers have expressed prioritizing the implementation of Program H4.A and H4.B.

Housing Commission review and recommendation

The Housing Commission considered the proposed BMR Guideline revisions at its Nov. 27 special meeting. The Housing Commission was presented a detailed overview of the proposed changes to the specific sections of the guidelines. Housing Commissioners asked a number of questions about the proposed revisions. Questions included clarifying when the legacy list was to be used and when marketing is needed. Also, the Housing Commission wanted further clarification of how the City will hold developers accountable to ensure that BMR units are comparable to the market rate units. A member of the public submitted comments and questions which were addressed by staff at the meeting. Overall, the commenter supported the revisions and had a question about §5.4 regarding the role of the BMR administrator and §8.2 and how the legacy list works with the marketing plan.

The Housing Commission made a recommendation to approve the proposed revisions and to retain the existing exception language in §7.1. Staff had proposed to remove the two exceptions from the first time homebuyer requirement to focus more on first time homebuyers. The two exceptions proposed to be removed are as follows:

- Section 7.1 – First Time Homebuyer
 - Removes exception to requirement that a new BMR buyer be a first time homebuyer if their household was on the purchase waiting list before 2010
 - Removes exception to requirement that a new BMR buyer be a first time homebuyer if they own a home 50 miles or more away from Menlo Park

As background, these exceptions were added to the guidelines in 2010. At that time, the City Council approved a first time homebuyers requirement to the BMR Guidelines and added the exception to accommodate those who were not first time homebuyers, but were already on the City’s list. Also, the 50 mile exception was to help reduce commute traffic and to meet a goal of creating a more equitable live/work balance.

Analysis

The proposed updates to the BMR Guidelines are focused on the new BMR sales process, which includes the marketing of the units. Changes made to the guidelines are further described below and modifications that are not listed in specific detail are considered general programming-related description edits and “clean up” to terminology to align the BMR guidelines with standard program administration practices such as updating the income limits and grammatical changes.

When BMR ownership and/or rental unit(s) become available, staff works closely with the City’s BMR administrator (Housing Inc.) and property owner to advertise the units. Marketing efforts are made directly to persons and households on the City’s BMR ownership legacy list and rental interest list, often referred to as the interest list, as well as through other general advertising practices to publicize the affordable housing opportunities to households not on the interest list. Similar to many cities throughout the Bay Area, the City of Menlo Park has seen dramatic increases in property values over the last 15 to 20 years. Menlo Park is among the most desired cities in the region, which has resulted in home prices and rents exceeding the averages of many other Bay Area cities and making the need for affordable housing even greater. When BMR units become available, having clear guidelines and processes in place help make for a smooth and timely transaction.

A “clean” version of the proposed revisions is included as Exhibit A in Attachment A and the “track changes” version is included as Attachment B.

Below is a summary of the proposed revisions to the BMR Guidelines sections:

- Section 4.1.1 – Initial Price for For-Sale Unit
 - Specify that the sales price for a new BMR unit must be calculated before the building inspection for temporary certificate of occupancy or final certificate of occupancy, whichever comes first (“Building Inspection”).
- Section 5.1 and 5.2 – Size and Location (§5.1) and Design and Materials (§5.2) of the BMR units
 - For condominium conversions, further clarify that those condominium conversions that do not require a Building Inspection, City staff will still inspect to ensure that the BMR unit meets the City BMR guideline requirements for comparable appliances, size, design and materials for other market rate units in the development.
 - For all new units, specify that the City must review building permit or other improvement plans to confirm that the plans show that the requirements of §§5.1 and 5.2 are or will be met.
- Section 5.4 – BMR Maximum Sales Price Calculation
 - In determining the maximum sales price of the unit, it further defines the various components of the BMR value calculation. The revisions include requiring certain factors and referring to §9.1.4 for a formula.
 - Clarifies that the developer is responsible for transaction costs including the title policy, escrow fee, documentary transfer tax and the BMR administrator’s fee.
 - Requires that the City have a BMR administrator to assist with the sales process.
 - States that the BMR administrator will serve as the broker in the BMR sales and represent both buyer and seller in the process. The buyer cannot have their own real estate agent. The seller may hire another real estate agent to represent them but seller would be responsible for the cost of that agent in addition to the BMR administrator’s fee.
- Section 5.5 – Right of First Refusal
 - The City’s purchase price under its right of first refusal is determined in the same way as the resale price to BMR buyers.
 - Removes the option of allowing the City to consent to a market rate sale or transfer to a person who does not income qualify if it is unlikely that a BMR buyer will be found in a reasonable amount of time.
 - Removes repetitive discussion of exceptions to the prohibition on a BMR owner’s ability to sell or transfer the BMR unit and notes that these exceptions are discussed in §10.3.
- Section 7.1 – First Time Homebuyer¹
 - Removes exception to requirement that a new BMR buyer be a first time homebuyer if their household was on the purchase waiting list before 2010.
 - Removes exception to requirement that a new BMR buyer be a first time homebuyer if they own a home 50 miles or more away from Menlo Park.
- Section 7.2 – Complete First Time Pre-Purchase Homebuyer Education
 - Clarifies that an applicant need not complete homebuyer education before applying for a BMR unit, but must do so before they may sign an agreement with the developer.
- Section 7.4 – Income and Asset Limits for Purchasers of BMR Units
 - Replace “households having gross incomes of up to 120% of area median income (AMI)” with

¹ Initially proposed to Housing Commission. Housing Commission recommended not removing and retaining these exceptions. Staff supports the recommendation therefore the exceptions remain in the Attachments.

“households having incomes up to the income limit for the income category designated in the BMR Housing Agreement” (examples of income categories are extremely low- 30% AMI, very low- 50% AMI, subsidized low- 60% AMI, low- 80% AMI, or moderate- 120% of AMI).

- Section 8.1 – Application and Maintenance of the BMR Purchase Legacy List (legacy list)
 - Additional language is included for the annual updating of the BMR legacy list. List members must affirm their interest and provide proof that they are still income qualified and first time homebuyers each year. If they do not respond or do not provide acceptable proof, they are removed from the list. Please see below for an expanded discussion about the City legacy list.
 - Members of the legacy list do not need to show they meet a preference when they apply for a BMR unit.
- Section 8.2 – BMR Preference Criteria and Lottery Process
 - The additional language clarifies that the City will use a lottery in the event the legacy list is exhausted or if there two or fewer legacy households eligible for the unit based on their household size.
- Section 8.3 – BMR Applicant Financing Rules.
 - Specified loans must be 30-year mortgages with 3% down payment and interest rates consistent with the Freddie Mac Primary Mortgage Market Survey.
- Section 8.4 – Applications.
 - Legacy list members must prove they are income qualified and first time homebuyers unless the applicant qualifies for an exception.
 - All other applicants must prove legacy list requirements in addition to proving they meet a preference if they are claiming a preference.
 - Applicants must all acknowledge and agree to the title requirement specified in §7.3
 - As part of the application package, the applicant must submit a pre-qualification loan letter.
- Section 9.1 – Purchase Process for New Units and Condo Conversions
 - The updates further expand on the requirements in determining the BMR sales price, when that BMR sales prices is set in the review process and the responsibilities of the seller and buyer.
 - Adds specific timelines for steps in the purchase process.
 - Removes the ability for the unit to be sold at a market rate if the City does not obtain a qualified BMR buyer within six months of the issuance of the certifying letter (deletes the previous §9.1.16)
- Section 9.1.1 – New Units or Condo Conversions that Require a Building Inspection
 - The developer is required to notice the City 180 days before the Building Inspection.
 - The developer’s notice must include homeowners association (HOA) dues, estimated property taxes and estimated insurance costs. Previously it was not clear when developer would provide this.
- Section 9.1.2 – Condo Conversion or Condo Projects that Do Not Require a Building Inspection
 - Requires the developer to provide notice 180 days before the units are sold. The City then has 60 days from receipt of the notice to inspect the unit.
- Section 9.1.4 – BMR Sales Price Determination
 - Within 90 days of notice, the City determines the maximum BMR sales price for the developer.
- Section 9.1.5 and 9.1.6 – Certifying Letter
 - In units requiring Building Inspection, requires the developer to inform City of receipt of the final certificate of occupancy, which triggers the obligation of the City to provide a certifying letter. The certifying letter can update the sales price if interest rates have changed.
 - In units not requiring Building Inspection, City’s confirmation that the unit meets the requirements of §§5.1 and 5.2 and (if applicable) is in good condition after a tenant vacates triggers the City

obligation to provide a certifying letter.

- Sections 9.1.7 and 9.1.9 – Marketing Plan Requirements and Implementation
 - Sets a deadline of 10 days from developer’s receipt of certifying letter for developer to provide a contract, covenants, conditions and restrictions (CC&Rs), HOA rules and bylaws, and a marketing plan.
 - The revisions include additional requirements for a marketing plan when a BMR ownership unit comes on the market and either the legacy list has been terminated or there are only 2 or fewer households of an appropriate size for the unit. The revisions would require a more robust outreach including listing the BMR unit on Zillow or Redfin and require open houses to be held on weekends or evenings on weekdays to ensure they are held at times when buyers would be available.
- Section 9.1.10 and 9.1.11 – Application Processing
 - Includes specific deadlines for closing the application period and publishing rankings with applicants identified by their assigned number.
- Section 9.1.12 – Ranking and Purchase Agreement
 - Provides specific timelines for both the designated buyer to submit documentation that they have completed a homebuyer education course to the City and for the City to review and introduce the applicant to the developer if the documentation is acceptable.
 - Also provides a specific deadline for both the buyer and developer (seller) to sign the purchase agreement. However, the City has the discretion to extend the timelines by a few days if both parties are acting in good faith and appear to be reaching agreement.
 - If the applicant does not meet the required deadlines, the update clarifies the next highest ranked applicant would be given the opportunity to purchase the unit.
- Section 9.2 – Process for Resale of BMR Units
 - Clarifies that the procedures applicable to sales of new units also apply to resales, except that a marketing plan is not required and advertising will be done on the City website. The sales price is the lower of the appraised value or the price determined based on the formula previously included in §11.6.
 - Sets a 90-day timeline from receipt of the owner’s notice to sell for the City to inspect the unit, get an appraisal and calculate the sales price.
 - The BMR owner is responsible for the same transaction costs as the seller in new units.

BMR legacy list

The City continues to use the BMR legacy list for the pool of potential homebuyers when a BMR ownership unit becomes available. Previously known as the BMR purchase waiting list, it was structured as a ranked waiting list in which households had to pay a fee to annually recertify. However, in 2022, the City Council adopted changes to the BMR Guidelines in which the City would no longer add and maintain this waiting list. It was converted to the legacy list where those households on the legacy list will have priority over all other applicants.

Therefore, procedurally, when a BMR unit becomes available, eligible legacy List households are contacted about the availability of the unit. Some households may not be eligible for a unit because of certain factors such as household size (e.g., the available unit is a one bedroom and the applicant is a four person household) or income level (it is a moderate income unit and the household is low income). The highest ranked eligible household will be given the opportunity to purchase the unit.

The legacy List has not been updated for a few years. City staff intends to contact all households on the legacy List on an annual basis to reaffirm their interest and to update their information if necessary as

proposed in §8.2. If they do not respond in a timely manner, they will be removed from the list. Staff will continue to update the legacy list until there are no longer any households on the legacy list. As part of the update, marketing requirements have been included in the eventuality that the legacy list is no longer used or there are two or fewer legacy households applying for the unit to ensure that an eligible, qualified homebuyer to complete the transaction in a timely fashion.

Conclusion

Staff supports the Housing Commission recommendation to retain the First Time Homebuyer exceptions in §7.1. While it was staff's intent to remove the exceptions to focus more on first time homebuyers, staff supports the purpose and intent of the exceptions. This will provide greater opportunities for households to purchase BMR units in Menlo Park.

The proposed revisions will become effective immediately if the City Council supports the proposed revisions as recommended.

Impact on City Resources

There are no impacts to City resources besides the preparation of the revisions and report and continued coordination of the BMR housing program with the City's designated BMR administrator.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Resolution to approve update BMR Guidelines
Exhibit A of Attachment A - "Clean" version of the proposed updated BMR Guidelines
- B. "Track change" version of the proposed updated BMR Guidelines

Report prepared by:
Tim Wong, Housing Manager

Reviewed by:
Nira Doherty, City Attorney
Deanna Chow, Community Development Director

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING REVISIONS TO THE BELOW MARKET RATE HOUSING
PROGRAM GUIDELINES**

WHEREAS, the City of Menlo Park (“City”) adopted Chapter 16.96 of the Menlo Park Municipal Code to authorize a below market rate housing program to increase the housing supply for households that have very low, low and moderate incomes compared to the median household income for San Mateo County (“Below Market Rate Housing Program”);

WHEREAS, the City established the Below Market Rate Housing Program Guidelines (“Guidelines”) to implement the Below Market Rate Housing Program on the twelfth day of January, 1988; and

WHEREAS, there remains a need to facilitate affordable housing opportunities for extremely low, very low, low and moderate-income households in Menlo Park; and

WHEREAS, the City strives to continue improving the implementation of the Below Market Rate Housing Program with continued updates to the Guidelines; and

WHEREAS, the City affirms its commitment to providing affordable housing opportunities to income-qualifying households; and

WHEREAS, the proposed modifications to the Guidelines ensure the City is proactively improving current practices for its affordable housing programs by outlining clearer requirements and deadlines for calculating the sales prices for for-sale affordable housing units, soliciting and reviewing applications from income-qualifying households, and carrying out the purchase and sale transaction between the seller and the selected income qualified buyer; and

WHEREAS, the Housing Commission reviewed and recommended the City Council adopt the proposed changes to the Guidelines at its meeting on the twenty-seventh day of November, 2023; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Menlo Park hereby adopts the revised Below Market Rate Housing Program Guidelines, attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, BE IT FURTHER RESOLVED that any prior versions of the Below Market Rate Housing Program are hereby superseded and shall have no further force and effect from this date forward.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___day of December, 2023.

Judi A. Herren, City Clerk

Exhibits:

A. Below Market Rate Housing Program Guidelines

CITY OF MENLO PARK BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

Section 14 Tables Updated for 2023

Originally Adopted by City Council on January 12, 1988

Revised by City Council on the following dates:

- December 17, 2002 (No Resolution)
- March 25, 2003 (Resolution No. 5433)
- January 13, 2004 (No Resolution)
- March 22, 2005 (Resolution No. 5586)
- March 2, 2010 (Resolution No. 5915)
- May 10, 2011 (No Resolution)
- May 6, 2014 (Resolution No. 6196)
- April 17, 2018 (Resolution No. 6432)
- June 19, 2018 (Resolution No. 6446)
- March 1, 2022 (Resolution No. 0000)

BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

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1. OVERVIEW

The high cost and scarcity of housing in Menlo Park have been caused in large part because the number of jobs in Menlo Park has grown, but the supply of housing has not increased significantly. A majority of new employees earn low- and moderate-incomes and are most severely impacted by the lack of affordable housing in Menlo Park. Because of the high cost of housing, families who seek to live in Menlo Park cannot afford to purchase homes here and are forced to rent. Many renters pay a disproportionately high amount of their incomes in rent.

1.1 Purpose. The City of Menlo Park's Below Market Rate ("BMR") Housing Program is intended to increase the housing supply for households that have very low, low- and moderate-incomes compared to the median income for San Mateo County. The primary objective is to obtain actual housing units, either "rental" or "for sale," rather than equivalent cash.

1.2 Enabling Legislation. The BMR Housing Program is governed by Chapter 16.96 of the Municipal Code. The BMR Housing Program is administered under these BMR Housing Program Guidelines ("Guidelines").

2. BMR HOUSING AGREEMENT AND REVIEW PROCESS

2.1 BMR Housing Agreement. Before acceptance of plans for review by the City of Menlo Park staff, the applicant for any project described in Section 3 below ("Project Applicant") should provide a proposal for meeting the requirements of the BMR Housing Program. The proposal should include one or a combination of the following alternatives: a) Provision of BMR units on site; and/or b) Provision of BMR units off-site; and/or c) Payment of an in-lieu fee. These alternatives are listed in order of preference.

2.2 Review Steps. The following review steps apply to most development projects:

- City staff will review a BMR For-Sale Agreement or an Affordability Housing Agreement (either, a "BMR Housing Agreement"), that has been prepared by the Project Applicant's attorney on a form substantially similar to that provided by the City and shall make a recommendation with respect to it to the Housing Commission, and, if applicable, to the Planning Commission and/or the City Council. The City Attorney must approve as to form the BMR Housing Agreement prior to its review by the Planning Commission.
- The City Council grants approval of the BMR Housing Agreement for projects which it reviews. For all other projects, the BMR Housing Agreement shall be approved by the entity having final approval authority over the project.

3. REQUIREMENTS FOR DEVELOPMENTS BY TYPE

3.1 Commercial Developments. The BMR Housing Program requires commercial developments which bring employees to Menlo Park to provide BMR units or to contribute to the BMR Housing Fund that is set up to increase the stock of housing for very low, low and moderate income

households, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.1.1 Commercial Development Requirements. Commercial buildings of 10,000 square feet or more gross floor area are required to mitigate the demand for affordable housing created by the commercial development project. In order to do so, it is preferred that a commercial development project provide BMR housing on-site (if allowed by zoning) or off-site (if on-site BMR units are infeasible). A density bonus of up to 15% above the density otherwise allowed by zoning may be permitted when BMR housing is provided on-site. The BMR Housing Agreement will detail the BMR Housing Program participation of a particular development.

Although the provision of actual BMR units is strongly preferred, it is not always possible to provide BMR housing units. In such cases, the Project Applicant shall pay a commercial in-lieu fee rather than provide actual BMR housing units. Commercial in-lieu fees must be paid prior to the issuance of a building permit.

Commercial in-lieu fees are charged at different rates to two groups based on the employee housing demand the uses produce. Group A uses are office and research and development ("R&D"). Group B uses are all other uses not in Group A.

Commercial in-lieu fee rates are adjusted annually on July 1st. The amount of the adjustment is based on a five-year moving average of the percentage increase in the Consumer Price Index (Shelter Only) for All Urban Consumers in the San Francisco-Oakland-San Jose area. Refer to Section 14, Table D, for the Commercial In-lieu Fee Rates, which may be updated by City staff from time to time.

3.1.2 Applicability. The BMR Housing Program applies to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals and building permits for any commercial development. The BMR Housing Program also applies to the construction of any new square footage or any square footage that is converted from an exempt use to a non-exempt use. Finally, the BMR Housing Program applies to the conversion of floor area from a less intensive use (Commercial/Industrial uses) to a more intensive use (Office/R&D).

3.1.3 Exemptions. The following are exempted from the BMR Housing Program:

- (a) Private schools and churches;
- (b) Public facilities;
- (c) Commercial development projects of less than 10,000 square feet; and
- (d) Projects that generate few or no employees.

3.2 Residential Developments. The BMR Housing Program requires residential developments which use scarce residentially zoned land in

Menlo Park to provide BMR units or to contribute to the BMR Housing Fund. The BMR Housing Fund is set up to increase the stock of housing for very low-, low- and moderate-income families, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.2.1 Residential Development Requirements. Residential developments of five or more units are subject to the requirements of the BMR Housing Program. These requirements also apply to condominium conversions of five units or more. As part of the application for a residential development of five or more units, the Project Applicant must submit a BMR Housing Agreement, in a form substantially similar to that provided by the City, which details the Project Applicant's plan for participation in the BMR Housing Program. No building permit or other land use authorization may be issued or approved by the City unless the requirements of the BMR Program have been satisfied.

3.2.2 Condominium Conversions. If an apartment complex already participating in the BMR Housing Program elects to convert the complex to condominiums, then the existing BMR rental apartments shall be converted to BMR condominium units under the BMR Housing Program.

When market rate rental units are removed from the rental housing stock for conversion to condominiums, and they are not already participating in the BMR Housing Program, then the project shall meet the same requirements as new developments to provide BMR units in effect at the time of conversion. When the property owner notifies the City of the intent to sell, the property owner shall notify any BMR tenants of such units of the pending sale and non-renewal of lease. Such tenant(s) shall be given the right of first refusal to purchase the unit. If the tenant seeks to purchase the unit, at the close of escrow the unit shall exist as a for-sale BMR unit. If the tenant does not seek to purchase, the tenant shall vacate the unit at the expiration of the current lease term and the unit will be sold to an eligible third party according to the BMR Guidelines and held as a for-sale BMR unit. The tenant who vacates will have priority to move to other vacant BMR rental units in the City for two years from the date the lease expired, regardless of the place of residence of the displaced BMR tenant.

3.3 Mixed Use Developments. Mixed use developments must comply with the requirements for commercial developments in the commercial portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

3.4 Required Contribution for Residential Development Projects. All residential developments of five units or more are required to participate in the BMR Housing Program. The preferred BMR Housing Program contribution for all residential developments is on-site BMR units. For

rental residential development projects, the Project Applicant may comply with the City's BMR requirements by providing in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. Any alternative means of compliance shall be approved by the City Council upon findings that the alternative is commensurate with the applicable on-site requirement and complies with applicable BMR Guidelines.

For ownership residential development projects, if providing on-site BMR units is not feasible as confirmed by the City, Project Applicants are required to pay an in-lieu fee as described in Section 4.3. The requirements for participation increase by development size as shown below:

One (1) to Four (4) Units. Project Applicants are exempt from the requirements of the BMR Housing Program.

Five (5) to Nine (9) Units. It is preferred that the Project Applicant provide one unit at below market rate to a very low, low, or moderate income household.

Ten (10) to Nineteen (19) Units. The Project Applicant shall provide not less than 10% of the units at below market rates to very low-, low- and moderate-income households.

Twenty (20) or More Units. The Project Applicant shall provide not less than 15% of the units at below market rates to very low-, low- and moderate-income households. On a case-by-case basis, the City will consider creative proposals for providing lower cost units available to lower income households such as smaller unit size, duet-style, and/or attached units that are visually and architecturally consistent with the market-rate units on the exterior, and that meet the City's requirements for design, materials, and interior features of BMR units.

3.4.1 Fraction of a BMR Housing Unit. If the number of BMR units required for a residential development project includes a fraction of a unit, the Project Applicant shall provide either a whole unit, the preferred form of participation, or make a pro rata residential in lieu payment on account of such fraction per Section 4.3 or 4.4, as applicable.

Example: A residential project is developed with 25 condominium units. The BMR requirement of 15% equates to 3.75 units. The preferred BMR Housing Program participation is four BMR units. If four BMR units are provided, the Project Applicant would pay no in-lieu fee. Alternatively, if three BMR units are provided, the Project Applicant would have to pay an in-lieu fee for the remaining fractional BMR unit.

4. BMR PROGRAM REQUIREMENTS FOR ON-SITE BMR UNITS, OFF-SITE BMR UNITS AND IN-LIEU FEES

4.1 On-Site BMR Units.

4.1.1 Initial Price for For-Sale Unit. The initial selling price of BMR for-sale units for extremely low (30% AMI), very low (50% AMI), subsidized low (60% AMI), low (80% AMI) or moderate (120% AMI) income households (each, an “Income Category”) is based on what is affordable to households with incomes at the identified percentage of area median income (“AMI”) for that Income Category related to household size, as established from time to time by the State of California Housing and Community Development Department (“HCD”) for San Mateo County. See Section 14, Table A, which may be updated by City staff from time to time. The timing and formula for the sales price calculation is further detailed in Section 5.4 and 9.1.

4.1.2 Initial Price for Rental Unit. The initial monthly rental amounts for BMR rental units will be equal to or less than thirty percent (30%) of the applicable income limits for extremely low, very low, subsidized low, low and moderate income households adjusted for occupancy, as established from time to time by the HCD for San Mateo County. In no case shall the monthly rental amounts for BMR units exceed seventy-five percent (75%) of comparable market rate rents. The maximum rent for specific BMR units will be based on Section 14, Table B of the BMR Guidelines, which may be updated by City staff from time to time. See also Sections 11.1.1 and 11.1.2.

The provision of affordable units at extremely low, very low, low and/or moderate income levels shall be roughly equivalent to the provision of all of the affordable units at the low income level.

4.1.3 Bonus Unit. For each BMR unit provided, a Project Applicant shall be permitted to build one additional market rate (bonus) unit. However, in no event shall the total number of units in a development be more than fifteen percent (15%) over the number otherwise allowed by zoning.

4.2 Off-Site BMR Units. If authorized by the City as described in Section 2.2, Project Applicants may propose to provide BMR units at a site other than the proposed development. These off-site BMR units must be provided on or before completion of the proposed development and must provide the same number of units at below market rates to very low, low and moderate income households as required for on-site developments. Such units may be new or existing. Provision by the Project Applicant and acceptance by the City of off-site units shall be described in the BMR Housing Agreement. Size, location, amenities and condition of the BMR units shall be among the factors considered by the City in evaluating the acceptability of the off-site BMR units. For existing units, the Project Applicant shall be responsible for correcting, at Project Applicant’s expense, all deficiencies

revealed by detailed inspection of the premises by qualified inspectors, including a certified pest inspector.

The initial price or rent for the BMR units shall be established as stated in Sections 4.1.1 and 4.1.2 and in accordance with the BMR Income Guidelines in Section 14 in effect at the time the BMR unit is ready for sale or rent. Fractions of required BMR units shall be handled by provision of an in-lieu fee for the market rate units for which no BMR unit is provided.

4.3 Ownership Residential In Lieu Payments Based on Sales Price.

4.3.1 Developments of Ten (10) or More Units. In developments of 10 or more units, the City will consider an in-lieu payment alternative to required BMR units only if the Project Applicant substantiates to the City's satisfaction that the BMR units cannot be provided on or off-site. In developments of 10 or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the Project Applicant shall pay to the City an in-lieu payment calculated at three percent (3%) of the actual sales price of each unit sold. In lieu payments for fractions of BMR units shall be determined by disregarding any bonus units and as three percent (3%) of selling price of each market rate unit sold if the Project Applicant substantiates to the City's satisfaction that the BMR units cannot be provided on or off-site.

If a portion of a BMR requirement is met by a provision of BMR units, and the Project Applicant substantiates to the City's satisfaction that a sufficient number of BMR units cannot be provided on or off-site, then BMR in-lieu payments will be required from the sales of the number of market rate units (excluding bonus units) that is in proportion to the BMR requirement that is not met.

4.3.2 Developments of Five (5) to Nine (9) Units.
Residential In-Lieu Payments Based on Sales Price. In developments of five to nine units, the City will consider an in-lieu payment alternative to required BMR units only if the Project Applicant cannot provide an additional BMR unit. If providing an additional BMR unit is not feasible, Project Applicants are required to pay a residential in lieu fee as described below.

<u>Unit No.</u>	<u>In lieu fee for each unit</u>
1, 2 and 3	1% of the sales price
4, 5 and 6	2% of the sales price
7, 8 and 9	3% of the sales price

Example: In a development of seven units, the BMR contribution would be, in order of preference: a) One BMR unit out of the seven units, with the possibility of a density bonus of one unit, or, if that is not feasible, b) Three units designated to pay an in-lieu fee of one percent (1%) of the sales price, three units to pay in-lieu fees of two

percent (2%) of their sales prices and one unit to pay three percent (3%) of its sales price.

Units paying in-lieu fees are designated so that they are distributed by unit size and location throughout the project.

In developments of 10 or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the Project Applicant shall pay to the City an in-lieu payment calculated at three percent (3%) of the actual sales price of each unit sold.

Example: Two possible plans to meet the BMR requirement for a project of 15 housing units are, in order of preference: a) Two BMR units are provided, and no in-lieu fees are paid, or b) One BMR unit is provided out of the first 10 units, one bonus unit is granted for the provision of the BMR unit, and four units pay in-lieu fees.

Units held as rental, in-lieu fee. If the Project Applicant retains any completed unit as a rental, either for its own account or through subsidiary or affiliated organizations, the BMR contribution including BMR housing unit or in-lieu payment for such unit shall be negotiated between the Project Applicant and the City. If an in-lieu fee is paid, the market value shall be based on an appropriate appraisal by an appraiser agreed upon by the City and the Project Applicant and paid for by the Project Applicant. The basis for such appraisal shall be as a condominium rather than as a rental.

- 4.4 Rental Residential In Lieu Payments Based on Cost.** The City Council shall establish a rental residential in-lieu fee by resolution, which fee may be updated from time to time. The fee shall be based on the cost to develop, design, construct, and maintain a standard one-bedroom unit in Menlo Park. The fee shall also include the proportionate costs of associated common area as well as land acquisition costs. The fee shall be adjusted on a project-by-project basis depending on size, location and other factors relevant to cost. The fee can be adjusted by a pre-set formula or by a consultant selected by the City and funded by the Project Applicant.

5. CHARACTERISTICS OF BMR UNITS

- 5.1 Size and Location of BMR Units.** BMR housing units shall generally be of the same proportionate size (number of bedrooms and square footage) as the market-rate units. The BMR units should be distributed throughout the development, and should be indistinguishable from the exterior. BMR units shall contain standard appliances common to new units, but need not have luxury accessories, such as Jacuzzi tubs. The Planning Commission and/or City Council shall have the authority to waive these size, location and appearance requirements of BMR units in order to carry out the purposes of the BMR Housing Program and the Housing Element. Prior to issuing any building permit for (a) new construction and (b) condominium

conversions that require an inspection for the temporary certificate of occupancy or final certificate of occupancy, whichever comes first (“Building Inspection”), City shall determine for each BMR Unit that the Project Applicant’s plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and confirm that the BMR unit has been constructed pursuant to the plans during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty (60) days of City’s receipt of the Project Applicant’s notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.

5.2 Design and Materials in BMR Units. The design and materials used in construction of BMR units shall be of a quality comparable to other new units constructed in the development but need not be of luxury quality. City shall determine that the Project Applicant’s plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and City shall confirm that these requirements have been met during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty (60) days of City’s receipt of the Project Applicant’s notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.

5.3 The BMR Price Must Be Set Before Building Inspection. There shall be no Building Inspection of a for-sale BMR housing unit until its Maximum Sales Price or monthly rental amount has been established by the City. Also, the sale or rental process will not begin until the Maximum Sales Price or monthly rental amount for the BMR housing unit is set.

5.3.1 Building Inspection Schedule for Smaller and Larger Developments.

Less Than Ten (10) Units. In developments of less than 10 units with one or more BMR units, all BMR units must pass Building Inspection before the last market rate unit passes Building Inspection.

Ten (10) to Nineteen (19) Units. In developments of 10 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass Building Inspection before nine market rate units may pass final inspection. For each additional group of 10 housing units, one additional BMR unit must pass Building Inspection before nine additional market rate units may pass final inspection.

Twenty (20) or More Units. In developments of 20 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass Building Inspection before nine market rate units may pass Building Inspection. In addition, two additional BMR units must pass Building Inspection before eight additional market rate units may pass final inspection. For each

additional group of 20 housing units, three additional BMR units must pass Building Inspection before 17 additional market rate units may pass Building Inspection. No project or phase may pass Building Inspection unless all the BMR units, which equal 15% or more of the housing units in that phase or project, have passed Building Inspection for that phase or project.

Last Unit. In no case may the last market rate unit pass Building Inspection before the last BMR unit has passed Building Inspection.

5.4 Maximum Sales Price for BMR For-Sale Units; Transaction Costs.

The “Maximum Sales Price” will be calculated according to a formula designed to ensure that BMR units remain affordable. The formula is based on the required income limits for the particular BMR unit and the minimum household size eligible for the BMR unit as shown on Table C. The formula takes into consideration mortgage interest rates, minimum down payments, and other qualifying criteria used by lenders at the time the Maximum Sales Price is set, as well as cost of insurance, taxes, homeowners’ dues, utilities, and any other necessary costs of homeownership capped at a specified percentage of household income. The formula is further described in Section 9.1.4 and the Maximum Sales Price may be adjusted in the event of changes in interest rates, as further detailed in Section 9.1.

Owners of for-sale units are not guaranteed that a new buyer will purchase the unit at the Maximum Sales Price. As in any real estate transaction, owners of for-sale units may have to lower the price in order to attract a buyer. Owners with deferred maintenance or excessive wear and tear should expect to negotiate a lower sales price or agree to repairs as a condition of sale. The Maximum Sales Price is simply the maximum amount that owners of for-sale units may advertise and sell a BMR unit for.

The net proceeds from the sale will also be less than the Maximum Sales Price because of the Administration Fee, any commissions, and transaction costs.

The Project Applicant shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent’s services. The BMR Applicant shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City will designate a BMR administrator to assist with the sales process including the process of marketing new BMR units and resales of BMR units and processing applications from BMR Applicants. City’s designee will represent both the BMR Applicant and Project Applicant in the transaction. The Project Applicant shall be responsible for paying the City’s designee’s fee to administer the sales process and market the BMR unit (“Administration Fee”), which shall not exceed six percent (6%) of the Maximum Sales Price. The Project Applicant, but not the BMR Applicant,

may elect to secure their own real estate broker. If the Project Applicant secures their own real estate broker, the Project Applicant shall be responsible for the commission or other fee charged by the Project Applicant's real estate broker in addition to the City's designee's Administration Fee.

5.4.1 Price Determination for Projects with Condominium Maps That Will Rent for an Indefinite Period of Time. Projects with condominium subdivision maps that will rent BMR units for an indefinite period must have all required City approvals for such arrangement and document such arrangement in the Project's BMR Housing Agreement. The Maximum Sales Price shall be approved in the manner set forth in Section 9.1.4.

5.5 Legal Characteristics of BMR Units: Right of First Refusal and Deed Restrictions. All BMR units shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for a period of 55 years under which the City or its designee will be entitled to purchase the property at a sales price computed as described in Section 9.2 of these Guidelines ("**City Purchase Option**"). The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a sales price computed as described in Section 9.2 of these Guidelines. Exceptions from all prohibitions against sale or transfer are discussed in Section 10.3 and the transfer must satisfy the terms and conditions set forth in Section 10.3.

6. HOUSEHOLD DEFINITION AND CRITERIA

For purposes of sections 7, 8 and 9 of these Guidelines, the following definition of household and provisions establishing household composition shall apply.

6.1 Definition of BMR Applicant. "BMR Applicant" shall mean any person or household (defined below) applying for a BMR unit.

6.2 Definition of Household. For the purposes of this program, "household" is defined as all persons who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household. To be considered a household, all proposed household members must live together in a home that is their primary residence. To be considered part of the household and included in household size, children under the age of 18 (including foster children) must reside in the home at least part-time or parents must have at least partial (50%) custody of the child/children. If a parent has 50% or more custody of a child, the child shall be counted as one person in the household.

6.3 Household Requirement. To constitute a household, all members of the BMR Applicant household must currently live together (in a location that is their primary residence) at the time of application. Also, at the time of application and regardless of where they currently live, all members who

make up the BMR Applicant household must have continuously lived together for a minimum of one year prior to the date of application.

6.3.1 Exceptions. Exceptions to this minimum one year joint-residency requirement include:

- Children under the age of 18 who have recently joined the household in conjunction with marriage, separation, or divorce, or similar family re-organization, and for whom there is evidence of a custody agreement or arrangement. This also applies to foster children.
- Children born or adopted into a household.
- Households newly formed as a result of marriage or domestic partnership.
- Other circumstances regarding the addition of a family member over the age of 18 may be reviewed by the City or its designee.

7. ELIGIBILITY REQUIREMENTS FOR HOUSEHOLDS APPLYING TO PURCHASE BMR UNITS

Note: The City no longer maintains a ranked purchase waitlist. Previously ranked households have been transferred to the BMR Purchase Legacy List, as defined and more fully set forth in Section 8.2. The provisions of Sections 7.1 to 7.4 below apply to all households, including the BMR Purchase Legacy List households, at the time of submission of an application to purchase a BMR unit. In order for a household to be eligible at the time of submission of application, all of the following provisions shall apply and/or be met (except that the requirement in Section 7.2 may be met at the time specified in Section 9.1):

7.1 First Time Homebuyer. All members of the BMR Applicant household must be first time homebuyers, defined as not having owned a home as a primary residence within the last three years prior to the date of application. A primary residence is a property occupied by the BMR Applicant household for the majority of a calendar year. A household may have only one primary residence. First time homebuyers include owners of mobile homes not on a permanent foundation, as well as BMR Applicants whose names are on title for properties they have not lived in as their primary residences for the last three years (for instance rental properties, which must be considered as part of the BMR Applicant's eligible assets).

7.1.1 Exceptions. Exceptions to this requirement are:

- BMR Applicants who are current BMR homeowners and are otherwise eligible for the BMR Housing Program, are eligible to apply for BMR ownership opportunities and to purchase a smaller or larger home needed due to changes in household size or family needs, such as for accessibility needs.
- BMR Applicants whose names were placed on the BMR Purchase Waiting List prior to March 2, 2010.
- BMR Applicant households that currently and/or within the last three years prior to the date of application own homes as their primary

residences more than 50 miles outside Menlo Park city limits, that are otherwise eligible for the BMR Housing Program.

7.2 Complete First Time Pre-Purchase Homebuyer Education. All adult household members, except as provided herein, must complete a one-time homebuyer education workshop, class, or counseling session. Program staff provides households with a list of approved local organizations that provide pre-purchase homebuyer education. BMR Applicants choose an education provider or program from the approved list and may choose to attend in either a group or individualized setting. It is the BMR Applicants' responsibility to provide the City or the City's BMR Housing Program provider with evidence that a pre-purchase homebuyer education workshop or session was completed. In most cases, the education providers will provide BMR Applicants with certificates of completion, typically good for two years, that BMR Applicants can submit to the City's BMR Housing Program provider as proof that the pre-purchase education requirement was completed. Only households that have completed the education requirement will be allowed to purchase BMR units when BMR units become available. Adult parents of BMR Applicants living in the household need not complete the education requirement.

7.2.1 Prior Completion of Pre-Purchase Homebuyer Education.

Except as provided in Section 7.2.3 below, BMR Applicants who provide an unexpired certificate of completion for a homebuyer education workshop, class, or counseling session are not required to complete an additional workshop, class, or counseling session.

7.2.2 Homebuyer Education Provider. At the City's discretion, the City may elect to work exclusively with one or more homebuyer education providers/organizations. The City may also choose to contract with a particular person or organization to provide this educational component.

7.2.3 Long-Term Education or Counseling Required for Certain BMR Applicants. BMR Applicants who are invited to apply to purchase BMR units and are twice denied (on separate occasions) due to long-term or significant credit problems, will be required to meet individually with a credit counseling professional. The BMR Applicant must provide evidence of completion of credit counseling before they can be approved to purchase a BMR ownership unit. The credit counseling requirement does not exclude the BMR Applicant from applying to future BMR purchase opportunities.

7.3 Ownership Interest. A minimum of 50% of the ownership interest in the property must be vested in the qualifying BMR Applicant(s), regardless of income.

7.4 Income and Asset Limits for Purchasers of BMR Units. Income eligibility limits are established by HCD for San Mateo County. Income limits are updated on an annual basis. BMR units shall only be sold to very low, low, and moderate income households. Only households having gross incomes at or below the income limit for the Income Category

designated in the BMR Housing Agreement, adjusted for household size, are eligible to purchase and occupy BMR for-sale units, either upon initial sale or upon any subsequent resale, as specified in the deed restrictions. Refer to Section 14, Table A, for the income eligibility limits, which may be updated by City staff from time to time.

An asset is a cash or non-cash item that can be converted into cash. Only households having non-retirement assets that do not exceed the Maximum Sales Price of the BMR units are considered eligible.

- Assets Include: cash held in checking accounts, savings accounts, and safe deposit boxes; equity in real property; cash value of stocks (including options), bonds, Treasury bills, certificates of deposit, money market accounts, and revocable trusts; personal property held as an investment such as gems, jewelry, coin and art collections, antiques, and vintage and/or luxury cars; lump sum or one-time receipts such as inheritances, capital gains, lottery winnings, victim's restitution, and insurance settlements; payment of funds from mortgages or deeds of trust held by the BMR Applicant(s); boats and planes; and motor homes intended for primary residential use.
- Assets DO NOT Include: cars and furniture (except cars and furniture held as investments such as vintage and/or luxury cars, and antiques); company pension and retirement plans; Keogh accounts; dedicated education funds/savings accounts; and funds dedicated to federally recognized retirement programs such as 401K's and IRA's.

Note that equity in real property or capital investments is defined as follows: the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g. broker/realtor fees) that would be incurred in selling the asset.

7.4.1 Senior or Disabled Households That Use Assets for Living Expenses. An exception to the income and asset limit requirement is a household whose head is over 62 years of age, or permanently disabled and unable to work, with assets valued up to two times the price of the BMR unit. The BMR Applicant must be able to demonstrate that the sole use of his/her assets has been for household support for at least the three previous years, and that the total annual household income meets the BMR Guidelines.

8. BMR PURCHASE LEGACY LIST; PREFERENCE CRITERIA

8.1 BMR Purchase Legacy List.

The City no longer maintains a ranked BMR Purchase Waiting List and no longer adds households to this list. To honor households that maintained their place on the BMR Purchase Waiting List and were required to annually recertify, the City created a "BMR Purchase Legacy List." Households on the previous ranked BMR purchase list as of January 1, 2021 were effectively notified and transferred to the BMR Purchase Legacy List, which allows these identified households to have priority over

all other BMR Applicants. Once there are no longer any households remaining on the BMR Purchase Legacy List (either because households on the list have been placed in units pursuant to these Guidelines, or because households have withdrawn from the list), the BMR Purchase Legacy List will be considered terminated. By January 31 of each calendar year, City shall notify each household in writing that the household must respond within thirty (30) days of the date of City's notice to reaffirm the household's interest in remaining on the BMR Purchase Legacy List, inform the City of any increase or decrease in household size, and provide documentation that the household meets the criteria set forth in Sections 7.1 and 7.4 and that a failure to timely respond will result in the household's removal from the BMR Purchase Legacy List. City's written notification shall be provided to the household at the address or email address last provided to City or City's designee by the household. If the household does not timely provide a response with acceptable documentation, the household will be removed from the BMR Purchase Legacy List.

Households on the BMR Purchase Legacy List are not required to meet a preference.

Households on the BMR Purchase Legacy List will be notified when any BMR units become available and reminded that only households within the minimum and maximum household size on table C for the BMR unit size should apply for the BMR unit.

8.2 BMR Preference Criteria and Lottery Process.

If the BMR Purchase Legacy List has been terminated or if there are two (2) or fewer households on the BMR Purchase Legacy List within the minimum and maximum size on Table C for an available BMR unit, income qualified households that are not on the BMR Purchase Legacy List shall apply for available BMR units via a lottery drawing held by the City or the City's designee. BMR Applicants from the BMR Purchase Legacy List that are within the minimum and maximum size set forth on Table C, if any, shall be ranked higher than the BMR Applicants from the lottery drawing and shall be ranked in the order that they appeared on the BMR Purchase Legacy List. The lottery drawing will rank all other BMR Applicants at random followed by a final ranking to account for households meeting the City's preference criteria. All income eligible BMR Applicants that do not qualify under one of the preferences will receive a final lottery rank lower than BMR Applicants meeting preference criteria.

Preference criteria will be utilized at the time of a BMR unit drawing submission and verified during the application process. If a BMR Applicant does not meet a preference or cannot provide sufficient evidence establishing they meet a preference, that BMR Applicant will lose their preference ranking. In no circumstances shall the preference criteria and/or eligibility requirements of these Guidelines be applied in a manner that is contrary to State and/or Federal fair housing laws.

In addition to the below criteria, a tenant of a Menlo Park BMR rental unit who is required to vacate the BMR rental unit due to its conversion to a BMR for-sale unit, shall have first priority for vacant BMR rental units for which the tenant is eligible and qualifies for two years from the expiration of the lease, regardless of the place of residence of the displaced tenant. Preference criteria are set forth below. All preferences, aside from the accessible unit preference, shall be given the same weight and/or ranking significance in formation of the final lottery ranking list.

Live and/or Work Preference: The BMR Applicant's primary residence is within incorporated Menlo Park or a member of the BMR Applicant household currently works or volunteers within incorporated Menlo Park.

- Criteria for residing within incorporated Menlo Park. To qualify as living in Menlo Park, the BMR Applicant's primary residence must be within incorporated Menlo Park.
- Criteria for working within incorporated Menlo Park. To qualify as a household that works in Menlo Park, a member of the BMR Applicant's household must currently work in Menlo Park at least 20 hours per week, or (if currently less than 20 hours per week) hours worked over the course of the one year prior to application averages a minimum of 20 hours per week.
 - Types of work. Work is defined as (1) owning and operating a business at a Menlo Park location; (2) employment for wages or salary by an employer located at a Menlo Park location; (3) contract employment where the actual work is conducted at a Menlo Park location for one year; (4) commission work, up to and including a 100% commission arrangement, conducted in Menlo Park, or (5) volunteering for a community or civic serving entity located within Menlo Park, without receipt of compensation, wages or salary in exchange for such time and work.
 - Employer-based work. If employed for wages or salary by an employer, working in Menlo Park is defined as the employer is located in Menlo Park and the employment/actual work is performed within incorporated Menlo Park.
 - Owning (either wholly or in part) a residential or commercial property for investment purposes only shall not qualify as working within incorporated Menlo Park.

Unhoused Preference: For purposes of these Guidelines, unhoused persons may show local residency by providing evidence that their last permanent residence was located in Menlo Park and/or documentation from a case manager or homeless services provider demonstrating current residency in Menlo Park, including places or structures other than a bona fide dwelling unit (i.e. vehicle or tent).

Displacement Preference: A BMR Applicant residing within incorporated Menlo Park for three or more years that was subsequently displaced from such housing and does not reside in Menlo Park at the date of submission

of application, shall not be disqualified based on current lack of residency, provided they can show their displacement was due to economic conditions beyond their control (including but not limited to job loss, rent increase, eviction, foreclosure or other form of economic hardship resulting in loss of housing). Evidence of such economic displacement shall be in the form of direct evidence (i.e. job termination letter) or declarations submitted under penalty of perjury.

Accessible Unit Preference: If the BMR unit is an accessible unit, then BMR Applicants with a person or persons with accessibility needs who are otherwise eligible for the BMR unit, including by household size and income, will receive preference for units with features serving those accessibility needs ahead of BMR Applicants without an accessibility need. Ranking of BMR Applicants for accessible units shall follow the below list from highest to lowest in the order of lottery ranking:

- BMR Applicants with a person or persons with an accessibility need meeting an existing Menlo Park preference, such as live and/or work, unhoused or displacement preference.
- BMR Applicants with a person or person with an accessibility need not meeting an existing Menlo Park preference
- BMR Applicants meeting an existing Menlo Park preference
- BMR Applicants not meeting an existing Menlo Park preference

8.3 BMR Applicant Financing Rules. BMR Applicants that finance the purchase of the BMR unit must do so with a 30 year loan, a 3% down payment, and an interest rate that is consistent with Freddie Mac's most recently published Primary Mortgage Market Survey.

8.4 Applications. All applications for a for-sale BMR unit must include supporting documentation to demonstrate that:

- The BMR Applicant meets the criteria set forth in Sections 7.1 and 7.4;
- The BMR Applicant is pre-qualified for a loan; and
- If the BMR Applicant is not on the BMR Purchase Legacy List and claims to meet a preference, that the BMR Applicant meets the preference (acceptable documentation is set forth in Section 8.2).

Applications must also include a signed acknowledgement that the BMR Applicant understands and agrees to the condition set forth in section 7.3.

9. THE BMR UNIT PURCHASE PROCESS: BUYER SELECTION AND SALE PROCEDURES

9.1 Process for Sale of New Units and Condominium Conversions

Where BMR units are developed as part of new construction or where BMR rental units will be converted to condominiums the following procedures shall apply in the order in which they are set forth, below.

9.1.1 For (a) new construction or (b) condominium conversions that will require a Building Inspection, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that the Project Applicant anticipates being ready for a Building Inspection.

- 9.1.2** For (a) condominium conversions where no Building Inspection is required or (b) units in projects described in Section 5.4.1, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that they intend to sell the subject BMR unit(s).
- 9.1.3** Together with the notice in 9.1.1 or 9.1.2, the Project Applicant must provide the amount of any Homeowner's Association dues, estimated property tax figures, and estimated insurance costs for the BMR unit(s). No Building Inspection shall be scheduled or otherwise take place until the Maximum Sales Price for the BMR unit is set.
- 9.1.4** Within 90 days of proper written notification being provided pursuant to section 9.1.1 or section 9.1.2, the City or its designee shall (1) determine income qualifications for the BMR unit(s); and (2) determine the Maximum Sales Price of the BMR unit(s). The Project Applicant or owner shall not influence the determination of Maximum Sales Price, which shall be determined solely based on the following:
- The income limit for the minimum household size for the BMR unit in the Income Category designated in the BMR Housing Agreement, as shown in Table C. City staff may update Table C from time to time to reflect changes made to the household size for a unit from time to time by HCD for San Mateo County. See Section 14, Table A, for income eligibility limits, which may be updated by City staff from time to time.
 - a 3% down payment.
 - The average 4 week interest rate published in Freddie Mac's most recent Primary Mortgage Market Survey.
 - monthly housing costs, insurance costs, utilities, homeowners' association dues, taxes and assessments, not to exceed 30% of the household income amount established based on the above criteria.
- 9.1.5** For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, the Project Applicant or owner of the BMR unit(s) must inform the City or its designee in writing that the BMR unit has received its final certificate of occupancy and that the BMR unit is ready for sale and occupancy. "The City" shall mean the City Manager, or his or her designee.
- 9.1.6** City of Menlo Park staff writes a certifying letter that states the BMR unit meets the BMR Housing Program's requirements set forth in Sections 5.1 and 5.2. The certifying letter will also state the Maximum Sales Price for the BMR unit, which may be adjusted from the Maximum Sales Price established under Section 9.1.4 to account for changes in interest rates.

The City will send the certifying letter at the following times:

For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, within ten (10) days of City's receipt of notice that the unit received its final certificate of occupancy.

For condominium conversions that do not require a Building Inspection, after the City has 1) inspected the BMR unit and confirmed that the requirements set forth in Sections 5.1 and 5.2 have been met and 2) set the Maximum Sales Price.

For units in projects described in Section 5.4.1, within ten (10) days after the BMR unit has been vacated and City has reinspected the unit to confirm that the unit is in good condition and still meets the requirements of Section 5.1 and 5.2.

9.1.7 Within ten (10) days of receipt of the certifying letter, the Project Applicant must provide City or its designee the following:

- (1) a proposed purchase contract that must include the following terms:
 - A forty-five (45) day loan contingency.
 - A thirty (30) day inspection period where the BMR Applicant can inspect the unit and negotiate repairs or modifications with the Project Applicant.
 - The requirement that escrow open within five (5) days of full execution.
 - The requirement that the BMR Applicant provide a deposit within three (3) days of opening escrow.
 - The requirement that escrow close within sixty (60) days of opening escrow.
- (2) Covenants, Conditions and Restrictions applicable to the BMR unit(s),
- (3) any other rules or bylaws established by a Homeowner's Association that governs any condominium complex or planned development in which the BMR unit is located.
- (4) for any development that must provide fewer than five (5) BMR units or any development not required to prepare a marketing plan because the BMR Purchase Legacy List has not been terminated or there are more than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size for all units the Project Applicant is providing, the Project Applicant must provide for City approval a proposed advertisement to be posted on the City website, which must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development, a floorplan with dimensions of each room, a description of appliances and amenities offered, and a proposed schedule of open houses. The proposed open house schedules must include open houses on weekend days or at times after 6pm on a weekday.

- (5) if the BMR Purchase Legacy List has been terminated or there are fewer than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size on table C for the size of any BMR unit the Project Applicant is providing, a marketing plan for any development that must provide five (5) or more BMR Units, the plan must include at the least following, unless City approves substitute marketing measures in its reasonable discretion:
- An advertisement of the BMR Unit to be posted by the City or City's designee on Zillow or Redfin, the City's website, and the City's pages on at least two (2) social media platforms. The listing must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development), a floorplan with dimensions of each room, a description of appliances and amenities offered.
 - Mailing and/or emailing flyers to persons on any interest list that the City maintains or that have submitted an interest form for for-sale BMR units.
 - Holding at least three (3) open houses that must occur on a weekend day or at 6pm or later on weekdays.
 - Internet advertisements *must all include* a statement that applicants who do not meet the income qualifications should not contact the Project Applicant or apply for the City's lottery for the BMR unit.

City shall approve the marketing plan (if applicable) or, if City desires to propose revisions to the marketing plan (if applicable) , hold a meeting with Project Applicant to discuss revisions to the marketing plan within fifteen (15) business days of receipt of the marketing materials from Project Applicant. If the City must hold a meeting with the Project Applicant before approving the materials, the Project Applicant and City must agree on a final marketing plan (if applicable) within twenty-five (25) business days of City's receipt of the original proposed purchase agreement and original marketing plan.

The Project Applicant must act in good faith and respond in a reasonably timely manner to City staff and City's designee at all times throughout the sales process.

- 9.1.8** If there is a standard pre-sale requirement by the BMR Applicant's lender for a certain percentage of units in the project to be sold before the BMR Applicant's lender will close, then the time for the City's purchase or the BMR Applicant's purchase will be extended until that requisite number of units has closed.

- 9.1.9** Within ten (10) days of City's approval of the marketing plan, the Project Applicant shall implement the marketing plan and (for developments with more than five (5) BMR units) list the BMR unit, and the City shall post the approved advertisement on the approved, designated City social media pages and City website. The City shall also make the following available on its website:
- A detailed description of the BMR Housing Program, including the rights, restrictions, and responsibilities of owning a BMR unit.
 - A complete description of the property or properties being offered for sale including buyer eligibility requirements, the purchase price, home owner association costs (if any), estimated property taxes, and home features.
 - The name of two (2) City staff persons which includes City hired consultants that BMR Applicants may call or email with questions or, alternatively, a date of a meeting for staff or City's consultant to answer questions about the process.
- 9.1.10** Completed applications are submitted to the City or its designee along with income and asset verifications and a loan prequalification letter. Applications will be accepted for forty-five (45) days.
- 9.1.11** When the application period closes, the City or its designee reviews the completed applications. The complete, eligible, qualifying applications are ranked pursuant to the procedures set forth in Section 8.2. The City will publish the rankings within twenty one (21) days, identifying the BMR Applicants by number assigned to them at the time of their initial application.
- 9.1.12** The highest ranked BMR Applicant will then be notified by the City that they have been selected. The highest ranked BMR Applicant must provide documentation acceptable to the City that they have satisfied Section 7.2 within ten (10) days of the date of City's notification that the BMR Applicant was selected. Within two (2) business days of receipt of the BMR Applicant's documentation and confirming the documentation is acceptable, City shall introduce the highest ranked BMR Applicant to the Project Applicant by email and provide the contract to the highest ranked BMR Applicant. The BMR Applicant must sign the contract or propose revisions within ten (10) days of the introduction. The BMR Applicant should be aware that the Project Applicant's ability to accept revisions may be limited if the purchase agreement was required to be approved by the Department of Real Estate. The Project Applicant must respond to any revisions within five (5) days. If the highest ranked BMR Applicant and Project Applicant do not sign a contract within twenty-one (21) days of the introduction, the City shall contact the next BMR Applicant on the list. The City may, in its discretion, extend the timelines set forth in this paragraph by a few days if the BMR

Applicant and Project Applicant are acting in good faith and are likely to reach agreement.

If a BMR Applicant does not timely provide acceptable documentation that they have satisfied Section 7.2 or enters into a contract with the Project Applicant and thereafter fails to timely open escrow, make a deposit, obtain final loan approval, or close escrow pursuant to these timeframes, the City or its designee will (i) notify the BMR Applicant that the BMR Applicant has forfeited the unit and (ii) contact the next highest ranked BMR Applicant in writing and by telephone to inform them that they have been selected and may enter into a contract with Project Applicant. The next highest ranked BMR Applicant, the Project Applicant, and the City shall follow the procedures of this Section 9.1.12 and the next highest ranked BMR Applicant shall be subject to the same deadlines described above in this Section 9.1.12. The procedures of this Section 9.1.12 will repeat until an eligible BMR Applicant has closed escrow.

The Project Applicant shall negotiate in good faith with the BMR Applicant following City's introduction of the Project Applicant and BMR Applicant. The Project Applicant must respond timely to questions and proposed contract terms posed by BMR Applicants and must respond timely to the escrow agent and provide all documentation reasonably requested by the escrow agent from the Project Applicant to close escrow.

- 9.1.13** If no applications are received from BMR Applicants that meet the requirements of Sections 7.1 and 7.4 during the forty-five (45) day application period then, within thirty (30) days after the end of the application period, (i) the Maximum Sales Price will be recalculated according to the method set forth in Section 9.1.4 (provided that if the Maximum Sales Price after recalculation is not different than the Maximum Sales Price specified in the certifying letter, the Project Applicant and the City shall agree upon a reasonable price modification to attract qualified BMR Applicants) and (ii) the Project Applicant and City shall agree on any necessary or desirable modifications to the marketing plan. The BMR unit will then be marketed again at the lower of the Maximum Sales Price specified in the certifying letter or the recalculated Maximum Sales Price. If the BMR unit still does not sell, the City shall at its option (i) elect to repeat the process set forth in this Section 9.1.13, or (ii) offer to purchase the unit at a recalculated Maximum Sales Price in accordance with Section 9.1.4.

9.2 Process for Resale of BMR units

Where For-Sale BMR unit(s) are proposed to be resold, the following procedures shall apply in the order in which they are set forth, below.

- 9.2.1** The owner of the subject For-Sale BMR unit notifies the City by certified mail that he/she wishes to sell the unit. The City notifies its

designee, if applicable. The unit must be provided in good repair and salable condition, or the cost of rehabilitating the unit will be reimbursed to the City (if the City is the buyer) or qualified buyer out of the proceeds of the sale. The definition of “salable condition” for any given unit shall be provided on a case-by-case basis following the City’s inspection of the unit, and shall be at the discretion of the City Manager or his/her designee. “Salable condition” shall refer to the general appearance, condition, and functionality of all: flooring; painted surfaces; plumbing, heating, and electrical systems; fixtures; appliances; doors; windows; walkways; patios; roofing; grading; and landscaping. In addition for each unit, the City reserves the right to withhold the cost of having it professionally cleaned from the seller’s proceeds. Once cleaning is complete, the seller will be refunded any difference between the amount withheld and the actual cost to clean the unit.

- 9.2.2** Within 90 days of proper written notification being provided pursuant to section 9.2.1, the City or its designee shall have 1) inspected the BMR unit to confirm it is in salable condition, 2) obtained an appraisal that determines the fair market value of the BMR unit, and 3) computed a sales price of the BMR unit, based on the original selling price of the BMR unit, depreciated value of any substantial improvements made by the seller, and 1/3 of the increase in the cost of living index for the Bay Area. The sales price will be the lower of the appraisal’s conclusion of fair market value or the price computed as described in clause 3.
- 9.2.3** Following the requirements set forth in sections 9.2.1 and 9.2.2, the owner and City shall follow the procedures commencing with section 9.1.7 and concluding with section 9.1.13 except that there shall be no requirement for a marketing plan and the word “Project Applicant” in section 9.1.7 to 9.1.13 shall be replaced with “owner.”

The owner shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent’s services. The BMR buyer shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City may designate a BMR administrator to assist with the process of marketing resales of BMR units and processing applications from BMR buyers. City’s designee will represent both the buyer and seller in the transaction. The seller shall be responsible for paying the City’s designee’s Administration Fee, which shall not exceed six percent (6%) of the Maximum Sales Price. The seller, but not the buyer, may elect to secure their own real estate broker. If the seller secures their own real estate broker, the seller shall be responsible for the commission or other fee charged by the seller’s real estate broker in addition to the City’s designee’s Administration Fee.

10. OCCUPANCY AND TITLE REQUIREMENTS FOR OWNER-OCCUPIED BMR UNITS

10.1 Primary Residence. The owners listed on title to the BMR property must occupy it as their primary residence and remain in residence for the duration of the Deed Restrictions (55 years). Occupancy is defined as a minimum stay of 10 months in every 12 month period. BMR owners may not terminate occupancy of the BMR property and allow the property to be occupied by a relative, friend, or tenant. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR property is not the primary place of residence of the purchaser. As necessary, the City may request that BMR owners provide evidence that their units are currently occupied by them as their primary residences. Examples of such evidence may include current copies of any of the following: homeowner's insurance, car/vehicle registration, and utility bills.

10.2 Refinancing and BMR Valuations. BMR owners may refinance the debt on their property at any time following purchase, however, they must contact the City's designated BMR Housing Program provider first, prior to a refinance or equity line. The City's BMR Housing Program provider will provide the owner with clear instructions to ensure program compliance. At that time and at any other time the owner requests it, the BMR Housing Program provider will provide the owner and/or the lender with the current BMR value of the home, in accordance with the formula specified in the Deed Restrictions. Only the City's BMR Housing Program provider can determine the appraised value of a BMR unit and it is the owner's responsibility to inform their lender that the property is a BMR unit. BMR owners are not allowed to take out loans against their property that exceed 95% combined loan to value of the BMR value of the home. There is a fee for refinancing a BMR unit that is set by the City's BMR Housing Program provider.

10.3 Transfers of Title. Prior to adding an additional person to title or transferring title to the BMR unit, including transferring title to a trust, BMR owners must contact the City for clear instructions to ensure program compliance.

The following transfers of title are exempt from the City's right of first refusal and do NOT re-start the 55 year deed restriction clock:

- Transfer by devise or inheritance to the owner's spouse.
- Transfer of title by an owner's death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title).
- Transfer of title to a spouse as part of divorce or dissolution proceedings.
- Transfer of title or an interest in the property to the spouse in conjunction with marriage.

Transfers by devise or inheritance (such as to a child or other family member), are permitted under certain terms and conditions identified in the

Deed Restrictions. These kinds of transfers must first be reviewed and approved by the City or the BMR Housing Program provider. If the person inheriting the property meets the following terms and conditions, then that person may take title, assume full ownership, and reside in the BMR unit. The 55 year deed restriction clock would restart when that person takes title. If the person inheriting the property does NOT meet the following terms and conditions they may still inherit the property but are not allowed to live there. In such case, the inheriting party must sell the property and shall be entitled to receive any proceeds from the sale after payment of sales expenses and all liens against the property. The property would then be sold by the City through the BMR Housing Program to an eligible, qualified BMR Applicant. For transfers of title by devise or inheritance, the inheriting party (“Transferee”) must meet the following terms and conditions in order to live in the BMR unit:

- Transferee shall occupy, establish and maintain the property as the Transferee’s primary residence.
- The Transferee must meet all current eligibility requirements for the BMR Housing Program, as identified at the time of transfer in the BMR Guidelines.
- The Transferee must sign a new BMR Agreement and Deed Restrictions for the property concurrently with the transfer of title to the Transferee. This restarts the 55 year clock.

11. REQUIREMENTS FOR BMR RENTAL DEVELOPMENTS

11.1 Income and Rent Standards.

11.1.1 Income Limits upon Occupancy of BMR Rental units. Unless otherwise approved by the Planning Commission or City Council in the BMR Housing Agreement for the proposed project, only households having gross incomes at or below Low Income for San Mateo County, adjusted for household size, are eligible to occupy BMR rental units, either when initially rented or upon filling any subsequent vacancy. See Section 14, Table A (Below Market Rate Household Income Limits), which may be updated by City staff from time to time. Any variation in the affordability mix to assist the City in meeting its Regional Housing Needs Assessment (including very low, low or moderate income households) shall require a finding by the approving body that the mix is roughly equivalent to the provision of all of the affordable units at the low income level.

11.1.2 BMR Rent. BMR units may be rented for monthly amounts not exceeding thirty percent (30%) of the income limit for extremely low, very low, subsidized low, or low (or moderate income if approved by the Planning Commission or City Council) households adjusted for occupancy, as established from time to time by the HCD for San Mateo County. In no case shall the monthly rental amounts for BMR units exceed 75% of comparable market rate rents. The maximum rental amounts are listed in Section 14, Table B, (Maximum Monthly Housing Cost Limits for BMR Rental units), which may be updated

by City staff from time to time. BMR rents may be adjusted from time to time to reflect any changes to the then current Income limits.

- 11.1.3 Tenant Selection and Certification Procedures.** Priority for occupancy of all BMR rental units shall be given to those income eligible households who meet the preference criteria defined in section 8.2 of these Guidelines.
- 11.1.4 Interest List.** The qualifications of BMR rental tenants as described in Section 8.2, above, will be independently verified by the owner. The City of Menlo Park or the City's designee shall maintain a list of households interested in BMR rentals (herein referred to as the "Interest List") and shall make it available to any Project Applicant upon request.
- 11.1.5 One-Year Lease Offer.** Each BMR tenant shall be offered the opportunity to enter into a lease, which has a minimum term of one year. Such offer must be made in writing. If the tenant rejects the offer, such rejection must also be in writing. A lease may be renewed upon the mutual agreement of both parties.
- 11.1.6 Vacation of units and Re-Renting.** When a BMR tenant vacates, the owner must provide notice to the City, and re-rent the unit to a qualified BMR tenant in accordance with these BMR Guidelines and the BMR Housing Agreement for the unit.
- 11.1.7 Annual Recertification of BMR units.** The City of Menlo Park or the City's BMR Housing Program provider will recertify annually, by procedures to be established in the BMR Housing Agreement, the provision of BMR rental units as agreed at the time of application for the permit. A qualified BMR tenant shall continue to qualify unless at the time of recertification, for two consecutive years, the household's income exceeds the eligibility requirements, then the tenant shall no longer be qualified. Upon the owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a BMR unit, and the owner shall make the next available unit, which is comparable in terms of size, features and number of bedrooms, a BMR (the "Next Available Unit Requirement"), or take other actions as may be necessary to ensure that the total required number of units are rented to qualifying BMR households. The owner shall notify the City annually if it substitutes a different unit for one of the designated BMR units pursuant to this paragraph.
- 11.1.8 Annual Report.** On an annual basis on or before July 1 of each year, the Project Applicant or subsequent owner shall submit a report (the "Annual Report") to the City which contains, with respect to each BMR unit, the name of the eligible tenant, the rental rate and the income and household size of the occupants. The Annual Report shall be based on information supplied by the tenant or occupant of each BMR unit in a certified statement executed yearly by the tenant on a form provided or previously approved by the City or designee. Execution and delivery thereof by the tenant may be

required by the terms of the lease as a condition to continued occupancy at the BMR rate. In order to verify the information provided, City shall have the right to inspect the books and records of Project Applicant and its rental agent or bookkeeper upon reasonable notice during normal business hours. The Annual Report shall also provide a statement of the owner's management policies, communications with the tenants and maintenance of the BMR unit, including a statement of planned repairs to be made and the dates for the repairs.

12. EQUIVALENT ALTERNATIVES

Nothing set forth herein shall preclude the City from approving reasonably equivalent alternatives to these BMR Guidelines, including, but not limited to, in lieu fees, land dedication, off-site construction or acquisition and rehabilitation of units. Additionally, the City reserves the right to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix. Any modifications to these Guidelines shall be approved by the City Council and shall contain findings that the alternative is commensurate with the applicable requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.

13. BELOW MARKET RATE HOUSING FUND AND SEVERABILITY CLAUSE

13.1 Purpose. The City of Menlo Park Below Market Rate Housing Fund ("BMR Housing Fund") is a separate City fund set aside for the specific purpose of assisting the development of housing that is affordable to very low, low and moderate income households. The BMR Housing Fund is generated by such income as in-lieu fees. All monies contributed to the BMR Housing Fund, as well as repayments and interest earnings accrued, shall be used solely for this purpose, subject to provisions set forth below.

13.2 Eligible Uses. The BMR Housing Fund will be used to reduce the cost of housing to levels that are affordable to very low, low and moderate income households, as defined in the Housing Element of the City's General Plan. A preference will be given to assisting development of housing for households with minor children; however, this preference does not preclude the use of funds for other types of housing affordable to households with very low, low and moderate incomes.

13.3 Eligible Uses in Support of Very Low, Low and Moderate Income Housing Development. The BMR Housing Fund may be used for, but is not limited, to the following:

- Provision of below market rate financing for homebuyers.
- Purchase of land or air rights for resale to developers at a reduced cost to facilitate housing development for very low, low or moderate income households.
- Reduction of interest rates for construction loans or permanent financing, or assistance with other costs associated with development or purchase of very low, low or moderate income housing.

- Rehabilitation of uninhabitable structures for very low, low or moderate income housing.
- On-site and off-site improvement costs for production of affordable housing.
- Reduction of purchase price to provide units that are very low, low or moderate cost.
- Rent subsidies to reduce the cost of rent for households with limited incomes.
- Emergency repair and/or renovation loan program for BMR owners of older units.
- Loan program to assist BMR condominium owners who have no other way to pay for major special assessments.
- City staff time and administrative costs associated with implementation of the BMR Housing Program.

13.4 Procedures. Requests for use of BMR Housing Fund money shall be submitted to staff for review and recommendation to the City Council. A request for funding shall provide the following minimum information:

- A description of the proposal to be funded and the organizations involved in the project. Public benefit and relevant Housing Element policies and programs should be identified.
- Amount of funding requested.
- Identification of the number of very low, low and moderate income households to be assisted and the specific income range of those assisted.
- Reasons why special funding is appropriate.
- Identification of loan rate, financial status of applicants, and source of repayment funds or other terms.
- Identification of leverage achieved through City funding.

13.5 Annual Report. At the close of each fiscal year, City staff shall report on activity during the previous year (deposits and disbursements) and available funds. The City's auditor shall periodically examine this report and all other BMR Housing Fund financial records, and shall report the results of this examination. In addition, City staff shall report annually on activities assisted by monies from the BMR Housing Fund. The report will review how the program is serving its designated purpose. It will include a discussion of the timely use of funds for actions taken to provide BMR housing units, a review of management activities, and staff recommendations for policy changes to improve the program's performance. In addition, it will provide, for each activity, information corresponding to that required of funding requests listed above in Section 13.4.

13.6 Severability Clause. If any one or more of the provisions contained in the BMR Guidelines shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in the BMR Guidelines, and the BMR Guidelines shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

13.7 Administrative Updates. Future updates to tables in Section 14 may be made annually without City Council approval when data becomes available from the appropriate state and federal agencies.

14. TABLES

Table A

Below Market Rate Household Income Limits

2023 Income Limits

Area Median Income: \$175,000 (for a household of 4 persons) effective June 6, 2023

Income Category	Household Size						
	1	2	3	4	5	6	7
Extremely Low Income	39,150	44,750	50,350	55,900	60,400	64,850	69,350
Very Low Income	65,250	74,600	83,900	93,200	100,700	108,150	115,600
Low Income	104,400	119,300	134,200	149,100	161,050	173,000	184,900
Median Income	122,500	140,000	157,500	175,000	189,000	203,000	217,000
Moderate Income	147,000	168,000	189,000	210,000	226,800	243,600	260,400

www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf

Table B

Maximum Affordable Rent Payment

2023 Rent Limits

Area Median Income: \$175,000 (for a household of 4 persons) effective June 6, 2023

Maximum Rents	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Very Low Income	1,598	1,713	2,056	2,375	2,650
Low Income	2,561	2,738	3,293	3,805	4,245
Moderate Income	3,141	3,365	4,038	4,666	5,205

NOTE 1: The maximum rent is based on the following household size for each unit: Studio: 1 person; 1-bedroom: 1.5 persons; 2-bedroom: 3 persons; 3-bedroom: 4.5 persons; 4-bedroom: 6 persons.

NOTE 2: Per the City of Menlo Park BMR Guidelines (Section 4.1.2), the monthly rental amounts for BMR unit shall not exceed seventy-five percent (75%) of comparable market rate rents. Additional calculations may be necessary for each project to ensure BMR rents comply with this requirement.

Table C

Occupancy Standards

Per the California Department of Housing and Community Development, occupancy of BMR units shall be limited to the following:

<u>Unit Size</u>	<u>Number of Persons</u>	
	<u>Minimum</u>	<u>Maximum</u>
Studio	1	2
1	1	2
2	2	3
3	3	4
4	4	5

Note: The City Manager or his/her designee has the discretion to vary the persons per unit for unusually large units, not to exceed one person per bedroom, plus one.

Table D

Commercial In-Lieu Fees for July 1, 2023 – June 30, 2024

Group A uses are Research & Development and Office.	Fee: \$21.65 per square foot of gross floor area.
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Group B uses are all other Commercial and Industrial Uses not in Group A.	Fee: \$11.75 per square foot of gross floor area.
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Commercial In-Lieu Fees are adjusted annually on July 1. Annual fee adjustments are posted on the City's website.

CITY OF MENLO PARK BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

Income Limits/~~Section 15~~, Section 14 Tables ~~A and B~~ Updated for ~~2021-22~~2023

Originally Adopted by City Council on January 12, 1988

Revised by City Council on the following dates:

- December 17, 2002 (No Resolution)
- March 25, 2003 (Resolution No. 5433)
- January 13, 2004 (No Resolution)
- March 22, 2005 (Resolution No. 5586)
- March 2, 2010 (Resolution No. 5915)
- May 10, 2011 (No Resolution)
- May 6, 2014 (Resolution No. 6196)
- April 17, 2018 (Resolution No. 6432)
- June 19, 2018 (Resolution No. 6446)
- March 1, 2022 (Resolution No. 0000)

BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

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1. OVERVIEW

The high cost and scarcity of housing in Menlo Park have been caused in large part because the number of jobs in Menlo Park has grown, but the supply of housing has not increased significantly. A majority of new employees earn low- and moderate-incomes and are most severely impacted by the lack of affordable housing in Menlo Park. Because of the high cost of housing, families who seek to live in Menlo Park cannot afford to purchase homes here and are forced to rent. Many renters pay a disproportionately high amount of their incomes in rent.

1.1 Purpose. The City of Menlo Park's Below Market Rate ("BMR") Housing Program is intended to increase the housing supply for households that have very low, low- and moderate-incomes compared to the median income for San Mateo County. The primary objective is to obtain actual housing units, either "rental" or "for sale," rather than equivalent cash.

1.2 Enabling Legislation. The BMR Housing Program is governed by Chapter 16.96 of the Municipal Code. The BMR Housing Program is administered under these BMR Housing Program Guidelines ("Guidelines").

2. BMR HOUSING AGREEMENT AND REVIEW PROCESS

2.1 BMR Housing Agreement. Before acceptance of plans for review by the City of Menlo Park staff, ~~a developer~~ [the applicant for any project described in Section 3 below \("Project Applicant"\)](#) should provide a proposal for meeting the requirements of the BMR Housing Program. The proposal should include one or a combination of the following alternatives: a) Provision of BMR units on site; and/or b) Provision of BMR units off-site; and/or c) Payment of an in-lieu fee. These alternatives are listed in order of preference.

2.2 Review Steps. The following review steps apply to most development projects:

- City staff will review a BMR For-Sale Agreement or an Affordability Housing Agreement (either, a “BMR Housing Agreement”), that has been prepared by the ~~developer’s~~ Project Applicant’s attorney on a form substantially similar to that provided by the City and shall make a recommendation with respect to it to the Housing Commission, and, if applicable, to the Planning Commission and/or the City Council. The City Attorney must approve as to form the BMR Housing Agreement prior to its review by the Planning Commission.
- The City Council grants approval of the BMR Housing Agreement for projects which it reviews. For all other projects, the BMR Housing Agreement shall be approved by the entity having final approval authority over the project.

3. REQUIREMENTS FOR DEVELOPMENTS BY TYPE

3.1 Commercial Developments. The BMR Housing Program requires commercial developments which bring employees to Menlo Park to provide BMR units or to contribute to the BMR Housing Fund that is set up to increase the stock of housing for very low, low and moderate income households, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.1.1 Commercial Development Requirements. Commercial buildings of 10,000 square feet or more gross floor area are required to mitigate the demand for affordable housing created by the commercial development project. In order to do so, it is preferred that a commercial development project provide BMR housing on-site (if allowed by zoning) or off-site (if on-site BMR units are infeasible). A density bonus of up to 15% above the density otherwise allowed by zoning may be permitted when BMR housing is provided on-site. The BMR Housing Agreement will detail the BMR Housing Program participation of a particular development.

Although the provision of actual BMR units is strongly preferred, it is not always possible to provide BMR housing units. In such cases, the ~~developer~~ Project Applicant shall pay a commercial in-lieu fee rather than provide actual BMR housing units. Commercial in-lieu fees must be paid prior to the issuance of a building permit.

Commercial in-lieu fees are charged at different rates to two groups based on the employee housing demand the uses produce. Group A uses are office and research and development (“R&D”). Group B uses are all other uses not in Group A.

Commercial in-lieu fee rates are adjusted annually on July 1st. The amount of the adjustment is based on a five-year moving average of the percentage increase in the Consumer Price Index (Shelter Only) for All Urban Consumers in the San Francisco-

Oakland-San Jose area. Refer to Section 154, Table D, for the Commercial In-lieu Fee Rates, which may be updated by City staff from time to time.

3.1.2 Applicability. The BMR Housing Program applies to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals and building permits for any commercial development. The BMR Housing Program also applies to the construction of any new square footage or any square footage that is converted from an exempt use to a non-exempt use. Finally, the BMR Housing Program applies to the conversion of floor area from a less intensive use (Commercial/Industrial uses) to a more intensive use (Office/R&D).

3.1.3 Exemptions. The following are exempted from the BMR Housing Program:

- (a) Private schools and churches;
- (b) Public facilities;
- (c) Commercial development projects of less than 10,000 square feet; and
- (d) Projects that generate few or no employees.

3.2 Residential Developments. The BMR Housing Program requires residential developments which use scarce residentially zoned land in Menlo Park to provide BMR units or to contribute to the BMR Housing Fund. The BMR Housing Fund is set up to increase the stock of housing for very low-, low- and moderate-income families, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.2.1 Residential Development Requirements. Residential developments of five or more units are subject to the requirements of the BMR Housing Program. These requirements also apply to condominium conversions of five units or more. As part of the application for a residential development of five or more units, the ~~developer~~-[Project Applicant](#) must submit a BMR Housing Agreement, in a form substantially similar to that provided by the City, which details the ~~developer's~~-[Project Applicant's](#) plan for participation in the BMR Housing Program. No building permit or other land use authorization may be issued or approved by the City unless the requirements of the BMR Program have been satisfied.

3.2.2 Condominium Conversions. If an apartment complex already participating in the BMR Housing Program elects to convert the complex to condominiums, then the existing BMR rental apartments shall be converted to BMR condominium units under the BMR Housing Program.

When market rate rental units are removed from the rental housing stock for conversion to condominiums, and they are not already participating in the BMR Housing Program,

then the project shall meet the same requirements as new developments to provide BMR units in effect at the time of conversion. When the property owner notifies the City of the intent to sell, the property owner shall notify any BMR tenants of such units of the pending sale and non-renewal of lease. Such tenant(s) shall be given the right of first refusal to purchase the unit. If the tenant seeks to purchase the unit, at the close of escrow the unit shall exist as a for-sale BMR unit. If the tenant does not seek to purchase, the tenant shall vacate the unit at the expiration of the current lease term and the unit will be sold to an eligible third party according to the BMR Guidelines and held as a for-sale BMR unit. The tenant who vacates will have priority to move to other vacant BMR rental units in the City for two years from the date the lease expired, regardless of the place of residence of the displaced BMR tenant.

3.3 Mixed Use Developments. Mixed use developments must comply with the requirements for commercial developments in the commercial portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

3.4 Required Contribution for Residential Development Projects. All residential developments of five units or more are required to participate in the BMR Housing Program. The preferred BMR Housing Program contribution for all residential developments is on-site BMR units. For rental residential development projects, the ~~applicant~~ Project Applicant may comply with the City's BMR requirements by providing in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. Any alternative means of compliance shall be approved by the City Council upon findings that the alternative is commensurate with the applicable on-site requirement and complies with applicable BMR Guidelines.

For ownership residential development projects, if providing on-site BMR units is not feasible as confirmed by the City, ~~developers~~ Project Applicants are required to pay an in-lieu fee as described in Section 4.3. The requirements for participation increase by development size as shown below:

One (1) to Four (4) Units. ~~Developers~~ Project Applicants are exempt from the requirements of the BMR Housing Program.

Five (5) to Nine (9) Units. It is preferred that the ~~developer~~ Project Applicant provide one unit at below market rate to a very low, low, or moderate income household.

Ten (10) to Nineteen (19) Units. The ~~developer~~ Project Applicant shall provide not less than 10% of the units at below market rates to very low-, low- and moderate-income households.

Twenty (20) or More Units. The ~~developer~~ Project Applicant shall provide not less than 15% of the units at below market rates to very low-, low- and moderate-income households. On a case-by-case basis, the City will consider creative proposals for providing lower cost units available to lower income households such as smaller unit size, duet-style, and/or attached units that are visually and

architecturally consistent with the market-rate units on the exterior, and that meet the City's requirements for design, materials, and interior features of BMR units.

3.4.1 Fraction of a BMR Housing Unit. If the number of BMR units required for a residential development project includes a fraction of a unit, the ~~developer~~ [Project Applicant](#) shall provide either a whole unit, the preferred form of participation, or make a pro rata residential in lieu payment on account of such fraction per Section 4.3 or 4.4, as applicable.

Example: A residential project is developed with 25 condominium units. The BMR requirement of 15% equates to 3.75 units. The preferred BMR Housing Program participation is four BMR units. If four BMR units are provided, the ~~developer~~ [Project Applicant](#) would pay no in-lieu fee. Alternatively, if three BMR units are provided, the ~~developer~~ [Project Applicant](#) would have to pay an in-lieu fee for the remaining fractional BMR unit.

4. BMR PROGRAM REQUIREMENTS FOR ON-SITE BMR UNITS, OFF-SITE BMR UNITS AND IN-LIEU FEES

4.1 On-Site BMR Units.

4.1.1 Initial Price for For-Sale Unit. The initial selling price of BMR for-sale units for extremely low (30% AMI), very low (50% AMI), subsidized low (60% AMI), low (80% AMI) or moderate (120% AMI) income households ([each, an "Income Category"](#)) is based on what is affordable to households with incomes at the identified percentage of area median income ("AMI") [for that Income Category](#) related to household size, as established from time to time by the State of California Housing and Community Development Department ("HCD") for San Mateo County. See Section [154](#), Table A, which may be updated by City staff from time to time. [The timing and formula for the sales price calculation is further detailed in Section 5.4 and 9.1.](#)

4.1.2 Initial Price for Rental Unit. The initial monthly rental amounts for BMR rental units will be equal to or less than thirty percent (30%) of the applicable income limits for extremely low, very low, subsidized low, low and moderate income households adjusted for occupancy, as established from time to time by the HCD for San Mateo County. In no case shall the monthly rental amounts for BMR units exceed seventy-five percent (75%) of comparable market rate rents. The maximum rent for specific BMR units will be based on Section [154](#), Table B of the BMR Guidelines, which may be updated by City staff from time to time. See also Sections 11.1.1 and 11.1.2. ~~The purchase or rental price for BMR units shall be established and agreed upon in writing in the BMR Housing Agreement per Section 2.2, prior to final building inspection for such BMR units.~~

The provision of affordable units at extremely low, very low, low and/or moderate income levels shall be roughly equivalent to the provision of all of the affordable units at the low income level.

4.1.3 Bonus Unit. For each BMR unit provided, a ~~developer~~ Project Applicant shall be permitted to build one additional market rate (bonus) unit. However, in no event shall the total number of units in a development be more than fifteen percent (15%) over the number otherwise allowed by zoning.

4.2 Off-Site BMR Units. If authorized by the City as described in Section 2.2, ~~developers~~ Project Applicants may propose to provide BMR units at a site other than the proposed development. These off-site BMR units must be provided on or before completion of the proposed development and must provide the same number of units at below market rates to very low, low and moderate income households as required for on-site developments. Such units may be new or existing. Provision by the ~~developer~~ Project Applicant and acceptance by the City of off-site units shall be described in the BMR Housing Agreement. Size, location, amenities and condition of the BMR units shall be among the factors considered by the City in evaluating the acceptability of the off-site BMR units. For existing units, the ~~developer~~ Project Applicant shall be responsible for correcting, at ~~developer's~~ Project Applicant's expense, all deficiencies revealed by detailed inspection of the premises by qualified inspectors, including a certified pest inspector.

The initial price or rent for the BMR units shall be established as stated in Sections 4.1.1 and 4.1.2 and in accordance with the BMR Income Guidelines in Section ~~15-14~~ in effect at the time the BMR unit is ready for sale or rent. Fractions of required BMR units shall be handled by provision of an in-lieu fee for the market rate units for which no BMR unit is provided.

4.3 Ownership Residential In Lieu Payments Based on Sales Price.

4.3.1 Developments of Ten (10) or More Units. In developments of 10 or more units, the City will consider an in-lieu payment alternative to required BMR units only if the ~~developer~~ Project Applicant substantiates to the City's satisfaction that the BMR units cannot be provided on or off-site. In developments of 10 or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the ~~developer~~ Project Applicant shall pay to the City an in-lieu payment calculated at three percent (3%) of the actual sales price of each unit sold. In lieu payments for fractions of BMR units shall be determined by disregarding any bonus units and as three percent (3%) of selling price of each market rate unit sold if the ~~developer~~ Project Applicant substantiates to the City's satisfaction that the BMR units cannot be provided on or off-site.

If a portion of a BMR requirement is met by a provision of BMR units, and the ~~developer~~ Project Applicant substantiates to the City's satisfaction that a sufficient number of BMR units cannot be provided on or off-site, then BMR in-lieu payments will be required from the sales of the number of market rate units (excluding bonus units) that is in proportion to the BMR requirement that is not met.

4.3.2 Developments of Five (5) to Nine (9) Units.

Residential In-Lieu Payments Based on Sales Price. In developments of five to nine units, the City will consider an in-lieu payment alternative to required BMR units only if the ~~developer~~ Project Applicant cannot provide an additional BMR unit. If providing an additional BMR unit is not feasible, ~~developers~~ Project Applicants are required to pay a residential in lieu fee as described below.

<u>Unit No.</u>	<u>In lieu fee for each unit</u>
1, 2 and 3	1% of the sales price
4, 5 and 6	2% of the sales price
7, 8 and 9	3% of the sales price

Example: In a development of seven units, the BMR contribution would be, in order of preference: a) One BMR unit out of the seven units, with the possibility of a density bonus of one unit, or, if that is not feasible, b) Three units designated to pay an in-lieu fee of one percent (1%) of the sales price, three units to pay in-lieu fees of two percent (2%) of their sales prices and one unit to pay three percent (3%) of its sales price.

Units paying in-lieu fees are designated so that they are distributed by unit size and location throughout the project.

In developments of 10 or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the ~~developer~~ Project Applicant shall pay to the City an in-lieu payment calculated at three percent (3%) of the actual sales price of each unit sold.

Example: Two possible plans to meet the BMR requirement for a project of 15 housing units are, in order of preference: a) Two BMR units are provided, and no in-lieu fees are paid, or b) One BMR unit is provided out of the first 10 units, one bonus unit is granted for the provision of the BMR unit, and four units pay in-lieu fees.

Units held as rental, in-lieu fee. If the ~~developer~~ Project Applicant retains any completed unit as a rental, either for its own account or through subsidiary or affiliated organizations, the BMR contribution including BMR housing unit or in-lieu payment for such unit shall be negotiated between the ~~developer~~ Project Applicant and the City. If an in-lieu fee is paid, the market value shall be based on an appropriate appraisal by an appraiser agreed upon by the City and the ~~developer~~ Project Applicant and paid for by the ~~developer~~ Project Applicant. The basis for such appraisal shall be as a condominium rather than as a rental.

4.4 Rental Residential In Lieu Payments Based on Cost. The City Council shall establish a rental residential in-lieu fee by resolution, which fee may be updated from time to time. The fee shall be based on the cost to develop, design, construct, and

maintain a standard one-bedroom unit in Menlo Park. The fee shall also include the proportionate costs of associated common area as well as land acquisition costs. The fee shall be adjusted on a project-by-project basis depending on size, location and other factors relevant to cost. The fee can be adjusted by a pre-set formula or by a consultant selected by the City and funded by the ~~applicant~~[Project Applicant](#).

5. CHARACTERISTICS OF BMR UNITS

5.1 Size and Location of BMR Units. BMR housing units shall generally be of the same proportionate size (number of bedrooms and square footage) as the market-rate units. The BMR units should be distributed throughout the development, and should be indistinguishable from the exterior. BMR units shall contain standard appliances common to new units, but need not have luxury accessories, such as Jacuzzi tubs. The Planning Commission and/or City Council shall have the authority to waive these size, location and appearance requirements of BMR units in order to carry out the purposes of the BMR Housing Program and the Housing Element. [Prior to issuing any building permit for \(a\) new construction and \(b\) condominium conversions that require an inspection for the temporary certificate of occupancy or final certificate of occupancy, whichever comes first \(“Building Inspection”\), City shall determine for each BMR Unit that the Project Applicant’s plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and confirm that the BMR unit has been constructed pursuant to the plans during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty \(60\) days of City’s receipt of the Project Applicant’s notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.](#)

5.2 Design and Materials in BMR Units. The design and materials used in construction of BMR units shall be of a quality comparable to other new units constructed in the development but need not be of luxury quality. [City shall determine that the Project Applicant’s plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and City shall confirm that these requirements have been met during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty \(60\) days of City’s receipt of the Project Applicant’s notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.](#)

5.3 The BMR Price Must Be Set Before ~~Final Building Inspection.~~ There shall be no ~~final inspection of BMR housing units until their purchase or rental prices have been agreed upon in writing by the developer and the City Manager, or his or her designee~~[Building Inspection of a for-sale BMR housing unit until its Maximum Sales Price or monthly rental amount has been established by the City](#). Also, the sale or rental process will not begin until the ~~sales price~~[Maximum Sales Price or monthly rental amount for the BMR housing unit](#) is set.

5.3.1 ~~Final~~-Building Inspection Schedule for Smaller and Larger Developments.

Less Than Ten (10) Units. In developments of less than 10 units with one or more BMR units, all BMR units must pass fBuinaldingInspection before the last market rate unit passes fBuinaldingInspection.

Ten (10) to Nineteen (19) Units. In developments of 10 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass fBuinaldingInspection before nine market rate units may pass final inspection. For each additional group of 10 housing units, one additional BMR unit must pass fBuinaldingInspection before nine additional market rate units may pass final inspection.

Twenty (20) or More Units. In developments of 20 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass fBuinaldingInspection before nine market rate units may pass fBuinaldingInspection. In addition, two additional BMR units must pass fBuinaldingInspection before eight additional market rate units may pass final inspection. For each additional group of 20 housing units, three additional BMR units must pass fBuinaldingInspection before 17 additional market rate units may pass fBuinaldingInspection. No project or phase may pass fBuinaldingInspection unless all the BMR units, which equal 15% or more of the housing units in that phase or project, have passed fBuinaldingInspection for that phase or project.

Last Unit. In no case may the last market rate unit pass fBuinaldingInspection before the last BMR unit has passed ~~final inspection~~-Building Inspection.

~~5.4 Sales Price Determination for BMR For-Sale Units.~~ The maximum sales price for BMR units shall be calculated as affordable to BMR households, which are eligible by income at the time that the maximum prices are set and which are of the smallest size eligible for the BMR units (excluding two-bedroom units, which shall be based on incomes for two person households even when units are made available to one person households). See Section 15, Table A, for income eligibility limits, and Table C, for occupancy standards, which tables may be updated by City staff from time to time. The affordability of maximum prices will take 5.4 Maximum Sales Price for BMR For-Sale Units; Transaction Costs. The “Maximum Sales Price” will be calculated according to a formula designed to ensure that BMR units remain affordable. The formula is based on the required income limits for the particular BMR unit and the minimum household size eligible for the BMR unit as shown on Table C. The formula takes into consideration mortgage interest rates, minimum down payments, ~~mortgage debt to income ratios~~ and other qualifying criteria used by lenders at the time the ~~sales prices are~~ Maximum Sales Price is set, as well as cost of insurance, taxes, homeowners’ dues, utilities, and any other necessary costs of homeownership capped at a specified percentage of household income. The formula is further described in Section 9.1.4 and the Maximum Sales Price may be adjusted in the event of changes in interest rates, as further detailed in Section 9.1.

Owners of for-sale units are not guaranteed that a new buyer will purchase the unit at

the Maximum Sales Price. As in any real estate transaction, owners of for-sale units may have to lower the price in order to attract a buyer. Owners with deferred maintenance or excessive wear and tear should expect to negotiate a lower sales price or agree to repairs as a condition of sale. The Maximum Sales Price is simply the maximum amount that owners of for-sale units may advertise and sell a BMR unit for.

The net proceeds from the sale will also be less than the Maximum Sales Price because of the Administration Fee, any commissions, and transaction costs.

The Project Applicant shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent's services. The BMR Applicant shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City will designate a BMR administrator to assist with the sales process including the process of marketing new BMR units and resales of BMR units and processing applications from BMR Applicants. City's designee will represent both the BMR Applicant and Project Applicant in the transaction. The Project Applicant shall be responsible for paying the City's designee's fee to administer the sales process and market the BMR unit ("Administration Fee"), which shall not exceed six percent (6%) of the Maximum Sales Price. The Project Applicant, but not the BMR Applicant, may elect to secure their own real estate broker. If the Project Applicant secures their own real estate broker, the Project Applicant shall be responsible for the commission or other fee charged by the Project Applicant's real estate broker in addition to the City's designee's Administration Fee.

5.4.1 Price Determination for Projects with Condominium Maps That Will Rent for an Indefinite Period of Time. Projects with condominium subdivision maps that will rent BMR units for an indefinite period ~~shall have basic sales prices established at the outset for such BMR units in accordance with the Guidelines. Such initial sales prices shall be adjusted for the period between the month of completion of the BMR units and the month of notification of intent to sell the units, with further adjustments for improvements and deterioration per the Guidelines. The adjustments shall be based on one-third of the increase in the Consumer Price Index ("CPI"), All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments~~ must have all required City approvals for such arrangement and document such arrangement in the Project's BMR Housing Agreement. The Maximum Sales Price shall be approved in the manner set forth in Section 9.1.4.

5.5 Legal Characteristics of BMR Units: Right of First Refusal and Deed Restrictions. All BMR units shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for a period of 55 years under which the City or its designee will be entitled to purchase the property at ~~the lower of (1) market value, or (2) the purchase price paid by seller, plus one-third of the increase (during the period of seller's ownership) in the CPI, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments~~ a sales price computed as described in Section 9.2

of these Guidelines (“City Purchase Option”). The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a sales price computed as above described in Section 9.2 of these Guidelines. Exceptions from all prohibitions against sale or transfer ~~will include:~~ are discussed in Section 10.3 and the transfer must satisfy the terms and conditions set forth in Section 10.3.

~~(1) Demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period;~~

~~(2) Transfer by termination of joint tenancy or by gift or inheritance to parents, spouse, children, grandchildren or their issue.~~

~~The prohibition against sales or transfers will not terminate at the end of 55 years in the event of an exempt transfer by termination of joint tenancy or by gift or inheritance to family members. The prohibition against sales or transfers will terminate in the event of an exempt sale or transfer when there is a demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period of time.~~

~~In the event of an exempt sale when there is a demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period of time, the seller will be entitled to receive the lesser of (A) market value or (B) the purchase price paid by the seller plus one third of the increase (during the seller's ownership) in the CPI, plus certain other equitable adjustments, as specified in the deed restrictions. The balance of the proceeds shall be paid to the City of Menlo Park to be deposited in the BMR Housing Fund. Any transferee pursuant to an exempt transfer by termination of joint tenancy or by gift or inheritance to family members must reside in the BMR unit and must qualify under the income criteria of the BMR Program at the time of the transfer of the BMR unit.~~

6. HOUSEHOLD DEFINITION AND CRITERIA

For purposes of sections 7-, 8 and 8-9 of these Guidelines, the following definition of household and provisions establishing household composition shall apply.

6.1 Definition of BMR Applicant. “BMR Applicant” shall mean any person or household (defined below) applying for a BMR unit.

~~6.1~~ **6.2** **Definition of Household.** For the purposes of this program, “household” is defined as all persons who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household. To be considered a household, all ap~~applicant~~s/ed household members must live together in a home that is their primary residence. To be considered part of the household and included in household size, children under the age of 18 (including foster children) must reside in the home at least part-time or parents must have at least partial (50%) custody of the child/children. If a parent has 50% or more custody of a child, the child shall be counted as one person in the household.

6.26.3 Household Requirement. To constitute a household, all members of the ~~applicant~~ BMR Applicant household must currently live together (in a location that is their primary residence) at the time of application. Also, at the time of application and regardless of where they currently live, all members who make up the ~~applicant~~ BMR Applicant household must have continuously lived together for a minimum of one year prior to the date of application.

6.23.1 Exceptions. Exceptions to this minimum one year joint-residency requirement include:

- Children under the age of 18 who have recently joined the household in conjunction with marriage, separation, or divorce, or similar family re-organization, and for whom there is evidence of a custody agreement or arrangement. This also applies to foster children.
- Children born or adopted into a household.
- Households newly formed as a result of marriage or domestic partnership.
- Other circumstances regarding the addition of a family member over the age of 18 may be reviewed by the City or its designee.

7. ELIGIBILITY REQUIREMENTS FOR HOUSEHOLDS APPLYING TO PURCHASE BMR UNITS

Note: ~~Preference criteria for households entering a BMR unit lottery drawing are identified in Section 8.~~ The City no longer maintains a ranked purchase waitlist. Previously ranked households have been transferred to a ~~legacy purchase list, as~~ the BMR Purchase Legacy List, as defined and more fully set forth in Section 8.2. The provisions ~~identified~~ of Sections 7.1 to 7.4 below apply to all households, including the BMR Purchase Legacy List households, at the time of submission of an application to purchase a BMR unit. In order for a household to be eligible at the time of submission of application, all of the following provisions shall apply and/or be met: ~~(except that the requirement in Section 7.2 may be met at the time specified in Section 9.1):~~

7.1 First Time Homebuyer. All members of the ~~applicant~~ BMR Applicant household must be first time homebuyers, defined as not having owned a home as a primary residence within the last three years prior to the date of application. A primary residence is a property occupied by the ~~applicant~~ BMR Applicant household for the majority of a calendar year. A household may have only one primary residence. First time homebuyers include owners of mobile homes not on a permanent foundation, as well as ~~applicants~~ BMR Applicants whose names are on title for properties they have not lived in as their primary residences for the last three years (for instance rental properties, which must be considered as part of the ~~applicant's-eligibleassets~~ BMR Applicant's eligible assets).

7.1.1 Exceptions 7.1.1 Exceptions. Exceptions to this requirement are:

- BMR Applicants who are current BMR homeowners and are otherwise eligible for the BMR Housing Program, are eligible to apply for BMR ownership opportunities and to purchase a smaller or larger home needed due to changes in household size or family needs, such as for accessibility needs ~~(per Section 7.2.6, below)~~.
- BMR Applicants whose names were placed on the BMR Purchase Waiting List prior to March 2, 2010.
- BMR Applicant households that currently and/or within the last three years prior to the date of application own homes as their primary residences more than 50 miles outside Menlo Park city limits, that are otherwise eligible for the BMR Housing Program.

7.2 Complete First Time Pre-Purchase Homebuyer Education. All adult ~~applicants~~/household members ~~-,~~ except as provided herein, must complete a one-time homebuyer education workshop, class, or counseling session. Program staff provides households with a list of approved local organizations that provide pre-purchase homebuyer education. BMR Applicants choose an education provider or program from the approved list and may choose to attend in either a group or individualized setting. It is the ~~applicants~~ BMR Applicants' responsibility to provide the City or the City's BMR Housing Program provider with evidence that a pre-purchase homebuyer education workshop or session was completed. In most cases, the education providers will provide ~~applicants~~ BMR Applicants with certificates of completion, typically good for two years, that ~~applicants~~ BMR Applicants can submit to the City's BMR Housing Program provider as proof that the pre-purchase education requirement was completed. Only households that have completed the education requirement will be ~~invited to apply~~ allowed to purchase BMR units when BMR units become available. Adult parents of ~~applicants~~ BMR Applicants living in the household need not complete the education requirement.

7.2.1 Prior Completion of Pre-Purchase Homebuyer Education. Except as provided in Section 7.2.3 below, BMR Applicants who provide ~~written evidence~~ an unexpired certificate of ~~having completed a~~ on approved for a homebuyer education workshop, class, or counseling session ~~within the previous twelve months prior to the date of submission of the BMR unit purchase application~~ are not required to complete an additional workshop, class, or counseling session.

7.2.2 Homebuyer Education Provider. At the City's discretion, the City may elect to work exclusively with one or more homebuyer education providers/organizations. The City may also choose to contract with a particular person or organization to provide this educational component.

7.2.3 Long-Term Education or Counseling Required for Certain BMR Applicants. BMR Applicants who are invited to apply to purchase BMR units and are twice denied (on separate occasions) due to long-term or significant credit problems, will be required to meet individually with a credit counseling professional. The ~~applicant~~

[BMR Applicant](#) must provide evidence of completion of credit counseling before they can be approved to purchase a BMR ownership unit. The credit counseling requirement does not exclude the ~~applicant~~-[BMR Applicant](#) from applying to future BMR purchase opportunities.

7.3 Ownership Interest. A minimum of 50% of the ownership interest in the property must be vested in the qualifying ~~applicant(s)~~, [BMR Applicant\(s\)](#), regardless of income.

7.4 Income and Asset Limits for Purchasers of BMR Units. Income eligibility limits are established by HCD for San Mateo County. Income limits are updated on an annual basis. BMR units shall only be sold to very low, low, and moderate income households. Only households having gross incomes at or below ~~120% of the AMI for San Mateo County~~[the income limit for the Income Category designated in the BMR Housing Agreement](#), adjusted for household size, are eligible to purchase and occupy BMR for-sale units, either upon initial sale or upon any subsequent resale, as specified in the deed restrictions. Refer to Section ~~154~~, Table A, for the income eligibility limits, which may be updated by City staff from time to time.

An asset is a cash or non-cash item that can be converted into cash. Only households having non-retirement assets that do not exceed the ~~purchase price~~-[Maximum Sales Price](#) of the BMR units are considered eligible.

- Assets Include: cash held in checking accounts, savings accounts, and safe deposit boxes; equity in real property; cash value of stocks (including options), bonds, Treasury bills, certificates of deposit, money market accounts, and revocable trusts; personal property held as an investment such as gems, jewelry, coin and art collections, antiques, and vintage and/or luxury cars; lump sum or one-time receipts such as inheritances, capital gains, lottery winnings, victim's restitution, and insurance settlements; payment of funds from mortgages or deeds of trust held by the ~~applicant(s)~~; [BMR Applicant\(s\)](#); boats and planes; and motor homes intended for primary residential use.
- Assets DO NOT Include: cars and furniture (except cars and furniture held as investments such as vintage and/or luxury cars, and antiques); company pension and retirement plans; Keogh accounts; dedicated education funds/savings accounts; and funds dedicated to federally recognized retirement programs such as 401K's and IRA's.

Note that equity in real property or capital investments is defined as follows: the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g. broker/realtor fees) that would be incurred in selling the asset.

7.4.1 Senior or Disabled Households That Use Assets for Living Expenses. An exception to the income and asset limit requirement is a household

whose head is over 62 years of age, or permanently disabled and unable to work, with assets valued up to two times the price of the BMR unit. The ~~applicant~~ [BMR Applicant](#) must be able to demonstrate that the sole use of his/her assets has been for household support for at least the three previous years, and that the total annual household income meets the BMR Guidelines.

8. ~~BMR PURCHASE AND RENTAL INTEREST~~ [LEGACY LIST](#) ~~;~~ PREFERENCE CRITERIA

~~8.1 BMR Purchase and Rental Interest List Preference Criteria. A BMR purchase and rental interest list, (herein referred to as the “interest list”), is maintained by the City or the City’s designee.~~

~~An applicant must meet the current income eligibility limit requirements (per household size) to purchase and/or rent a BMR unit. See Section 15, Table A, for income eligibility limits, which may be updated by City staff from time to time.~~

[8.1 BMR Purchase Legacy List.](#)

The City no longer maintains a ranked BMR [Purchase Waiting List](#) and no longer adds households to this list. To honor households that maintained their [place on the BMR Purchase Waiting List](#) and were required to annually recertify, the City created a “[BMR Purchase Legacy List](#).” Households on the previous ranked BMR purchase list as of January 1, 2021 were effectively notified and transferred to the BMR Purchase Legacy List, which allows these identified households to have priority over all other [BMR Applicants](#). Once there are no longer any households remaining on the BMR Purchase Legacy List (either because households on the list have been placed in units pursuant to these Guidelines, or because households have withdrawn from the list), the [BMR Purchase Legacy List](#) will be considered terminated. By January 31 of each calendar year, City shall notify each household in writing that the household must respond within thirty (30) days of the date of City’s notice to reaffirm the household’s interest in remaining on the BMR Purchase Legacy List, inform the City of any increase or decrease in household size, and provide documentation that the household meets the criteria set forth in Sections 7.1 and 7.4 and that a failure to timely respond will result in the household’s removal from the BMR Purchase Legacy List. City’s written notification shall be provided to the household at the address or email address last provided to City or City’s designee by the household. If the household does not timely provide a response with acceptable documentation, the household will be removed from the BMR Purchase Legacy List.

Households on the BMR Purchase Legacy List are not required to meet a preference.

Households on the BMR Purchase Legacy List will be notified when any BMR units become available and reminded that only households within the minimum and maximum household size on table C for the BMR unit size should apply for the BMR unit.

8.2 BMR Preference Criteria and Lottery Process.

~~Income-qualified households~~ If the BMR Purchase Legacy List has been terminated or if there are two (2) or fewer households on the BMR Purchase Legacy List within the minimum and maximum size on Table C for an available BMR unit, income qualified households that are not on the BMR Purchase Legacy List shall apply for available BMR units via a lottery drawing held by the City or the City's designee. BMR Applicants from the BMR Purchase Legacy List that are within the minimum and maximum size set forth on Table C, if any, shall be ranked higher than the BMR Applicants from the lottery drawing and shall be ranked in the order that they appeared on the BMR Purchase Legacy List. The lottery drawing will rank ~~applicants~~ all other BMR Applicants at random followed by a final ranking to account for households meeting the City's preference criteria. All income eligible ~~persons and households~~ BMR Applicants that do not qualify under one of the preferences will receive a final lottery rank lower than ~~persons or households~~ BMR Applicants meeting preference criteria.

Preference criteria will be utilized at the time of a BMR unit drawing submission and verified during the application process. If ~~an~~ a BMR applicant does not meet a preference or cannot provide sufficient evidence establishing they meet a preference, that ~~applicant~~ BMR Applicant will lose their preference ranking. In no circumstances shall the preference criteria and/or eligibility requirements of these Guidelines be applied in a manner that is contrary to State and/or Federal fair housing laws.

In addition to the below criteria, a tenant of a Menlo Park BMR rental unit who is required to vacate the BMR rental unit due to its conversion to a BMR for-sale unit, shall have first priority for vacant BMR rental units for which the tenant is eligible and qualifies for two years from the expiration of the lease, regardless of the place of residence of the displaced tenant.

Preference criteria are set forth below. All preferences, aside from the accessible unit preference, shall be given the same weight and/or ranking significance in formation of the final lottery ranking list.

Live and/or Work Preference: The ~~applicant household's~~ BMR Applicant's primary residence is within incorporated Menlo Park or a member of the ~~applicant~~ BMR Applicant household currently works or volunteers within incorporated Menlo Park.

- Criteria for residing within incorporated Menlo Park. To qualify as living in Menlo Park, the ~~applicant household's~~ BMR Applicant's primary residence must be within incorporated Menlo Park.
- Criteria for working within incorporated Menlo Park. To qualify as a household that works in Menlo Park, a member of the ~~applicant's~~ BMR Applicant's household must currently work in Menlo Park at least 20 hours per week, or (if currently less than 20 hours per week) hours worked over the course of the one year prior to application averages a minimum of 20 hours per week.

- Types of work. Work is defined as (1) owning and operating a business at a Menlo Park location; (2) employment for wages or salary by an employer located at a Menlo Park location; (3) contract employment where the actual work is conducted at a Menlo Park location for one year; (4) commission work, up to and including a 100% commission arrangement, conducted in Menlo Park, or (5) volunteering for a community or civic serving entity located within Menlo Park, without receipt of compensation, wages or salary in exchange for such time and work.
- Employer-based work. If employed for wages or salary by an employer, working in Menlo Park is defined as the employer is located in Menlo Park and the employment/actual work is performed within incorporated Menlo Park.
- Owning (either wholly or in part) a residential or commercial property for investment purposes only shall not qualify as working within incorporated Menlo Park.

Unhoused Preference: For purposes of these Guidelines, unhoused persons may show local residency by providing evidence that their last permanent residence was located in Menlo Park and/or documentation from a case manager or homeless services provider demonstrating current residency in Menlo Park, including places or structures other than a bona fide dwelling unit (i.e. vehicle or tent).

Displacement Preference: A ~~person or household~~ [BMR Applicant](#) residing within incorporated Menlo Park for three or more years that was subsequently displaced from such housing and does not reside in Menlo Park at the date of submission of application, shall not be disqualified based on current lack of residency, provided they can show their displacement was due to economic conditions beyond their control (including but not limited to job loss, rent increase, eviction, foreclosure or other form of economic hardship resulting in loss of housing). Evidence of such economic displacement shall be in the form of direct evidence (i.e. job termination letter) or declarations submitted under penalty of perjury.

Accessible Unit Preference: If the BMR unit is an accessible unit, then [BMR Applicants with a person or persons](#) ~~and/or persons within a household~~ with accessibility needs who are otherwise eligible for the BMR unit, including by household size and income, will receive preference for units with features serving those accessibility needs ahead of ~~applicants~~ [BMR Applicants](#) without an accessibility need. Ranking of ~~persons and households~~ [BMR Applicants](#) for accessible units shall follow the below list from highest to lowest in the order of lottery ranking:

- ~~Person or household~~ [BMR Applicants with a person or persons](#) with an accessibility need meeting an existing Menlo Park preference, such as live and/or work, unhoused or displacement preference.

- ~~Person or household~~ [BMR Applicants with a person or person](#) with an accessibility need not meeting an existing Menlo Park preference
- ~~Person or household~~ [BMR Applicants](#) meeting an existing Menlo Park preference
- ~~Person or household~~ [BMR Applicants](#) not meeting an existing Menlo Park preference

~~**8.2 — BMR Purchase Legacy List.** The City no longer maintains a ranked BMR purchase waitlist and no longer adds persons or households to this list. To honor households that maintained their ranking and were required to annually recertify, the City created a BMR Purchase Legacy List. Households on the previous ranked BMR purchase list as of January 1, 2021 were effectively notified and transferred to the BMR Purchase Legacy List, which allows these identified households to have priority over all other applicants. Once there are no longer any households remaining on the BMR Purchase Legacy List (either because households on the list have been placed in units pursuant to these Guidelines, or because households have withdrawn from the list), the list will be considered terminated.~~

8.3 BMR Applicant Financing Rules. [BMR Applicants that finance the purchase of the BMR unit must do so with a 30 year loan, a 3% down payment, and an interest rate that is consistent with Freddie Mac’s most recently published Primary Mortgage Market Survey.](#)

8.4 Applications. [All applications for a for-sale BMR unit must include supporting documentation to demonstrate that:](#)

- [The BMR Applicant meets the criteria set forth in Sections 7.1 and 7.4;](#)
- [The BMR Applicant is pre-qualified for a loan; and](#)
- [If the BMR Applicant is not on the BMR Purchase Legacy List and claims to meet a preference, that the BMR Applicant meets the preference \(acceptable documentation is set forth in Section 8.2\).](#)

[Applications must also include a signed acknowledgement that the BMR Applicant understands and agrees to the condition set forth in section 7.3.](#)

9. THE BMR UNIT PURCHASE PROCESS: BUYER SELECTION AND SALE PROCEDURES

9.1 Process for Sale of New Units and Condominium Conversions.

[Where BMR units are developed as part of new construction or where BMR rental units will be converted to condominiums the following procedures shall apply in the order in which they are set forth, below.](#)

9.1.1 For (a) new construction or (b) condominium conversions that will require a Building Inspection, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that the Project Applicant anticipates being ready for a Building Inspection.

9.1.2 For (a) condominium conversions where no Building Inspection is required or (b) units in projects described in Section 5.4.1, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that they intend to sell the subject BMR unit(s).

9.1.3 Together with the notice in 9.1.1 or 9.1.2, the Project Applicant must provide the amount of any Homeowner's Association dues, estimated property tax figures, and estimated insurance costs for the BMR unit(s). No Building Inspection shall be scheduled or otherwise take place until the Maximum Sales Price for the BMR unit is set.

9.1.4 Within 90 days of proper written notification being provided pursuant to section 9.1.1 or section 9.1.2, the City or its designee shall (1) determine income qualifications for the BMR unit(s); and (2) determine the Maximum Sales Price of the BMR unit(s). The Project Applicant or owner shall not influence the determination of Maximum Sales Price, which shall be determined solely based on the following:

- The income limit for the minimum household size for the BMR unit in the Income Category designated in the BMR Housing Agreement, as shown in Table C. City staff may update Table C from time to time to reflect changes made to the household size for a unit from time to time by HCD for San Mateo County. See Section 14, Table A, for income eligibility limits, which may be updated by City staff from time to time.
- a 3% down payment.
- The average 4 week interest rate published in Freddie Mac's most recent Primary Mortgage Market Survey.
- monthly housing costs, insurance costs, utilities, homeowners' association dues, taxes and assessments, not to exceed 30% of the household income amount established based on the above criteria.

~~9.1.1 The participating developer informs~~ 9.1.5 For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, the Project Applicant or owner of the BMR unit(s) must inform the City or its designee in writing that the BMR unit has received its final ~~building inspection~~ certificate of occupancy and that the BMR unit is ready for sale and occupancy. "The City" shall mean the City Manager, or his or her designee.

~~9.1.26 City of Menlo Park staff or the City's BMR Housing Program provider inspects the BMR unit. After approval of the unit, the City or the City's BMR Housing Program provider~~ writes a certifying letter that states the BMR unit meets the BMR Housing Program's requirements ~~and satisfies the BMR Agreement's provisions~~ set forth in Sections 5.1 and 5.2. The certifying letter will also state the ~~price for the BMR~~

~~unit. The price for the BMR unit will be determined based on the information described in the next three sections. Maximum Sales Price for the BMR unit, which may be adjusted from the Maximum Sales Price established under Section 9.1.4 to account for changes in interest rates.~~

The City will send the certifying letter at the following times:

For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, within ten (10) days of City's receipt of notice that the unit received its final certificate of occupancy.

For condominium conversions that do not require a Building Inspection, after the City has 1) inspected the BMR unit and confirmed that the requirements set forth in Sections 5.1 and 5.2 have been met and 2) set the Maximum Sales Price.

For units in projects described in Section 5.4.1, within ten (10) days after the BMR unit has been vacated and City has reinspected the unit to confirm that the unit is in good condition and still meets the requirements of Section 5.1 and 5.2.

9.1.7 Within ten (10) days of receipt of the certifying letter, the Project Applicant must provide City or its designee the following:

(1) a proposed purchase contract that must include the following terms:

- A forty-five (45) day loan contingency.
- A thirty (30) day inspection period where the BMR Applicant can inspect the unit and negotiate repairs or modifications with the Project Applicant.
- The requirement that escrow open within five (5) days of full execution.
- The requirement that the BMR Applicant provide a deposit within three (3) days of opening escrow.
- The requirement that escrow close within sixty (60) days of opening escrow.

~~9.1.3 The City or its designee obtains necessary information for determining the price of the BMR unit. These include, but may not be limited to, the estimated tax figures from the developer and the County Assessor, as well as Homeowner's Association dues, (2) Covenants, Conditions and Restrictions, and insurance figures from the developer. Also included will be all associated Homeowner Association documentation. applicable to the BMR unit(s).~~

(3) any other rules or bylaws established by a Homeowner's Association that governs any condominium complex or planned development in which the BMR unit is located.

~~9.1.4 Household size and income qualifications are established. In households in which an adult holds 50% or more custody of a minor child or children through a legally binding joint custody settlement, each such child shall count as a person in determining the household size.~~

~~9.1.5 The City or its designee determines the maximum price of the BMR unit based on an income up to 120% of AMI ("AMI") related to household size, as established from time to time by HCD for San Mateo County, monthly housing costs including current mortgage rates, insurance costs, homeowners' dues, taxes, closing costs and any other consideration of costs of qualifying for a first mortgage and purchase of the BMR unit. See Section 15, Table A, for income eligibility limits, which may be updated by City staff from time to time. When these documents and the information described in this and preceding sections have been received, the City will provide the developer with a certifying letter in which the City states the price for the BMR unit, accepts the BMR unit as available for purchase and the purchase period will commence.~~

(4) for any development that must provide fewer than five (5) BMR units or any development not required to prepare a marketing plan because the BMR Purchase Legacy List has not been terminated or there are more than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size for all units the Project Applicant is providing, the Project Applicant must provide for City approval a proposed advertisement to be posted on the City website, which must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development, a floorplan with dimensions of each room, a description of appliances and amenities offered, and a proposed schedule of open houses. The proposed open house schedules must include open houses on weekend days or at times after 6pm on a weekday.

(5) if the BMR Purchase Legacy List has been terminated or there are fewer than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size on table C for the size of any BMR unit the Project Applicant is providing, a marketing plan for any development that must provide five (5) or more BMR Units, the plan must include at the least following, unless City approves substitute marketing measures in its reasonable discretion:

- An advertisement of the BMR Unit to be posted by the City or City's designee on Zillow or Redfin, the City's website, and the City's pages on at least two (2) social media platforms. The listing must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development), a floorplan with dimensions of each room, a description of appliances and amenities offered.
- Mailing and/or emailing flyers to persons on any interest list that the City maintains or that have submitted an interest form for for-sale BMR units.

- Holding at least three (3) open houses that must occur on a weekend day or at 6pm or later on weekdays.
- Internet advertisements *must all include a statement that applicants who do not meet the income qualifications should not contact the Project Applicant or apply for the City's lottery for the BMR unit.*

City shall approve the marketing plan (if applicable) or, if City desires to propose revisions to the marketing plan (if applicable), hold a meeting with Project Applicant to discuss revisions to the marketing plan within fifteen (15) business days of receipt of the marketing materials from Project Applicant. If the City must hold a meeting with the Project Applicant before approving the materials, the Project Applicant and City must agree on a final marketing plan (if applicable) within twenty-five (25) business days of City's receipt of the original proposed purchase agreement and original marketing plan.

The Project Applicant must act in good faith and respond in a reasonably timely manner to City staff and City's designee at all times throughout the sales process.

9.1.6 **9.1.8** If there is a standard pre-sale requirement by the BMR ~~a~~Applicant's lender for a certain percentage of units in the project to be sold before the BMR ~~a~~Applicant's lender will close, then the time for the City's purchase or the ~~buyer's~~-BMR ~~Applicant's~~ purchase will be extended until that requisite number of units has closed.

~~9.1.7 The City may retain a realtor to facilitate the sale of the property.~~

9.1.9 Within ten (10) days of City's approval of the marketing plan, the Project Applicant shall implement the marketing plan and (for developments with more than five (5) BMR units) list the BMR unit, and the City shall post the approved advertisement on the approved, designated City social media pages and City website. The City shall also make the following available on its website:

~~9.1.8 Contact is established between the City or its designee and the developer's representative to work out a schedule and convenient strategy for advertisements, if needed, when the units will be open for viewing, and for when the interested applicants may obtain detailed information about the units.~~

~~9.1.9 All marketing and sales procedures for BMR units must be approved by the City and will be subject to review on a periodic basis for compliance.~~

~~9.1.10 An information packet and application forms are designed and duplicated by the City or its designee. The developer provides information about the unit, including a floor plan of the unit and of the building showing the location of the unit, dimensions, appliances, amenities, and finishes.~~

~~9.1.11 The City or the City's BMR Housing Program provider holds an application orientation meeting(s). All person and households are invited to attend the~~

~~orientation meeting(s). Only households that are eligible by household size and have completed the one-time pre-purchase education requirement are contacted and invited to attend the orientation. Applications to purchase BMR units can only be obtained by attending an application orientation meeting. At the meeting, potential applicants are provided with the following information:~~

- A detailed description of the BMR Housing Program, including the rights, restrictions, and responsibilities of owning a BMR unit.
- A complete description of the property or properties being offered for sale including buyer eligibility requirements, the purchase price, home owner association costs (if any), estimated property taxes, and home features.
- ~~• An overview of the home loan application process and description of necessary costs including down payment (if required), closing costs, real estate taxes, and mortgage insurance.~~
- The name of two (2) City staff persons which includes City hired consultants that BMR Applicants may call or email with questions or, alternatively, a date of a meeting for staff or City's consultant to answer questions about the process.
- ~~• A description of the BMR and home loan approval process. Potential applicants are informed they must work with one of the program's approved mortgage providers. Per the City's discretion the potential applicants are also informed of the kinds of acceptable mortgage financing, and also of mortgage financing not allowed at that time (for instance negative amortizing loans).~~
- ~~• Based on the purchase price, estimates are provided on the minimum annual income required to purchase, as well as possible monthly housing costs including principal and interest, property taxes, and insurance payments.~~
- ~~• A step-by-step explanation of the BMR purchase application. If there are several sizes of units for which applicants may be eligible, applicants are instructed where to indicate their unit size preferences.~~

~~Potential applicants are invited to ask questions. Meeting attendees are invited to sign up to tour the property or properties for sale. Attendees are given applications and a reasonable deadline to submit their completed applications.~~

~~**9.1.12**~~ **9.1.10** Completed applications are submitted to the City or its designee along with income and asset verifications and a loan prequalification letter. Applications will be accepted for forty-five (45) days.

~~9.1.13~~ **9.1.11** When the application period closes, the City or its designee reviews the completed applications. The complete, eligible, qualifying applications are ranked ~~according to legacy list order and/or lottery ranking.~~ pursuant to the procedures set forth in Section 8.2. The City will publish the rankings within twenty one (21) days, identifying the BMR Applicants by number assigned to them at the time of their initial application.

9.1.12 The highest ranked BMR Applicant will then be notified by the City that they have been selected. The highest ranked BMR Applicant must provide documentation acceptable to the City that they have satisfied Section 7.2 within ten (10) days of the date of City's notification that the BMR Applicant was selected. Within two (2) business days of receipt of the BMR Applicant's documentation and confirming the documentation is acceptable, City shall introduce the highest ranked BMR Applicant to the Project Applicant by email and provide the contract to the highest ranked BMR Applicant. The BMR Applicant must sign the contract or propose revisions within ten (10) days of the introduction. The BMR Applicant should be aware that the Project Applicant's ability to accept revisions may be limited if the purchase agreement was required to be approved by the Department of Real Estate. The Project Applicant must respond to any revisions within five (5) days. If the highest ranked BMR Applicant and Project Applicant do not sign a contract within twenty-one (21) days of the introduction, the City shall contact the next BMR Applicant on the list. The City may, in its discretion, extend the timelines set forth in this paragraph by a few days if the BMR Applicant and Project Applicant are acting in good faith and are likely to reach agreement.

If a BMR Applicant does not timely provide acceptable documentation that they have satisfied Section 7.2 or enters into a contract with the Project Applicant and thereafter fails to timely open escrow, make a deposit, obtain final loan approval, or close escrow pursuant to these timeframes, the City or its designee will (i) notify the BMR Applicant that the BMR Applicant has forfeited the unit and (ii) contact the next highest ranked BMR Applicant in writing and by telephone to inform them that they have been selected and may enter into a contract with Project Applicant. The next highest ranked BMR Applicant, the Project Applicant, and the City shall follow the procedures of this Section 9.1.12 and the next highest ranked BMR Applicant shall be subject to the same deadlines described above in this Section 9.1.12. The procedures of this Section 9.1.12 will repeat until an eligible BMR Applicant has closed escrow.

The Project Applicant shall negotiate in good faith with the BMR Applicant following City's introduction of the Project Applicant and BMR Applicant. The Project Applicant must respond timely to questions and proposed contract terms posed by BMR Applicants and must respond timely to the escrow agent and provide all documentation reasonably requested by the escrow agent from the Project Applicant to close escrow.

9.1.13 If no applications are received from BMR Applicants that meet the requirements of Sections 7.1 and 7.4 during the forty-five (45) day application period then, within thirty (30) days after the end of the application period, (i) the Maximum Sales Price will be recalculated according to the method set forth in Section 9.1.4 (provided that if the Maximum Sales Price after recalculation is not different than the Maximum Sales Price specified in the certifying letter, the Project Applicant and the City shall agree

upon a reasonable price modification to attract qualified BMR Applicants) and (ii) the Project Applicant and City shall agree on any necessary or desirable modifications to the marketing plan. The BMR unit will then be marketed again at the lower of the Maximum Sales Price specified in the certifying letter or the recalculated Maximum Sales Price. If the BMR unit still does not sell, the City shall at its option (i) elect to repeat the process set forth in this Section 9.1.13, or (ii) offer to purchase the unit at a recalculated Maximum Sales Price in accordance with Section 9.1.4.

9.2 Process for Resale of BMR units

Where For-Sale BMR unit(s) are proposed to be resold, the following procedures shall apply in the order in which they are set forth, below.

9.2.1 The owner of the subject For-Sale BMR unit notifies the City by certified mail that he/she wishes to sell the unit. The City notifies its designee, if applicable. The unit must be provided in good repair and salable condition, or the cost of rehabilitating the unit will be reimbursed to the City (if the City is the buyer) or qualified buyer out of the proceeds of the sale. The definition of “salable condition” for any given unit shall be provided on a case-by-case basis following the City’s inspection of the unit, and shall be at the discretion of the City Manager or his/her designee. “Salable condition” shall refer to the general appearance, condition, and functionality of all: flooring; painted surfaces; plumbing, heating, and electrical systems; fixtures; appliances; doors; windows; walkways; patios; roofing; grading; and landscaping. In addition for each unit, the City reserves the right to withhold the cost of having it professionally cleaned from the seller’s proceeds. Once cleaning is complete, the seller will be refunded any difference between the amount withheld and the actual cost to clean the unit.

9.2.2 Within 90 days of proper written notification being provided pursuant to section 9.2.1, the City or its designee shall have 1) inspected the BMR unit to confirm it is in salable condition, 2) obtained an appraisal that determines the fair market value of the BMR unit, and 3) computed a sales price of the BMR unit, based on the original selling price of the BMR unit, depreciated value of any substantial improvements made by the seller, and 1/3 of the increase in the cost of living index for the Bay Area. The sales price will be the lower of the appraisal’s conclusion of fair market value or the price computed as described in clause 3.

9.2.3 Following the requirements set forth in sections 9.2.1 and 9.2.2, the owner and City shall follow the procedures commencing with section 9.1.7 and concluding with section 9.1.13 except that there shall be no requirement for a marketing plan and the word “Project Applicant” in section 9.1.7 to 9.1.13 shall be replaced with “owner.”

The owner shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent’s services. The BMR buyer shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City may designate a BMR administrator to assist with the process of marketing resales of BMR units and processing applications from BMR buyers. City's designee will represent both the buyer and seller in the transaction. The seller shall be responsible for paying the City's designee's Administration Fee, which shall not exceed six percent (6%) of the Maximum Sales Price. The seller, but not the buyer, may elect to secure their own real estate broker. If the seller secures their own real estate broker, the seller shall be responsible for the commission or other fee charged by the seller's real estate broker in addition to the City's designee's Administration Fee.

~~9.1.14 If the leading applicant for a unit fails to contact the developer, provide a deposit, or obtain appropriate financing within the period of time specified in the notification letter, the City or its designee will contact the next household on the list.~~

~~9.1.15 The City of Menlo Park or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice to be recorded with the deed to the property.~~

~~9.1.16 The developer shall be free to sell a BMR unit without restriction as to price or qualification of buyer if all of the following criteria are met, unless the BMR applicant's lender has a loan condition that a specific number of units in the development must be sold before the loan can be approved: (1) the City and the developer are unable to obtain a qualified buyer within six months after the City has provided written notice both certifying that the unit is available for purchase and setting the price for the BMR unit, (2) the City or its designee does not offer to purchase the BMR unit within said six months period, and complete said purchase within not more than 60 days following the end of the six month period, (3) the developer has exercised reasonable good faith efforts to obtain a qualified buyer. A qualified buyer is a buyer who meets the eligibility requirements of the BMR Housing Program and who demonstrates the ability to complete the purchase of the BMR unit. Written notice of availability shall be delivered to the City Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Separate written notice of availability shall also be delivered to the City Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025.~~

10. OCCUPANCY AND TITLE REQUIREMENTS FOR OWNER-OCCUPIED BMR UNITS

10.1 Primary Residence. The owners listed on title to the BMR property must occupy it as their primary residence and remain in residence for the duration of the Deed Restrictions (55 years). Occupancy is defined as a minimum stay of 10 months in every 12 month period. BMR owners may not terminate occupancy of the BMR property and allow the property to be occupied by a relative, friend, or tenant. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR property is not the primary place of residence of the purchaser. As necessary, the City may request that BMR owners provide evidence that their units are currently occupied by them as their primary residences. Examples of such evidence may include current copies of any of the following: homeowner's insurance, car/vehicle registration, and utility bills.

10.2 Refinancing and BMR Valuations. BMR owners may refinance the debt on their property at any time following purchase, however, they must contact the City's designated BMR Housing Program provider first, prior to a refinance or equity line. The City's BMR Housing Program provider will provide the owner with clear instructions to ensure program compliance. At that time and at any other time the owner requests it, the BMR Housing Program provider will provide the owner and/or the lender with the current BMR value of the home, in accordance with the formula specified in the Deed Restrictions. Only the City's BMR Housing Program provider can determine the appraised value of a BMR unit and it is the owner's responsibility to inform their lender that the property is a BMR unit. BMR owners are not allowed to take out loans against their property that exceed [95% combined loan to value of](#) the BMR value of the home. There is a fee for refinancing a BMR unit that is set by the City's BMR Housing Program provider.

10.3 Transfers of Title. Prior to adding an additional person to title or transferring title to the BMR unit, [including transferring title to a trust](#), BMR owners must contact the City for clear instructions to ensure program compliance.

The following transfers of title are exempt from the City's right of first refusal and do NOT re-start the 55 year deed restriction clock:

- Transfer by devise or inheritance to the owner's spouse.
- Transfer of title by an owner's death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title).
- Transfer of title to a spouse as part of divorce or dissolution proceedings.
- Transfer of title or an interest in the property to the spouse in conjunction with marriage.

Transfers by devise or inheritance (such as to a child or other family member), are permitted under certain terms and conditions identified in the Deed Restrictions. These kinds of transfers must first be reviewed and approved by the City or the BMR Housing Program provider. If the person inheriting the property meets the following terms and conditions, then that person may take title, assume full ownership, and reside in the BMR unit. ~~This would then restart the~~ [The](#) 55 year deed restriction clock [would restart when that person takes title](#). If the person inheriting the property does NOT meet the following terms and conditions they may still inherit the property but are not allowed to live there. In such case, the inheriting party must sell the property and shall be entitled to receive any proceeds from the sale after payment of sales expenses and all liens against the property. The property would then be sold by the City through the BMR Housing Program to an eligible, qualified ~~household~~ [BMR Applicant](#). For transfers of title by devise or inheritance, the inheriting party ("Transferee") must meet the following terms and conditions in order to live in the BMR unit:

- Transferee shall occupy, establish and maintain the property as the Transferee's primary residence.
- The Transferee must meet all current eligibility requirements for the BMR Housing Program, as identified at the time of transfer in the BMR Guidelines.
- The Transferee must sign a new BMR Agreement and Deed Restrictions for the property concurrently with the transfer of title to the Transferee. This restarts the 55 year clock.

~~11. PROCESS FOR RESALE OF BMR UNITS~~

~~11.1 The seller notifies the City by certified mail that he/she wishes to sell the unit. The City notifies its designee, if applicable. The unit must be provided in good repair and salable condition, or the cost of rehabilitating the unit will be reimbursed to the City out of the proceeds of the sale. The definition of "salable condition" for any given unit shall be provided on a case-by-case basis following the City's inspection of the unit, and shall be at the discretion of the City Manager or his/her designee. "Salable condition" shall refer to the general appearance, condition, and functionality of all: flooring; painted surfaces; plumbing, heating, and electrical systems; fixtures; appliances; doors; windows; walkways; patios; roofing; grading; and landscaping. In addition for each unit, the City reserves the right to withhold the cost of having it professionally cleaned from the seller's proceeds. Once cleaning is complete, the seller will be refunded any difference between the amount withheld and the actual cost to clean the unit.~~

~~11.2 When the seller notifies the City or the City's BMR Housing Program provider, and it has been determined that the unit is in good repair and salable condition, and the City has set the price for the BMR unit, then the City or the City's BMR Housing Program provider will state in writing that the 180 day period for completing the sale of the BMR unit shall commence. The price will be set using information in Sections 11.3 through 11.6 below.~~

~~11.3 The City or its designee obtains an appraisal made to ascertain the market value of the unit, giving consideration to substantial improvements made by the seller, if needed.~~

~~11.4 The City or its designee obtains figures for homeowners' dues, insurance, and taxes from the seller.~~

~~11.5 The City or its designee checks major lending institutions active in this market to ascertain current mortgage information (prevailing interest rates, length of loans available, points, and minimum down payments). Monthly housing costs are estimated.~~

~~11.6 The City or its designee establishes a sales price, based on the original selling price of the unit, depreciated value of substantial improvements made by the~~

~~seller, and 1/3 of the increase in the cost of living index for the Bay Area. The selling price is established for the unit at the appraised market value or the computed price whichever is the lower.~~

~~11.7 The City retains a realtor to facilitate the sale of the property.~~

~~11.8 Agreement is reached between seller and the City or its designee for a schedule of open houses for the unit, at the seller's convenience.~~

~~11.9 The procedure continues the same as in Sections 9.1.7—9.1.16 above, with the seller substituted for the developer.~~

~~11.10 The City or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice and the seller's release from the previous Deed Restrictions, to be recorded with the new deed to the property.~~

1211. REQUIREMENTS FOR BMR RENTAL DEVELOPMENTS

121.1 Income and Rent Standards.

121.1.1 Income Limits upon Occupancy of BMR Rental Uunits. Unless otherwise approved by the Planning Commission or City Council in the BMR Housing Agreement for the proposed project, only households having gross incomes at or below Low Income for San Mateo County, adjusted for household size, are eligible to occupy BMR rental units, either when initially rented or upon filling any subsequent vacancy. See Section 154, Table A (Below Market Rate Household Income Limits), which may be updated by City staff from time to time. Any variation in the affordability mix to assist the City in meeting its Regional Housing Needs Assessment (including very low, low or moderate income households) shall require a finding by the approving body that the mix is roughly equivalent to the provision of all of the affordable units at the low income level.

121.1.2 BMR Rent. BMR units may be rented for monthly amounts not exceeding thirty percent (30%) of the income limit for extremely low, very low, subsidized low, or low (or moderate income if approved by the Planning Commission or City Council) households adjusted for occupancy, as established from time to time by the HCD for San Mateo County. In no case shall the monthly rental amounts for BMR units exceed 75% of comparable market rate rents. The maximum rental amounts are listed in Section 154, Table B, (Maximum Monthly Housing Cost Limits for BMR Rental Uunits), which may be updated by City staff from time to time. BMR rents may be adjusted from time to time to reflect any changes to the then current Income limits.

121.1.3 Tenant Selection and Certification Procedures. Priority for occupancy of all BMR rental units shall be given to those income eligible households who meet the preference criteria defined in section ~~8.1 of~~ 8.2 of these Guidelines.

121.1.4 BMR Interest List. The qualifications of BMR rental tenants as described in Section 8.12, above, will be independently verified by the owner. The City of Menlo Park or the City's designee shall maintain a [BMR list of households interested in BMR rentals \(herein referred to as the "Interest List-"\)](#) and shall make it available to any ~~owner/developer~~ [Project Applicant](#) upon request.

121.1.5 One-Year Lease Offer. Each BMR tenant shall be offered the opportunity to enter into a lease, which has a minimum term of one year. Such offer must be made in writing. If the tenant rejects the offer, such rejection must also be in writing. A lease may be renewed upon the mutual agreement of both parties.

121.1.6 Vacation of Uunits and Re-Renting. When a BMR tenant vacates, the owner must provide notice to the City, and re-rent the unit to a qualified BMR tenant in accordance with these BMR Guidelines and the BMR Housing Agreement for the unit.

121.1.7 Annual Recertification of BMR Uunits. The City of Menlo Park or the City's BMR Housing Program provider will recertify annually, by procedures to be established in the BMR Housing Agreement, the provision of BMR rental units as agreed at the time of application for the permit. A qualified BMR tenant shall continue to qualify unless at the time of recertification, for two consecutive years, the household's income exceeds the eligibility requirements, then the tenant shall no longer be qualified. Upon the owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a BMR Uunit, and the owner shall make the next available unit, which is comparable in terms of size, features and number of bedrooms, a BMR (the "Next Available Unit Requirement"), or take other actions as may be necessary to ensure that the total required number of units are rented to qualifying BMR households. The owner shall notify the City annually if it substitutes a different unit for one of the designated BMR Uunits pursuant to this paragraph.

121.1.8 Annual Report. On an annual basis on or before July 1 of each year, the ~~developer~~ [Project Applicant](#) or subsequent owner shall submit a report (the "Annual Report") to the City which contains, with respect to each BMR unit, the name of the eligible tenant, the rental rate and the income and household size of the occupants. The Annual Report shall be based on information supplied by the tenant or occupant of each BMR unit in a certified statement executed yearly by the tenant on a form provided or previously approved by the City or designee. Execution and delivery thereof by the tenant may be required by the terms of the lease as a condition to continued occupancy at the BMR rate. In order to verify the information provided, City shall have the right to inspect the books and records of ~~developer~~ [Project Applicant](#) and its rental agent or bookkeeper upon reasonable notice during normal business hours. The Annual Report shall also provide a statement of the owner's management policies, communications with the tenants and maintenance of the BMR unit, including a statement of planned repairs to be made and the dates for the repairs.

132. EQUIVALENT ALTERNATIVES

Nothing set forth herein shall preclude the City from approving reasonably equivalent alternatives to these BMR Guidelines, including, but not limited to, in lieu fees, land dedication, off-site construction or acquisition and rehabilitation of units. Additionally, the City reserves the right to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix. Any modifications to these Guidelines shall be approved by the City Council and shall contain findings that the alternative is commensurate with the applicable requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.

143. BELOW MARKET RATE HOUSING FUND AND SEVERABILITY CLAUSE

143.1 Purpose. The City of Menlo Park Below Market Rate Housing Fund (“BMR Housing Fund”) is a separate City fund set aside for the specific purpose of assisting the development of housing that is affordable to very low, low and moderate income households. The BMR Housing Fund is generated by such income as in-lieu fees. All monies contributed to the BMR Housing Fund, as well as repayments and interest earnings accrued, shall be used solely for this purpose, subject to provisions set forth below.

143.2 Eligible Uses. The BMR Housing Fund will be used to reduce the cost of housing to levels that are affordable to very low, low and moderate income households, as defined in the Housing Element of the City's General Plan. A preference will be given to assisting development of housing for households with minor children; however, this preference does not preclude the use of funds for other types of housing affordable to households with very low, low and moderate incomes.

143.3 Eligible Uses in Support of Very Low, Low and Moderate Income Housing Development. The BMR Housing Fund may be used for, but is not limited, to the following:

- Provision of below market rate financing for homebuyers.
- Purchase of land or air rights for resale to developers at a reduced cost to facilitate housing development for very low, low or moderate income households.
- Reduction of interest rates for construction loans or permanent financing, or assistance with other costs associated with development or purchase of very low, low or moderate income housing.
- Rehabilitation of uninhabitable structures for very low, low or moderate income housing.

- On-site and off-site improvement costs for production of affordable housing.
- Reduction of purchase price to provide units that are very low, low or moderate cost.
- Rent subsidies to reduce the cost of rent for households with limited incomes.
- Emergency repair and/or renovation loan program for BMR owners of older units.
- Loan program to assist BMR condominium owners who have no other way to pay for major special assessments.
- City staff time and administrative costs associated with implementation of the BMR Housing Program.

143.4 Procedures. Requests for use of BMR Housing Fund money shall be submitted to staff for review and recommendation to the City Council. A request for funding shall provide the following minimum information:

- A description of the proposal to be funded and the organizations involved in the project. Public benefit and relevant Housing Element policies and programs should be identified.
- Amount of funding requested.
- Identification of the number of very low, low and moderate income households to be assisted and the specific income range of those assisted.
- Reasons why special funding is appropriate.
- Identification of loan rate, financial status of applicants, and source of repayment funds or other terms.
- Identification of leverage achieved through City funding.

143.5 Annual Report. At the close of each fiscal year, City staff shall report on activity during the previous year (deposits and disbursements) and available funds. The City's auditor shall periodically examine this report and all other BMR Housing Fund financial records, and shall report the results of this examination. In addition, City staff shall report annually on activities assisted by monies from the BMR Housing Fund. The report will review how the program is serving its designated purpose. It will include a discussion of the timely use of funds for actions taken to provide BMR housing units, a review of management activities, and staff recommendations for policy changes to improve the program's performance. In addition, it will provide, for each activity,

information corresponding to that required of funding requests listed above in Section 13.4.

143.6 Severability Clause. If any one or more of the provisions contained in the BMR Guidelines shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in the BMR Guidelines, and the BMR Guidelines shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

143.7 Administrative Updates. Future updates to tables in Section ~~15~~14 may be made annually without City Council approval when data becomes available from the appropriate state and federal agencies.

154. TABLES

Table A

Below Market Rate Household Income Limits

2021~~3~~ Income Limits

Area Median Income: \$149~~75~~,600 (for a household of 4 persons) effective April~~26~~ June 6, 2021~~3~~

Income Category	Household Size							
	1	2	3	4	5	6	7	
Extremely Low Income	38400 3 9150	43850 4 4750	49350 5 0350	548 00	59200 5 5900	63600 6 0400	648 50	669350 8000
Very Low Income	639 52 50	731 46 00	822 50 3900	913 50	98700 9 3200	106000 100700	108 150	113300 115600
Low Income	1024 54 00	117100 119300	131750 134200	146 350	158100 149100	169800 161050	173 000	118150 118490 0
Median Income	1047 22 5000	1119 74 0000	1346 50 157500	149 600	1617 50 00	1735 50 189000	203 000	1855 50 217000
Moderate Income	1256 50 147000	143600 168000	161550 189000	179 500	193850 210000	208 226 800	243 600	222600 260400

<https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf> www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf

Table B

Maximum Affordable Rent Payment

2021~~3~~ Rent Limits

Area Median Income: \$149~~75~~,600 (for a household of 4 persons) effective April~~26~~ June 6, 2021~~3~~

Maximum Rents	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Very Low Income	1598	1713	2056	2375	2650
Low Income	2561	2738	3293	3805	4245
Moderate Income	3141	3365	4038	4666	5205

NOTE 1: The maximum rent is based on the following household size for each unit: Studio: 1 person; 1-bedroom: 1.5 persons; 2-bedroom: 3 persons; 3-bedroom: 4.5 persons; 4-bedroom: 6 persons.

NOTE 2: Per the City of Menlo Park BMR Guidelines (Section 4.1.2), the monthly rental amounts for BMR unit shall not exceed seventy-five percent (75%) of comparable market rate rents. Additional calculations may be necessary for each project to ensure BMR rents comply with this requirement.

Table C

Occupancy Standards

~~Occupancy~~ [Per the California Department of Housing and Community Development, occupancy](#) of BMR units shall be limited to the following:

<u>Unit Size</u>	<u>Number of Persons</u>	
	<u>Minimum</u>	<u>Maximum</u>
Studio	1	2
1	1	3 <u>2</u>
2 <u>2</u>	2 <u>2</u>	5 <u>3</u>
3	3	7 <u>4</u>
4 <u>4</u>	4 <u>4</u>	9 <u>5</u>

Note: The City Manager or his/her designee has the discretion to vary the persons per unit for unusually large units, not to exceed one person per bedroom, plus one.

Table D

Commercial In-Lieu Fees for July 1, 202~~1~~3 – June 30, 202~~2~~4

Group A uses are Research & Development and Office.	Fee: \$ 20 <u>1.46</u> 5 per square foot of gross floor area.
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Group B uses are all other Commercial and Industrial Uses not in Group A.	Fee: \$11. 40 <u>75</u> per square foot of gross floor area.
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Commercial In-Lieu Fees are adjusted annually on July 1. Annual fee adjustments are posted on the City's website.



STAFF REPORT

City Council

Meeting Date:

12/5/2023

Staff Report Number:

23-259-CC

Public Hearing:

Introduce and waive the first reading of an ordinance amending the City's comprehensive master fee schedule for the city manager's office, community development, library and community services, and public works departments, and Menlo Park Municipal Water

Recommendation

Staff recommends that the City Council introduce and waive the first reading of an ordinance (Attachment A) amending the City's master fee schedule to incorporate proposed changes in fees to become effective 30 days after the ordinance is adopted, or as otherwise noted or required by statute for the following departments: city manager's office, community development, library and community services, public works, and Menlo Park Municipal Water (MPMW).

Policy Issues

The City Council adopts fees to recover the cost for services to minimize the demand on general taxes for services that have an individual benefit. To guide the establishment of fees, the City Council last adopted revisions to the user fee cost recovery policy Aug. 23, 2022 (Attachment B).

Background

The master fee schedule reflects fees charged by all city departments. Amendments typically occur annually in order for fees to reflect the current costs of providing services; to bring fees closer to full cost recovery targets; to add new fees when applicable for new city services; and/or to eliminate fees for discontinued services. The most recent updates to the master fee schedule were approved by the City Council for fees effective October 2022 at the public hearing held Aug. 23, 2022. The most recent cost of services study was presented to the City Council at a study session Feb. 13, 2018, which informs the structure of fees in the current and proposed master fee schedule.

The City imposes different categories of fees with different requirements regarding how fees are set or changed:

- Fees and charges for use of facilities, services and access to property: These fees are elective on the part of the customer/user. The purpose of these fees and charges is to generate revenues for access or use of the service or facility.
- Property development processing and impact fees: These include fees for building and use permits, variances, building inspections, map applications and planning services, and impact and capacity fees. These fees cannot exceed the reasonable cost of providing the service or providing the facilities necessary to serve the new development. Any new fee or increase to existing fees in this category can be effective no sooner than 60 days following City Council approval.

- Fees relating to public records act requests and copies of documents and reports: These fees are limited to the actual cost of copying (not including personnel time to copy) or the statutory amount, whichever is less. There are no changes recommended for any fees in this category at this time.

The recommendations presented by staff in this report are primarily re-clarifications/modifications of existing fee descriptions; adding fees for services previously presented for consideration by the City Council, but not approved at a public hearing (those fees have not been imposed or collected); and fee level adjustments based on changes to the User Fee Policy as revised by City Council Aug. 23, 2022.

The City Council adopted the fiscal year 2023-24 budget on June 27 (Attachment C).

Analysis

City Manager's Office – Sustainability

Electric vehicle (EV) charging stations

The City began administering EV charging fees in September 2022. The fees allow the City to recover the capital and operational costs of the stations as well as support charging station turnover for other EV drivers that need charging. The access fee is intended to recover the full costs of the charging stations, including installation, maintenance, extended warranty and network access. This enables the City to fund additional charging stations or pay for indirect costs to operate the chargers.

On Aug. 16, 2023, the Environmental Quality Commission directed staff to explore removing some of the fees from city-owned charging stations. Staff recommends a reduction to the access fee from \$1.00 to \$0.50. Based on the average number of monthly sessions to date (2016 – 2023) - 1,150 sessions - it is estimated that the adjusted access fee will generate approximately \$7,000 annually. This would result in a payoff of two EV charging stations within a 3-year period. The estimated lifetime of chargers is typically seven to 10 years.

Community Development

Building permits

Staff recommends the addition of several building permits to help clarify types of construction activity. These include fees for water feature/fountains, antennas on existing structures, handrails/guardrails, electric heat pumps, heat pump water heaters, EV car chargers, battery storage and others. These recommendations are listed in the Community Development section of Attachment D. As part of the implementation of Climate Action Plan (CAP) strategy No. 1: electrify 95 percent of existing buildings, the City Council adopted a permit fee waiver for electrification projects, and the City does not currently collect plan check or permit fees for building permits related to the electrification of existing buildings. Permit data indicates estimated revenue loss from this program between \$80,000 and \$120,000 per year.

Library and Community Services

Belle Haven Community Campus

Staff recommends new and/or revised fees related to the Belle Haven Community Campus. These include fees for facility rentals, recreation classes, youth programs and camps, and related services. The recommended fees at Belle Haven Community Campus are designed to be inclusive and equivalent to fees at corresponding facilities on the Burgess Park campus. New hyperlocal resident fee rates, described later in this section, are designed to prioritize neighborhood residents' use of the new facility.

Aquatics

On Sept. 12, City Council authorized a new aquatics operator agreement effective Oct. 1. The new

agreement stipulates that aquatics user fees shall be subject to City Council approval in the Master Fee Schedule no later than six months after the agreement's effective date. Therefore, the recommended aquatics fees in Attachment A would take effect no later than April 1, 2024, or upon the opening of Belle Haven Community Campus, whichever comes first. The recommended aquatics fees include a proposed schedule for future annual fee increases that would phase in subsequent escalations in non-resident fees over time. The recommended aquatics fees are equivalent at both aquatics centers.

Athletic fields

The recommended fees for athletic fields reflect updated subdivisions of field spaces at Burgess Park, La Entrada Middle School, Jack Lyle Park and Nealon Park to more evenly and equitably distribute spaces and corresponding fees based on size of each field subdivision. City staff consulted with field user groups in regard to updating the subdivisions. The updated subdivisions are included for reference in Attachment E. The recommended fees also include new rates for running track rentals and for posting banners and signage on City athletic facilities.

Commercial fee rate

This new fee rate would apply to for-profit businesses using City facilities, and would be primarily applied to facility rentals. The commercial fee is generally 150% of the resident fee unless otherwise specified.

Cost adjustments

The recommended fees include modest adjustments to various existing fees to align with inflationary cost increases to maintain cost recovery.

Early childhood development

The recommended fees include new half-day toddler and preschool rates at Menlo Children's Center in response to interest from families seeking flexible care options before or after transitional kindergarten programs that only cover half days mornings or afternoons.

Hyperlocal resident fee rate

This new fee rate would apply to residents who live or attend K-12 school within the neighborhood service area of the Belle Haven Community Campus. The neighborhood service area can be defined as the geographic area of incorporated City of Menlo Park extending from Bay Road to San Francisco Bay. This service area encompasses all of District 1 and portions of District 2 near the pedestrian and bicycle overcrossing at US-101. The intent of the hyperlocal resident rate is to prioritize neighborhood access and use of the Belle Haven Community Campus, in recognition of historic inequity and generational harm caused by redlining, freeway construction and property loss, and other discriminatory practices of the past that uniquely affected the neighborhoods in the vicinity of Belle Haven Community Campus. The hyperlocal resident fee would apply to qualifying users at the new facility and is generally 65% of the resident fee unless otherwise specified.

Nonprofit fee rate

This new fee rate would apply to nonprofits that primarily serve Menlo Park residents and would be primarily applied to facility rentals. The nonprofit fee is generally 65% of the resident fee unless otherwise specified.

Recreation classes and camps

The recommended fees establish a basic framework and ranges for the user fees that may be charged for recreation classes and camps in City recreation facilities. Within the established fee range, fees for specific classes and camps would vary depending on the content, duration and other factors. The user fees for equivalent or comparable class content would apply the same to classes in all City recreation facilities.

Tennis and pickleball court fees

On Sept. 27, the Parks and Recreation Commission indicated strong interest in eliminating tennis key fees while preserving court reservation fees. The recommended fees eliminate tennis key fees while preserving reservation fees. Tennis and pickleball courts would be open for drop-in play with no fee, similar to most other nearby jurisdictions. Court reservations and schedules would be managed and made visible to the public on the City’s new online recreation platform.

Public Works

Newsracks

Newspaper Racks (newsracks) are a vital part of the streetscape of Menlo Park and provide an intrinsic value to its visitors and residents. Over the past few years, the City received complaints regarding the proliferation and deterioration of newsracks, especially in the downtown area. To address these concerns, the City Council approved a newsrack ordinance (Menlo Park Municipal Code, Chapter 13.28) effective Jan. 1, 2021. The ordinance regulates newsracks by establishing a permit process, standards for maintenance and display, size and design standards, standards for placement and location, and an enforcement mechanism for abandoned or unmaintained newsracks throughout Menlo Park.

During a public hearing on Feb. 9, 2021, the City Council adopted an ordinance to establish enforcement fees (impound/disposal of newsracks and appeals/protests), but decided to waive new and renewal permit fees. The City Council instructed staff to revisit these fees during the next master fee schedule update in 2023.

In 2021, the City removed all newsracks in poor condition and those that did not meet the standards of the ordinance. Additionally, staff ensured that all existing newsracks in the public right of way received a permit. Staff continue to process permit renewal applications every two years per the ordinance, which includes inspecting newsracks and affixing a permit sticker. Staff rarely receive new permit applications. Staff recommends continuing to waive new and renewal permit fees, as well as, maintain 100% cost recovery for newsrack enforcement fees. These fees were updated based on Finance’s FY 2023-24 hourly staff billing rates. See Table 1 below for a summary of these fees.

Table 1: Proposed Newsrack Fees

Fee Type	Current Fee	Proposed Fee	Percentage Change
New Permit	\$0	\$0	0%
Renewal Permit	\$0	\$0	0%
Appeal	\$465	\$550	18%
Impound	Cost + 25%	Cost + 25%	0%
Protest	\$465	\$550	18%
Disposal	Cost + 25%	Cost + 25%	0%

Streetaries

On Aug. 29, the City Council adopted a resolution establishing fee amounts for permit applications of streetary outdoor dining areas. Staff recommends including these fees in the master fee schedule. The proposed Annual Encroachment Lease Fee is designed to catalyze outdoor business development. Neighboring jurisdictions, such as Redwood City, charge over \$10 per square foot for a similar program.

Given the market rate, a \$10 per square foot lease fee is justifiable for Menlo Park. However, as a matter of policy to encourage and incentivize outdoor businesses, staff recommends the more modest \$7 per square lease.

Fee Type	1st year	Annual Renewal
Streetary permit - parklets (plus sidewalk cafes where applicable)	\$1,725	\$250
Streetary permit - sidewalk cafes (standalone)	\$810	\$250
Streetary Annual Encroachment Lease Fee	\$7.00 per square foot	\$7.00 per square foot

Menlo Park Municipal Water (MPMW)

Water consumption rates are set by a separate process in conformance with Proposition 218 and are not proposed for further changes in the master fee schedule. Non-consumption water fees are established through the annual Master Fee Schedule process. A detailed description of each fee is explained further below. Table 3 below summarizes the current fees, proposed fees, and percentage change in fees charged by Menlo Park Municipal Water for ancillary services like temporary construction meters, service requests, meter tampering, etc. The proposed fees will be newly adopted, and the existing fees remain in effect until the new fees become effective. These fees will be increased over a multi-year period, to reflect cost recovery for staff, and the City Council will be authorizing each step increase in subsequent master fee schedules. Changes to these fees do not impact the General Fund.

Fee Type	Current Fee	Proposed Fee	Percentage Change ¹
Disconnect Door Tag Fee	\$ 25	\$31	23%
Reconnection Fee – per meter (for services closed for non-payment):			
During business hours (7:30 a.m.-4 p.m.)	\$ 108	\$140	29%
Outside business hours (after 4 p.m. and weekends)	\$ 270	\$338	25%
Restricted access to water meter (for meter reading or maintenance)	\$ 100	\$123	23%
Service requests – per hour (customer requested):			
During business hours (7:30 a.m.-4 p.m.)	\$ 100	\$134	34%
Outside business hours (after 4 p.m. and weekends)	\$ 162	\$266	64%
Meter tampering fee	\$ 100	\$108	8%
Deposit for temporary construction meter	\$ 3,000	\$ 3,442	15%
Backflow penalty for non-compliance with ordinance	\$130	\$130	0%
Backflow device test fee:			
During business hours (7:30 a.m.-4 p.m.)	\$ 108	\$140	29%
Outside business hours (after 4 p.m. and weekends)	\$ 270	\$338	25%
Fire flow test, including report	\$ 405	\$473	15%
Additional test report copy	\$ 45	\$45	0%

NOTE: Proposed fees are based on fiscal year 2023-24 billing rates: Water System Operator = \$125 per hour, Chief Water Operator = 25% of total maintenance cost, and Management Analyst II = 25% of total maintenance cost.

¹Most fees have not been adjusted since 2016.

Disconnect Door Tag Fee

When a water customer is delinquent on their bill, they receive a mailed notice and then a phone call if payment is still not received. If payment is not made within 49 days from the original due date, the customer receives a final notice door tag at the service address, which gives the customer 15 additional days to pay in full or make payment arrangements. If the customer takes no action, water service is disconnected. The \$25 fee was established in 2016 to provide some cost recovery, and it has not increased since then. Staff recommends a \$31 fee, based on a quarter-hour of staff time at the updated hourly billing rate of a water system operator plus administration for greater cost recovery.

Reconnection Fee

The \$108 fee was established in 2016 based on one hour of maintenance staff time. Staff recommends a \$140 fee during business hours to match the updated hourly billing rate for one hour of a water system operator plus administration for greater cost recovery.

Outside of regular business hours, which includes evenings, weekends and holidays, it takes approximately three hours, at overtime rates, for a water system operator to report to the Corporation Yard, pick up a maintenance vehicle and equipment, drive to the service address, reconnect the water meter, return to the maintenance yard, and return home. The \$270 after-hours reconnection fee was established in 2016. Staff recommends a \$338 fee to match the updated hourly billing rate for a water system operator plus administration for greater cost recovery.

Restricted Access to Water Meter

Every month, the water meter reader requires physical access to water meters in order to record meter readings for billing, and a water system operator periodically needs access to inspect and maintain meters. When access is restricted by locked gates, vehicles, vegetation, pets or other obstacles, staff advises the customer to remove the restriction. If, after notification, the customer has not taken corrective action to ensure access, the penalty fee is applied to the water bill monthly until access is restored. The \$100 fee was established in 2016. Staff recommends a \$123 fee to match the updated hourly billing rate for one hour of a water system operator plus administration for greater cost recovery.

Service Requests

As requested by customers, a water system operator will visit customer homes or businesses to provide assistance (i.e., locate water meters, detect water leaks, turn off temporary meters, etc.). Typically, issues are resolved in one or two visits. However, there are instances when customers repeatedly request services on a reoccurring issue. The first two visits, per issue, per fiscal year, are offered complimentary. Thereafter, the customer would be subject to a fee if the issue was determined not to be a failure in the water system. The \$100 fee was established in 2016 based on one hour of maintenance staff time. Staff recommends a \$134 fee during business hours to match the updated hourly billing rate for one hour of a water system operator plus administration for greater cost recovery.

Outside of regular business hours, which includes evenings, weekends and holidays, it takes approximately three hours, at overtime rates, for a water system operator to report to the Corporation Yard, pick up a maintenance vehicle and equipment, drive to the service address, perform the requested service, return to the maintenance yard, and return home. The \$162 after-hours fee was established in 2016. Staff recommends a \$266 fee after-hours to match the updated hourly billing rate for a water system operator for three hours at overtime rate, plus administration for greater cost recovery.

Meter Tampering Fee

Some customers do not contact City staff and instead turn on/off the water meter or otherwise tamper with the water meter directly. Sometimes the customer's action results in damage to the meter and/or the

connecting pipes. The \$100 penalty fee was established in 2016. Staff recommends a \$108 penalty fee as well as adding costs for one hour of staff time and materials for greater cost recovery.

Deposit for temporary construction meter

The City provides temporary water meters, primarily for construction purposes, that allow connections to the water system via fire hydrants. Customers pay a deposit and are billed monthly for the meter rental and for metered water use. The \$3,000 deposit fee was established prior to 2016. Staff recommends a \$3,442 deposit to help cover two hours of maintenance staff time, administration costs, and the current purchase cost of a new 3" water meter (\$3,640).

Backflow Device Test Fee

Backflow devices are an integral part of the City's cross-connection control program, as they help ensure that contaminants do not enter the potable water system. They are owned by the customer and must be tested annually to ensure that they are working properly. Most businesses and some residential customers are required to have these devices. San Mateo County Environmental Health manages the City's cross-connection program and notifies customers when annual testing is due.

Per Chapter 7.28 of the Menlo Park Municipal Code, the City may test assemblies that are out of compliance with the annual test requirement. The \$108 backflow device test fee was established in 2016. Staff recommends a \$140 backflow device test fee for staff to perform the test during business hours, to match the updated hourly billing rate for one hour of a water system operator plus administration for full cost recovery.

The testing of devices is anticipated to occur during regular business hours and requires a shutdown of the water service. However, some customers are unable to have a water service shutdown during regular business hours, so staff would need to perform the testing after hours. The after-hours \$270 backflow device test fee was established in 2016. Staff recommends a \$338 fee after-hours to match the updated hourly billing rate for three hours of a water system operator plus administration for greater cost recovery.

Fire Flow Test

Originally established in 2008, maintenance staff perform fire flow tests upon request to confirm flow rates at specific hydrant locations for construction purposes. The fire flow test fee increased from \$270 to \$405 at the public hearing held Aug. 23, 2022 to include three hours of staff time. Staff recommends a \$473 fire flow test fee to cover four hours of maintenance staff time plus administration for greater cost recovery.

Impact on City Resources

User fees provide a significant source of cost recovery for the City. The recommended revisions to the master fee schedule will help in maintaining service levels in the current fiscal year.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 10 days

prior to the meeting, pursuant to the requirements of California Government Code §66018 and §6062a, Additionally, the public hearing notice was published in the Examiner Nov. 22, 2023.

Attachments

- A. Ordinance
- B. User Fee Cost Recovery Policy
- C. Hyperlink – Fiscal year 2023-24 budget: menlopark.gov/budget
<https://menlopark.gov/Government/Departments/Administrative-Services/Finance/City-budget>
- D. Master fee schedule recommendations
- E. Athletic field subdivisions

Report prepared by:
Adrian Patino, Management Analyst II

Report reviewed by:
Rani Singh, Interim Finance and Budget Manager
Brittany Mello, Administrative Services Director

ORDINANCE NO. XXXX**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, UPDATING CERTAIN FEES AND CHARGES FOR THE CITY MANAGER'S OFFICE, COMMUNITY DEVELOPMENT, LIBRARY AND COMMUNITY SERVICES AND PUBLIC WORKS DEPARTMENT, AND ADOPTING CERTAIN FEES AND CHARGES FOR MENLO PARK MUNICIPAL WATER**

WHEREAS, the City has the authority to impose fees, charges, and rates to offset the costs for municipal services and regulatory programs under its police powers under California Constitution Article XI section 7; and

WHEREAS, the City Council has, through prior actions, adopted various fees and charges requested by individual City Departments; and

WHEREAS, pursuant to Resolution No. 6768, adopted on August 23, 2022, the City Council amended and adopted a fee schedule for the City of Menlo Park's Administrative Services, City Manager's Office, Community Development, Library and Community Services, Police, Public Works Departments, and Menlo Park Municipal Water; and

WHEREAS, the Proposed User and Regulatory Fees and the Proposed Rental Fees (collectively "Proposed Fees") are both set forth in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, it is the general policy of the City to charge for the full costs of services provided by City Staff when such services benefit individual users rather than members of the community as a whole; and

WHEREAS, to better achieve the City's cost recovery goals, the City Council deems it advisable and in the best interests of the City to adopt and update certain fees, included in the City's Master Fee Schedule; and

WHEREAS, if enacted, the Taxpayer Protection and Government Accountability Act will require all fees and charges, adopted after January 1, 2022, to be adopted by the City Council by ordinance; and

WHEREAS, the City Council may adopt any fee or charge by ordinance if it is permitted to adopt the fee or charge by resolution; and

WHEREAS, the City Council desires to comply with the Taxpayer Protection and Government Accountability Act to ensure that the Proposed Fees will remain valid in the event the Act is adopted; and

WHEREAS, the Proposed Fees are "exempt charges," within the meaning of the Taxpayer Protection and Government Accountability Act because they are (1) reasonable charges for specific local government services or products provided directly to the payor that are not provided to those not charged, and they do not exceed the actual costs to the local government of providing the service or product; (2) charges for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, or the administrative enforcement and adjudication

thereof; or (3) reasonable charges for entrance to or use of local government property, or the purchase, rental, or lease of local government property; and

WHEREAS, Government Code section 66016 applies to the adoption or increase of fees for zoning variances, zoning changes, use permits, building inspections, building permits, filing and processing applications and petitions filed with the LAFCO, the processing of subdivision maps, and planning services; and

WHEREAS, Government Code section 66018 applies to the adoption or increase of fees to which a specific statutory notice requirement does not apply; and

WHEREAS, pursuant to Government Code sections 66016 and 66018 the enactment or increase in any fees to be charged for services must be adopted by the City Council by ordinance or resolution, after providing notice and holding a public hearing; and

WHEREAS, pursuant to Government Code section 66016, the data required to be made available to the public prior to increasing the amount of the fees by this ordinance was made available for public review at least ten (10) days prior to the date of this meeting; and

WHEREAS, notice of a public hearing on the new and increased user fees was published in accordance with Government Code sections 66018 and 6062a; and

WHEREAS, a duly noticed public hearing before the City Council was held on _____, 2023 at which public testimony was received and duly considered on the Proposed Fees; and

WHEREAS, pursuant to Government Code sections 66016 and 66017, fees imposed on a development project that apply to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall not take effect until at least sixty (60) days have passed since the final action on the adoption or increase of the fee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENLO PARK DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by reference and each is relied upon independently by the City Council for its adoption of the Ordinance.

Section 2. The Proposed Fees, set forth in Exhibit A, which is attached hereto and incorporated herein by reference, are hereby approved and adopted.

Section 3. Commencing on July 1, 2024 and on July 1 of each fiscal year thereafter, the Proposed Fees, shall be administratively revised and increased annually based on changes in City hourly rates. Notwithstanding the foregoing, in no event shall the annual administrative revisions described in this Section 3 apply to any fees and charges established by other agencies or as otherwise may be prohibited by applicable law. The proposed changes must be approved by the City Council.

Section 4. If there are conflicts between the Proposed Fees adopted in this Ordinance and the fees adopted by any prior resolution or fee schedule, the Proposed Fees adopted pursuant to this Ordinance shall control. This Ordinance does not supersede any previous resolution or ordinance setting fees that are not included in Exhibit A to this Ordinance.

Section 5. Pursuant to Government Code section 66017, the Proposed Fees adopted in this Ordinance shall go into effect 30 days after the ordinance is adopted, or otherwise noted or required by the statute for the following departments: city manager’s office, community development, library and community services, public works, and Menlo Park Municipal Water (MPMW). . Once effective, the Proposed Fees shall be incorporated into the City’s Master Fee Schedule.

Section 6. If any action, subsection, sentence, clause or phrase of this Ordinance or the fees levied by this Ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Ordinance, or the fees levied by this Ordinance that can be given effect without the invalid provisions. All other fees contained in the Master Fee Schedule, which were not changed or eliminated by this amendment, remain as adopted.

Section 7. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”). This action is not a project within the meaning of the CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves the adoption or amendment of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a “project” under CEQA. Therefore, approval of the fees and/or charges is not a “project” for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a “project” under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

Section 8. The Proposed Fees, set forth in Exhibit A, may be revised, amended, or updated from time to time by resolution or ordinance of the City Council.

Section 9. This Ordinance shall be published once, in full or in summary form, after its final passage, in a newspaper of general circulation, published, and circulated in the City of Menlo Park, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those City Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of Menlo Park, County of San Mateo, State of California.

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INTRODUCED on the fifth day of December, 2023.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the _____ day of _____, _____, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Jen Wolosin, Mayor

ATTEST:

Judi A. Herren, City Clerk

Exhibits:

A. Master fee schedule

EXHIBIT A

Streetaries

Streetary Fees		
Fee Title	1st year	Annual Renewal
Streetary permit - parklets (plus sidewalk cafes where applicable)	\$1,725	\$250
Streetary permit - sidewalk cafes (standalone)	\$810	\$250
Streetary Annual Encroachment Lease Fee	\$7.00 per square foot	\$7.00 per square foot

Newsracks

Proposed Newsrack Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
New Permit	\$0	\$0	0%
Renewal Permit	\$0	\$0	0%
Appeal	\$465	\$550	18%
Impound	Cost + 25%	Cost + 25%	0%
Protest	\$465	\$550	18%
Disposal	Cost + 25%	Cost + 25%	0%

Menlo Park Municipal Water (MPMW)

Proposed Changes to Menlo Park Municipal Water Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Disconnect Door Tag Fee	\$ 25	\$31	23%
Reconnection Fee – per meter (for services closed for non-payment):			
During business hours (7:30am-4:00pm)	\$ 108	\$140	29%
Outside business hours (after 4pm and weekends)	\$ 270	\$338	25%
Restricted access to water meter (for meter reading or maintenance)	\$ 100	\$123	23%
Service requests – per hour (customer requested):			
During business hours (7:30am-4:00pm)	\$ 100	\$134	34%
Outside business hours (after 4pm and weekends)	\$ 162	\$266	64%
Meter tampering fee	\$ 100	\$108	8%
Deposit for temporary construction meter	\$ 3,000	\$ 3,442	15%
Backflow penalty for non-compliance with ordinance	\$130	\$130	0%
Backflow device test fee:			
During business hours (7:30am-4:00pm)	\$ 108	\$140	29%
Outside business hours (after 4pm and weekends)	\$ 270	\$338	25%
Fire flow test, including report	\$ 405	\$473	17%
Additional test report copy	\$ 45	\$45	0%

Electric Vehicle Charging

Proposed Electric Vehicle Charging Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Access Fee	\$1.00	\$0.50	-50%

Community Development – Building, Miscellaneous Construction

Proposed Miscellaneous Construction Fees			
Fee Title		Proposed Plan Check Fee	Proposed Permit Fee
Accessory Structures			
Water feature/ fountain - built in		\$238	\$327
Antennas on an existing tower		\$230	\$250
Alteration For Residential Structures			
Handrail / Guardrail		\$168	\$220

Community Development – Building, Mechanical

Proposed Mechanical Fees			
Fee Title		Proposed Plan Check Fee	Proposed Permit Fee
Heating			
Mini Splits		\$119	\$152
Package Units		\$119	\$152
Electric Heat Pump Furnace / Air Conditioner		\$110	\$208
Cooling			
Chiller		\$198	\$240

Community Development – Building, Electrical

Proposed Electrical Fees		
Fee Title	Proposed Plan Check Fee	Proposed Permit Fee
Services		
Electrical Service or Switch Gear w/ New Pedestal	\$210	\$224
Conduits, Conductors, Switches, Outlets, and Fixed Lighting		
EV Car Charger (Residential) 1 - 10 units	\$71	\$93
EV Car Charger (Non residential) 1 - 10 units	\$143	\$157
Battery Storage	\$84	\$88

Community Development – Building, Plumbing

Proposed Plumbing Fees		
Fee Title	Proposed Plan Check Fee	Proposed Permit Fee
Water Heaters		
Heat Pump Water Heater	\$124	\$192

Library and Community Services – Recreation and Sports

Library and Community Services - Recreation and Sports Fees	
Fee Title	Proposed Fee
Recreation classes (fees vary by class content, duration, and other factors) per hour	
Resident	\$0-65
Non-Resident	\$5-100
Hyperlocal	\$0-20
Recreation camps (fees vary by camp content, duration, and other factors) per hour	
Resident	\$0-65
Non-Resident	\$5-100
Hyperlocal	\$0-20
Teen program	

Library and Community Services - Recreation and Sports Fees	
Fee Title	Proposed Fee
Daily	\$5
Monthly	\$12
Annual	\$70
Private or Drop-in Insurance fee	\$1

Library and Community Services – Meeting room rentals

Proposed Library and Community Services – Meeting Room Rentals Fees Arrillaga Family Recreation Center – Weekends (Friday evening, Saturday, Sunday)			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Sequoia Room (per hour)			
Resident	\$212	\$223	5%
Non-resident	\$286	\$300	5%
Commercial	-	\$600	-
Large Patio (per hour)			
Resident	\$212	\$223	5%
Non-resident	\$286	\$300	5%
Commercial	-	\$600	-
Elm Room (per hour)			
Resident	\$79	\$83	5%
Non-resident	\$106	\$111	5%
Cypress Room (per hour)			
Resident	\$79	\$83	5%
Non-resident	\$106	\$111	5%
Maple Room (per hour)			
Resident	\$106	\$111	5%
Non-resident	\$143	\$150	5%
Willow Room (per hour)			
Resident	\$53	\$56	5%

Proposed Library and Community Services – Meeting Room Rentals Fees Arrillaga Family Recreation Center – Weekends (Friday evening, Saturday, Sunday)			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Non-resident	\$74	\$78	5%
Oak Room (per hour)			
Resident	\$79	\$83	5%
Non-resident	\$106	\$111	5%
Juniper Room (per hour)			
Resident	\$79	\$83	5%
Non-resident	\$106	\$111	5%
Small Patio – additional charge with rental of Oak or Elm Rooms (per hour)	\$53	\$56	5%
Kitchen (per hour)			
Resident	\$42	\$44	5%
Non-resident	\$58	\$61	5%

Proposed Library and Community Services – Meeting Room Rentals Fees Arrillaga Family Recreation Center – Weekdays (Monday through Thursday, and Friday morning/afternoon)			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Sequoia Room (per hour)			
Resident	\$159	\$167	5%
Non-resident	\$215	\$226	5%
Commercial	-	\$450	-
Large Patio (per hour)			
Resident	\$159	\$167	5%
Non-resident	\$215	\$226	5%
Commercial	-	\$450	-
Elm Room (per hour)			
Resident	\$58	\$61	5%
Non-resident	\$79	\$83	5%

**Proposed Library and Community Services – Meeting Room Rentals Fees
 Arrillaga Family Recreation Center –
 Weekdays (Monday through Thursday, and Friday morning/afternoon)**

Fee Title	Current Fee	Proposed Fee	Percentage Change
Cypress Room (per hour)			
Resident	\$58	\$61	5%
Non-resident	\$79	\$83	5%
Maple Room (per hour)			
Resident	\$79	\$83	5%
Non-resident	\$106	\$111	5%
Willow Room (per hour)			
Resident	\$37	\$39	5%
Non-resident	\$53	\$56	5%
Oak Room (per hour)			
Resident	\$58	\$61	5%
Non-resident	\$79	\$83	5%
Juniper Room (per hour)			
Resident	\$58	\$61	5%
Non-resident	\$79	\$83	5%
Small Patio – additional charge with rental of Oak or Elm Rooms (per hour)	\$53	\$56	5%
Kitchen (per hour)			
Resident	\$42	\$44	5%
Non-resident	\$58	\$61	5%
Commercial	-	\$76	-

Proposed Library and Community Services – Meeting Room Rentals Fees Belle Haven Community Campus – Weekends (Friday evening, Saturday, and Sunday)	
Fee Title	Proposed Fee
Large event room – full room (per hour)	
Resident	\$223
Non-Resident	\$300
Hyperlocal	\$125
Commercial	\$600
Large event room – half room + terrace (per hour)	
Resident	\$111
Non-Resident	\$150
Hyperlocal	\$65
Commercial	\$300
Prep kitchen (per hour)	
Resident	\$44
Non-Resident	\$60
Hyperlocal	\$25
Commercial	\$120
In-house catering service	Varies (100% of cost)
Gymnasium (per hour)	
Resident	\$88
Non-Resident	\$120
Hyperlocal	\$50
Commercial	\$250
Makerspace + terrace (per hour)	
Resident	\$111
Non-Resident	\$150
Hyperlocal	\$65
Commercial	\$300
Flex classroom (per hour)	
Resident	\$83
Non-Resident	\$111

Proposed Library and Community Services – Meeting Room Rentals Fees Belle Haven Community Campus – Weekends (Friday evening, Saturday, and Sunday)	
Fee Title	Proposed Fee
Hyperlocal	\$40
Movement Studio (per hour)	
Resident	\$83
Non-Resident	\$111
Hyperlocal	\$40

Proposed Library and Community Services – Meeting Room Rentals Fees Belle Haven Community Campus – Weekdays (Monday through Thursday, and Friday morning/afternoon)	
Fee Title	Proposed Fee
Large event room – full room (per hour)	
Resident	\$167
Non-Resident	\$226
Hyperlocal	\$85
Commercial	\$500
Large event room – half room + terrace (per hour)	
Resident	\$85
Non-Resident	\$115
Hyperlocal	\$50
Commercial	\$230
Prep kitchen (per hour)	
Resident	\$30
Non-Resident	\$40
Hyperlocal	\$15
Commercial	\$80
In-house catering service	Varies (100% of cost)
Gymnasium (per hour)	
Resident	\$88
Non-Resident	\$120
Hyperlocal	\$50

Proposed Library and Community Services – Meeting Room Rentals Fees Belle Haven Community Campus – Weekdays (Monday through Thursday, and Friday morning/afternoon)	
Fee Title	Proposed Fee
Commercial	\$250
Makerspace + terrace (per hour)	
Resident	\$85
Non-Resident	\$115
Hyperlocal	\$50
Commercial	\$230
Flex classroom (per hour)	
Resident	\$61
Non-Resident	\$83
Hyperlocal	\$35
Movement Studio (per hour)	
Resident	\$61
Non-Resident	\$83
Hyperlocal	\$35

Proposed Library and Community Services – Meeting Room Rentals Fees Arrillaga Family Gymnasium			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Court Rental fee - Arrillaga Gym only (per hour)			
Resident	\$84	\$88	5%
Non-resident	\$114	\$120	5%
Commercial	-	\$250	-
Gymnastics Floor (per hour)			
Resident	\$170	\$179	5%
Non-resident	\$210	\$221	5%
Fitness Room (per hour)			
Resident	\$27	\$28	5%
Non-resident	\$37	\$39	5%

Proposed Library and Community Services – Meeting Room Rentals Fees Arrillaga Family Gymnasium			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Multi-Purpose Room (per hour)			
Weekday – Resident	\$37	\$39	5%
Weekday – Non-resident	\$53	\$56	5%
Weekend – Resident	\$53	\$56	5%
Weekend – Non-resident	\$74	\$78	5%
Security Deposit - One Day Rental	\$250	\$263	5%
Multi-Day Rental	\$500	\$525	5%
Miscellaneous equipment rentals - varies by equipment (per day)	-	\$1-250	-

Library and Community Services – Athletic field rentals

Proposed Library and Community Services –Athletic Field Rentals Fees	
Fee Title	Proposed Fee
Natural Turf	
Baseball (per hour)	
Resident	\$22
Non-Resident	\$30
Softball (per hour)	
Resident	\$26
Non-Resident	\$35
Soccer/Lacrosse – Small Field 7v7 (per hour)	
Resident	\$25
Non-Resident	\$35
Soccer/Lacrosse – Medium Field 9v9 (per hour)	
Resident	\$50
Non-Resident	\$68
Soccer/Lacrosse – Large Field 11v11 (per hour)	
Resident	\$100
Non-Resident	\$135

Proposed Library and Community Services –Athletic Field Rentals Fees	
Fee Title	Proposed Fee
Synthetic Turf	
Soccer/Lacrosse – Small Field 7v7 (per hour)	
Resident	\$30
Non-Resident	\$41
Commercial	\$85
Hyperlocal	\$20
Soccer/Lacrosse – Medium Field 9v9 (per hour)	
Resident	\$50
Non-Resident	\$60
Commercial	\$120
Hyperlocal	\$30
Soccer/Lacrosse – Large Field 11v11 (per hour)	
Resident	\$120
Non-Resident	\$162
Commercial	\$225
Hyperlocal	\$65
Lighting Fee – All Fields (per hour)	
Resident	\$10
Non-Resident	\$12
Commercial	\$25
Hyperlocal	\$5
Banner/signage fee (per season)	\$100

Library and Community Services – Other outdoor facility rentals

Proposed Library and Community Services – Other Outdoor Facility Rentals Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Tennis / Pickleball Courts			
Court reservations (per hour)			
Resident	-	\$10	-
Non-Resident	-	\$15	-
Commercial	-	\$25	-
Hyperlocal	-	\$6	-
Auxiliary Field – Non-Athletic Field Parks (per hour)			
Resident	\$16	\$17	5%
Non-Resident	\$22	\$23	5%
Weddings in Park (Sharon Park Only)			
Resident	\$150	\$165	10%
Non-Resident	\$250	\$275	10%
NOTE: The above fees do not include field preparation or equipment.			
Bedwell Bayfront Park (non-exclusive use of park)			
Special Event Park Usage (per day)	\$100	\$150	50%

Library and Community Services – Child development

Proposed Library and Community Services – Child Development Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Menlo Children's Center – Preschool			
Hot Lunch Fee - Friday only, varies by vendor (per hour)	\$5	\$5-10	0-100%
Toddler Resident 1/2 Day (per month)	-	\$1363	-
Early Preschool 1/2 Day (per month)	-	\$1125	-
Transitional Kindergarten (per month)	-	\$1000-1200	-

Proposed Library and Community Services – Child Development Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Menlo Children’s Center - School-Age			
1st through 5th grades (per month)			
Full-time 5 day	\$473	\$497	5%
Full-time 4 day	\$424	\$445	5%
Full-time 3 day	\$346	\$363	5%
Full-time 2 day	\$269	\$282	5%
Full-time 1 day	\$159	\$167	5%
Afternoon Kindergarten (per month)			
Full-time 5 day	\$512	\$538	5%
Full-time 4 day	\$369	\$387	5%
Full-time 3 day	\$292	\$307	5%
Menlo Children’s Center – Seasonal programs			
Daily rate	-	\$56-63	-
Parents Night Out – 3 hours of unlicensed care			
First Child	-	\$25	-
Additional Sibling (each)	-	\$20	-
Children not enrolled in a seasonal program	-	\$30	-
Morning Program – 8:30 am to Noon (per month)			
5 days a week	\$582	\$611	5%
3 days a week	\$369	\$387	5%
2 days a week	\$259	\$272	5%
Late Tuition Payment Fee – assessed if payment not received by the 5th of the month	\$20	\$21	5%
Late Pick-up Fee – if child is not picked-up by scheduled closing time (per child)			
First 10 minutes	\$15	\$16	5%
Lunch Fee (varies by vendor)	\$10	\$5-10	-50-0%
Non-notification of Absence Fee	\$25	\$26	5%
Waiting List Application Fee	\$50	\$53	5%
Facility Rental - 2 hour minimum (per hour)	\$115	\$121	5%

Proposed Library and Community Services – Child Development Fees			
Fee Title	Current Fee	Proposed Fee	Percentage Change
Belle Haven Child Development Center			
Parents Night Out – 3 hours of unlicensed care			
First Child	\$20	\$21	5%
Additional sibling (each)	\$10	\$11	5%
Children not enrolled in a seasonal program	\$25	\$26	5%

Library and Community Services – Aquatics

Aquatics fees in this section shall take effect April 1, 2024, or on the date the aquatics facility at Belle Haven Community Campus opens to the public, whichever comes first.

Proposed Library and Community Services – Aquatics Fees	
Fee Title	Proposed Fee
Memberships (per month)	
Lap & Open Swim	
General Resident	\$65
General Non-Resident	\$88
Senior Resident	\$52
Senior Non-Resident	\$82
Masters	
General Resident	\$114
General Non-Resident	\$153
Senior Resident	\$104
Senior Non-Resident	\$140
Team (Annual)	\$30
Aqua Fit	
General Resident	\$78
General Non-Resident	\$105
Senior Resident	\$70
Senior Non-Resident	\$95
Aqua Therapy	

Proposed Library and Community Services – Aquatics Fees	
Fee Title	Proposed Fee
General Resident	\$119
General Non-Resident	\$160
Drop-in (per day)	
Lap Swim	
General Resident	\$9
General Non-Resident	\$10
Senior Resident	\$8
Senior Non-Resident	\$9
Fee Assisted (Resident only)	\$5
Spectator Resident	\$4
Spectator Non-Resident	\$5
Open Swim	
General Resident	\$9
General Non-Resident	\$12
Child Resident	\$5
Child Non-Resident	\$7
Family Resident	\$28
Family Non-Resident	\$38
Fee Assisted (Resident only)	\$5
Spectator Resident	\$4
Spectator Non-Resident	\$5
Masters	
General Resident	\$20
General Non-Resident	\$27
Fee Assisted (Resident only)	\$5
Spectator Resident	\$4
Spectator Non-Resident	\$5
Aqua Fit (per session)	
General Resident	\$20
General Non-Resident	\$27

Proposed Library and Community Services – Aquatics Fees	
Fee Title	Proposed Fee
Fee Assisted (Resident only)	\$5
Spectator Resident	\$4
Spectator Non-Resident	\$5
Swim Lessons (per session)	
Group Lessons - Resident	\$25
Group Lessons - Non-Resident	\$35
Group Lessons - Fee Assisted (Resident only)	\$5
Water Babies - Resident	\$25
Water Babies - Non-Resident	\$35
Water Babies - Fee Assisted (Resident only)	\$5
Level 1 & 2 Resident	\$25
Level 1 & 2 Non-Resident	\$35
Level 1 & 2 - Fee Assisted (Resident only)	\$5
Level 2 & 3 Resident	\$25
Level 2 & 3 Non-Resident	\$35
Level 2 & 3 - Fee Assisted (Resident only)	\$5
Swim School Adult Lessons	\$35
Bridge Program Resident	\$16
Bridge Program Non-Resident	\$22
Bridge Program - Fee Assisted (Resident only)	\$5
Pre Bridge Program Resident	\$16
Pre Bridge Program Non-Resident	\$22
Pre Bridge Program - Fee Assisted (Resident only)	\$5
Beginner Resident	\$16
Pre Bridge Program Non-Resident	\$22
Pre Bridge Program - Fee Assisted (Resident only)	\$5
Intermediate Resident	\$16
Intermediate Non-Resident	\$22
Intermediate - Fee Assisted (Resident only)	\$5
Private Lessons Resident	\$76

Proposed Library and Community Services – Aquatics Fees

Fee Title	Proposed Fee
Private Lessons Non-Resident	\$103
Subcontractor Per Lane Fee	\$18



USER FEE COST RECOVERY

City Council Procedure #CC-22-025

Adopted August 23, 2022

Resolution No. 6768

<p>Purpose</p>
<p>A clear User Fee Cost Recovery Policy will allow the City of Menlo Park to provide an ongoing, sound basis for setting fees that allows charges and fees to be periodically reviewed and updated based on predetermined, researched and supportable criteria that can be made available to the public.</p>
<p>Background</p>
<p>In 2005 the <i>Your City/Your Decision</i> community driven budget process provided community direction and initial information on approaches to cost recovery of services. In 2007, the Cost Allocation Plan provided further basis for development of a standardized allocation system by providing a methodology for data-based distribution of administrative and other overhead charges to programs and services. The Cost of Services Study completed in 2008 allowed the determination of the full cost of providing each service for which a fee is charged and laid the final groundwork needed for development of a values-based and data-driven User Fee Cost Recovery Policy. A draft User Fee Cost Recovery Policy was presented for consideration by the Council at a Study Session on February 10, 2009. Comments and direction from the Study Session were used to prepare this Fiscal Policy.</p>
<p>Policy</p>
<p>The policy has three main components:</p> <ol style="list-style-type: none"> 1. Provision for ongoing review 2. Process of establishing cost recovery levels <ul style="list-style-type: none"> • Factors to be Considered 3. Target Cost Recovery Levels <ul style="list-style-type: none"> • Social Services and Recreation Programs • Development Review Services • Public Works – Engineering Transportation, and Maintenance • Public Safety – Police Services • Library Services • Administrative Services
<p>Provision for ongoing review</p>
<p>Fees will be reviewed at least annually in order to keep pace with changes in the cost of living and methods or levels of service delivery. In order to facilitate a fact-based approach to this review, a comprehensive analysis of the city's costs and fees should be made at least every five years. In the interim, fees will be adjusted by annual cost factors reflected in the appropriate program's operating budget.</p>
<p>Process of establishing service fee cost recovery levels</p>
<p>The City of Menlo Park provides services and infrastructure that contribute to quality-of-life for all Menlo Park residents. In so doing, the City strives to balance the resources and requirements of each area of the city in an equitable manner for all residents, in all neighborhoods of the City. The City of Menlo Park prioritizes social justice in decisions that affect residents' lives: the fair, just and equitable management of all institutions serving the public directly or by contract; the fair, just and equitable distribution of public services and implementation of public policy; and the commitment to promote fairness, justice, and equity in the formation of public policy.</p> <p>The following factors will be considered when setting service fees and cost recovery levels</p> <ol style="list-style-type: none"> 1. Community-wide vs. special benefit <ul style="list-style-type: none"> • The use of general purpose revenue is appropriate for community-wide services while user fees are appropriate for services that are of special benefit to individuals or groups. Full cost recovery is not always appropriate. 2. Service Recipient Versus Service Driver <ul style="list-style-type: none"> • Particularly for services associated with regulated activities (development review, code enforcement), from which the community primarily benefits, cost recovery from the "driver" of the need for the service (applicant, violator) is appropriate. 3. Consistency with City public policies and objectives <ul style="list-style-type: none"> • City policies and Council goals focused on long term improvements to community quality of life may also impact desired fee levels as fees can be used to change community behaviors, promote certain activities

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- or provide funding for pursuit of specific community goals, for example: health and wellness, environmental stewardship.
4. Impact on demand (elasticity)
 - Pricing of services can significantly impact demand. At full cost recovery, for example, the City is providing services for which there is a genuine market not over-stimulated by artificially low prices. Conversely, high cost recovery may negatively impact lower income groups and this can work against public policy outcomes if the services are specifically designed to serve particular groups.
 5. Discounted Rates and Surcharges
 - Rates may be discounted to accommodate lower income groups or groups who are the target of the service, such as senior citizens or residents.
 - Higher rates are considered appropriate for non-residents to further reduce general fund subsidization of services.
 6. Feasibility of Collection
 - It may be impractical or too costly to establish a system to appropriately identify and charge each user for the specific services received. The method of assessing and collecting fees should be as simple as possible in order to reduce the administrative cost of collection.

Target cost recovery levels

1. Low cost recovery levels (0%-30%) are appropriate if:
 - There is no intended relationship between the amount paid and the benefit received
 - Collecting fees is not cost-effective
 - There is no intent to limit use of the service
 - The service is non-recurring
 - Collecting fees would discourage compliance with regulatory requirements
 - The public at large benefits even if they are not the direct users of the service
2. High cost recovery levels (70%-100%) are appropriate if:
 - The individual user or participant receives the benefit of the service
 - Other private or public sector alternatives could or do provide the service
 - For equity or demand management purposes, it is intended that there be a direct relationship between the amount paid and the level and cost of the service received
 - The use of the service is specifically discouraged
 - The service is regulatory in nature
3. Services having factors associated with both cost recovery levels would be subsidized at a mid-level of cost recovery (30% - 70%).

General categories of services tend to fall logically into the three levels of cost recovery above and can be classified according to the factors favoring those classifications for consistent and appropriate fees. Primary categories of services include:

- Social Services and Recreation Programs
- Development Review Programs – Planning, and Building
- Public Works Department – Engineering, Transportation, and Maintenance
- Public Safety

Social services and recreation programs

Master fee schedule page #'s	General categorization of programs, services, activity, and facilities	Low cost recovery (0-30%)	Mid cost recovery (30-70%)	High cost recovery (70-100%)
Parks				
Page 9	Dog Parks	X		
Page 9	Skate Parks	X		
Page 9	Open Space/ Parks	X		

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Page 9	Playgrounds	X		
Social services				
	Senior Transportation	X		
Page 7	Senior Classes/ Events	X		
Page 11	Belle Haven School Age – Title 22		X	
Page 10	Menlo Children’s Center – Title 22			X
Page 11	Preschool – Title 22			X
Page 11	Preschool – Title 5		X	
Page 7	Second Harvest	X		
Page 7	Congregate Nutrition		X	
Page 11	Belle Haven Community School		X	
Events/Celebrations				
	City Sponsored	X		
	City-Wide	X		
	Youth & Teen Targeted	X		
	Cultural	X		
	Concerts	X		
Facility usage				
	City Functions (e.g. commissions)	X		
	Co-Sponsored Organizations	X		
Page 5,6,7	Non-Profit	X		
Page 9	Fields - Youth (non-profit)		X	
Page 9	Fields – Adult (non-profit)		X	
Page 9	Tennis Courts		X	
Page 10	Picnic Rentals – Private Party			X
Page 5,6,7	Private Rentals			X
Page 9	Fields – for-profit			X
Page 5,6,7,8,9,10	Contracted Venues – for-profit			X
Fee assisted programs				
Page 8	Recreational Swim	X		
Page 8	Swimming Classes	X		

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Page 8	Lap Swimming	X		
Page 7	Recreation Classes	X		
Page 11	Open Gym Activities	X		

Low recovery expectations

Low to zero recovery is expected for programs in this category as the community benefits from the service. Non-resident fees if allowed may provide medium cost recovery.

In general, low cost programs or activities in this group provide a community wide benefit. These programs and activities are generally youth programs or activities enhancing the health, safety and livability of the community and therefore require the removal of a cost barrier for optimum participation. Recreation programming geared toward the needs of teens, youth, seniors, persons with disabilities, and/or those with limited opportunities for recreation are included. For example:

- Parks – As long as collecting fees at City parks is not cost-effective, there should be no fees collected for general use of parks and playgrounds. Costs associated with maintaining the City’s parks represent a large cost for which there is no significant opportunity for recovery – these facilities are public domains and are an essential service of City government.
- Social Services – There is no intended relationship between the amount paid and the benefit received for social service programs. Some programs are designed and delivered in coordination/partnership with other providers in Menlo Park.
- Senior Transportation – Transportation is classified as a low cost recovery program because there is no fee charged for the program and the majority of the seniors served cannot afford the actual cost of the service. Donations are solicited, but they are minimal. No fee should be established for this service, as it would threaten ridership and County reimbursements would be withdrawn.
- Senior Classes/Events – The primary purpose of senior classes and events is to encourage participation. The seniors served in these classes do not have the means of paying for the classes and are classified as “scholarship” recipients due to their low income levels. The classes should continue to be offered in collaboration with outside agencies which can offer them for free through state subsidies.
- Second Harvest – Monthly food distributions provide free food to needy families and so contribute a broad community benefit. The coordination and operation of the program is through the Onetta Harris Center staff with volunteers assisting with the distribution of food, to keep costs as low as possible.
- Events/Celebrations – Community Services events provide opportunities for neighborhoods to come together as a community and integrate people of various ages, economic and cultural backgrounds. Events also foster pride in the community and provide opportunities for volunteers to give back. As such, the benefits are community-wide. In addition, collection of fees isn’t always cost effective.
- Facility Usage – Safe and secure facilities for neighborhood problem-solving and provision of other general services support an engaged community and should be encouraged with low or no fees.
- Fee Assisted Recreation Programs – Activities with fee assistance or sliding scales make the programs affordable to all economic levels in the community. Organized activities, classes, and drop-in programs are designed to encourage active living, teach essential life and safety skills and promote life-long learning for broad community benefit.

Medium recovery expectations

Recovery of most program costs incurred in the delivery of the service, but without recovery of any of the costs which would have been incurred by the department without the service. Both community and individuals benefit from these services. Non-resident fees if allowed may provide high cost recovery.

- Belle Haven School Age – Title 22 - Licensed Child Care Program – Services to participants in this program are not readily available elsewhere in the community at low cost. The program provides broad community benefit in the form of a safety net for children in the community. Organized activities and programs teach basic skills, constructive use of time, boundaries and expectations, commitment to learning and social competency. Resident fees charged based on San Mateo County Pilot program for full day care that sets fees at no more than 10% of the family’s gross income.
- Preschool Title 5 – The Preschool Program is supported primarily by reimbursement of federal and state grants for low income children. Tuition and reimbursement rates are regulatory.

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- Senior Lunches – Congregate Nutrition is classified as a medium cost recovery fee as it asks a donation coupled with a per meal reimbursement from OAA & State funds.
- Belle Haven School Community School – The Community School partners with various non-profit and community based agencies to provide much needed services to the community – high quality instruction, youth enrichment services, after-school programs, early learning and a family center. Services are open to Belle Haven students, their families and residents of the surrounding neighborhood.
- Field Rentals and Tennis Courts – Costs should be kept low for local non-profit organizations providing sports leagues open to residents and children in the Menlo Park Schools that encourage healthy lifestyles and lifelong fitness. Opportunities exist to collect a reasonable fee for use to defray citywide expenses for tennis facilities and fields.
- Programs – Drop-in programs can be accessed by the widest cross section of the population and therefore have the potential for broad-base participation. Recreation drop-in programs have minimal supervision while providing healthy outlets for youth, teens and adults.

High recovery expectations

Present when user fees charged are sufficient to support direct program costs plus up to 100% of department administration and city overhead associated with the activity. Individual benefit foremost and minimal community benefit exists. Activities promote the full utilization of parks and recreation facilities.

- Menlo Children’s Center School Age and Pre-school – Title 22 – Participation benefits the individual user.
- Picnic Areas – Picnic rental reservations benefit the individual but help defray the cost of maintaining parks benefiting the entire community.
- Facility Usage – Facility use is set at a higher rate for the private use of the public facility for meetings, parties, and programs charging fees for services and celebrations.
- Programs – Activities in this area benefit the individual user. Programs, classes, and sports leagues are often offered to keep pace with current recreational trends and provide the opportunity to learn new skills, improve health, and develop social competency. The services are made available to maximize the use of the facilities, increase the variety of offerings to the community as a whole and spread department administration and city-wide overhead costs to many activities. In some instances, offering these activities helps defray expenses of services with no viable means of collecting revenue e.g. parks, playgrounds, etc.
- Contracted Venues – (for profit) – Long term arrangements where a facility is rented or contracted out to reduce general funding expense in order to provide specialized services to residents.

Development review services

1. Planning (planned development permits, tentative tract and parcel maps, re-zonings, general plan amendments, variances, use permits)
2. Building and safety (building permits, structural plan checks, inspections)

Master fee schedule page #'s	General categorization of programs, Services, activity, and facilities	Low cost recovery (0-30%)	Mid cost recovery (30-70%)	High cost recovery (70-100%)
Planning				
Page 24	Appeals of Staff Decisions	X		
Page 24	Appeals of Planning Commission Decisions by Residents	X		
	Subsequent Appeals			X
Page 24	Temporary Sign Permits	X		

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Page 23	Use Permits – Non-Profits	X		
Page 24	Administrative Reviews – Fences		X	
	Appeals of Planning Commission Decisions by Non-Residents			X
Page 23	Administrative Reviews – Other			X
Page 23	Architectural Control			X
Page 23	Development Permits			X
Page 23	Environmental Reviews			X
Page 23	General Plan Amendments			X
Page 24	Tentative Maps			X
Page 24	Miscellaneous – not listed elsewhere			X
	Reviews by Community Development Director of Planning Commission			X
Page 23	Special Events Permitting			X
Page 23	Study Sessions			X
Page 24	Zoning Compliance Letters			X
Page 23	Signs and Awnings			X
Page 23	Use Permits – other			X
Page 23	Variances			X
Page 23	Zoning Map Ordinance Amendments			X
Building and safety				
Page 28-48	Solar Installations		X	
	Existing Building Electrification	X		
	Building Permits			X
	Mechanical Permits			X

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	Electrical Permits			X
	Plumbing Permits			X
	Consultant Review			X

Low recovery expectations

Low to zero recovery is expected for services in this category to maintain open and accessible government processes for the public, encourage environmental sustainability and encourage compliance with regulatory requirements. Example of Low Recovery items:

- Planning – The fees for applicants who wish to appeal a Staff Decision or for a Menlo Park resident or neighbor from an immediately adjacent jurisdiction who wishes to appeal a decision of the Planning Commission is purposefully low to allow for accessibility to government processes.
- Planning – Temporary sign permit fees are low so as to encourage compliance.
- Building – The elimination or reduction of building permits for solar array installations is consistent with California Government Code Section 65850.5, which calls on local agencies to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.
- Building- The elimination or reduction of building permit fees for projects that involve electrification of existing buildings to support the 2030 Climate Action Plan goal to electrify 95 percent of existing buildings by 2030.

Medium recovery expectations

Recovery in the range of 30% to 70% of the costs incurred in the delivery of the service reflects the private benefit that is received while not discouraging compliance with the regulation requirements.

- Planning – Administrative permits for fences that exceed the height requirements along Santa Cruz Avenue are set at mid-level to encourage compliance.

High recovery expectations

Cost recovery for most development review services should generally be high. In most instances, the City’s cost recovery goal should be 100%.

- Planning – Subsequent Appeals - The fees for applicants who are dissatisfied with the results of a previous appeal of an administrative permit or a decision of the Planning Commission should be at 100% cost recovery.
- Planning – Most of the Planning fees charged are based on a “time and materials” basis, with the applicant/customer being billed for staff time (at a rate that includes overhead cost allocations) and the cost of actual materials or external services utilized in the delivery of the service.
- Building – Building fees use a cost-basis, not a valuation basis, and are flat fees based on the size and quantities of the project.

Public Works – engineering transportation, and maintenance

1. Engineering and Transportation (public improvement plan checks, inspections, subdivision requirements, encroachments)
2. Transportation (red curb installation, truck route permits, traffic signal repairs from accidents)
3. Maintenance (street barricades, banners, trees, special event set-up, damaged city property)

Master fee schedule page #'s	General categorization of programs, services, activity, and facilities	Low cost recovery (0-30%)	Mid cost recovery (30-70%)	High cost recovery (70-100%)
Engineering				
Page 25	Heritage Tree	X		
Page 25	Appeals to Environmental	X		
	Appeals to Environmental	X		

USER FEE COST RECOVERY

City Council Policy #CC-22-025

Adopted August 23, 2022

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	Quality Commission and City Council			
	Bid Packages	X		
Page 19	Plotter Prints		X	
Page 19	Encroachment Permits for City-mandated repair work (non-temporary)		X	
Page 25	Heritage Tree Removal Permits 1-3 trees		X	
Page 19	City Standard Details		X	
Page 20	Improvement Plan			X
Page 20	Plan Revisions			
Page 21	Construction Inspections			X
Page 20	Maps/ Subdivisions			X
	Real Property			X
Page 19	Abandonments			X
Page 19	Annexations			X
Page 21	Certificates of Compliance			X
Page 20	Easement Dedications			X
Page 20	Lot Line Adjust/Merger			X
Page 19	Encroachment Permits			X
Page 19	Completion Bond			X
	Processing Fee			X
Page 25	Heritage Tree Permits after first 3 trees			X
Page 16	Downtown Parking Permits			X
Transportation				
Page 22	Red Curb Installation	X		
Page 22	Truck Route Permits	X		
Page 22	Traffic Signal Accident			X
Page 22	Aerial Photos			X
Maintenance				
Page 22	Tree Planting	X		

USER FEE COST RECOVERY

City Council Policy #CC-22-025

Adopted August 23, 2022

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Page 22	Banners – Santa Cruz Avenue			X
Page 22	Barricade replacement			X
Page 22	Weed Abatement			X
Page 22	Special Event set-up – for-profit use			X
Page 22	Special Event set-up – for non-profits use		X	
Page 22	Damaged City property			X

Low recovery expectations

Low to zero recovery is expected for services in this category as the community benefits from the service. In general, low cost services in this group provide a community-wide benefit. These services generally are intended to enhance or maintain the livability of the community and therefore require the removal of a cost barrier to encourage use. However, in some instances the maximum fee that can be charged is regulated at the State or Federal level and therefore the City fee is not determined by City costs (truck route permits, copies of documents). Examples of Low Recovery items:

- Maintenance – Tree Plantings is classified as a low cost recovery fee to replacement of trees removed due to poor health and to encourage new tree plantings.
- Transportation – Red Curb Installation is classified as a low cost recovery fee for support traffic/parking mitigation requests to address safety concerns of residents and businesses.
- Transportation – Truck Route Permits Fees – maximum fee set by State Law.
- Engineering – Heritage Tree Appeals is classified as a low cost recovery fee to insure that legitimate grievances are not suppressed by high fees.
- Engineering – Bid Packages are provided at a low cost to encourage bid submissions thereby insuring that the City receives sufficient bids to obtain the best value for the project to be undertaken.

Medium recovery expectations

Recovery in the range of 30% to 70% of the costs incurred in the delivery of the service. Typically, both the community and individuals benefit from these services.

- Engineering – Encroachment Permits for City-mandated repairs are classified as a medium cost recovery. Since the property owner is paying for the cost of construction but is required by ordinance to perform it promptly, a discounted fee for the permit is appropriate.

High recovery expectations

Recovery in the range of 70% to 100% when user fees charged are sufficient to fully recover costs of providing the service. Individual benefit is foremost and minimal community benefit exists. Most services provided by the Public Works Department fall in this area.

- Engineering – Encroachment Permits where the public right of way is used or impacted on a temporary or permanent basis for the benefit of the permittee. Debris Boxes are such an example
- Transportation – Traffic Signal Accident repair cost is the responsibility of the driver/insurer.
- Maintenance – Weed Abatement performed by Public Works staff to address ongoing code violation.
- Maintenance – Banners on Santa Cruz Avenue and El Camino Real.

Public safety – police services

(Case Copies, False Alarms, Parking Permits, Abatements, Emergency Response, Background Investigations, Tow Contract)

USER FEE COST RECOVERY

City Council Policy #CC-22-025

Adopted August 23, 2022

Resolution No. 6768

Master fee schedule page #'s	General categorization of programs, services, activity, and facilities	Low cost recovery (0-30%)	Mid cost recovery (30-70%)	High cost recovery (70-100%)
Page 14	Case Copies	X		
Page 15	Citation Sign Off - Residents	X		
Page 1,15	Document Copies	X		
Page 14	Bicycle Licenses	X		
Page 16	Overnight Parking Permits			X
Page 16	Residential Parking Permits	X		
Page 15	Property Inspection – Code Enforcement	X		
Page 15	Real Estate Sign Retrieval	X		
Page 14	False Alarm – Low Risk		X	
Page 15	Rotation Tow Service Contract		X	
Page 15	Repossession Fee		X	
Page 14	False Alarm – High Risk			X
Page 14	Good Conduct Letter			X
Page 14	Preparation Fees			X
Page 14	Research Fee			X
Page 14	Civil Subpoena Appearance			X
Page 14	Finger Printing Documents			X
Page 15	Background Investigations			X
Page 14	Notary Services			X
Page 14	Vehicle Releases			X
Page 14	DUI – Emergency Response			X
Page 15	Intoximeter Rental			X
Page 15	Street Closure			X
Page 15	Unruly Gatherings			X
Page 18	Abatement			X

Low recovery expectations

Low to zero recovery is expected for services in this category as the community generally benefits from the regulation of the activity. The regulation of these activities is intended to enhance or maintain the livability of the

USER FEE COST RECOVERY

City Council Policy #CC-22-025

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community. However, in some instances the maximum fee that can be charged is regulated at the State or Federal level and therefore the City fee is not determined by City costs (copies of documents).

Medium recovery expectations

Recovery in the range of 30% to 70% of the costs of providing the service. Both community and individuals benefit from these services.

- False Alarm – primarily residential and low cash volume retail. Alarm response provide a disincentive to crime activity. However excessive false alarms negatively impact the ability of prompt police response to legitimate alarms.

High recovery expectations

Recovery in the range of 70% to 100% when user fees charged are sufficient to recover costs of the service provided. Individual benefit is foremost and minimal community benefit exists. Items such as False Alarm, DUI Emergency Response, Vehicle Releases, Unruly Gathering, and Abatements are punitive in nature and the costs should not be funded by the community. Items such as Good Conduct Letter, Preparation Fees, Research Fee, Finger Printing, Background Investigations, and Notary Service primarily benefit the individual. 100% of the cost for services in these areas is typical.

- Overnight Parking Permits – the fee charged for One Night Parking Permits fall into Low Cost Recovery, however when combined with the fees collected from the issuance of Annual Permits the result is the program should achieve High Cost Recovery.
- Street Closure – primarily residential for activities within a defined area. This service is provided for public safety and therefore is provided at a rate below 100% cost recovery.

Library services

(Library Cards, etc.) – fees are aligned with the fees established by the Peninsula Library System. No overdue fines will be charged.

Administrative services

(Copying Charges, Postage, etc.) – fees are primarily set by regulations and are generally high cost recovery of pass-thru charges.

Procedure history

Action	Date	Notes
Procedure adoption	March 9, 2010	
Procedure updated	April 13, 2021	
Procedure updated	August 23, 2022	Addition of building permit fee reductions for existing building electrification projects.

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Administrative Services				
Electric Vehicle Charging Access Fee	\$0.50		\$1.00	-50%
Menlo Park Municipal Water				
Deposit Required for Temporary Water Meters A temporary water including a gate (check) valve may be obtained from the Water Department upon payment of a deposit. Monthly fees shall be assessed based on the meter size and the amount of water used (based on monthly water meter readings). The Water Department shall designate the hydrant where the temporary meter is to be used. The deposit will be refunded after the return of the meter (undamaged) and payment of the final bill.	\$3,442.00	per meter	\$3,000.00	15%
Disconnect Door Tag Fee	\$31.00		\$25.00	23%
Reconnection fee (for services closed for non-payment During business hours (7:30 a.m. - 4:00 p.m.) After business hours (after 4:00 p.m.)	\$139.00 \$338.00	per meter per meter	\$108.00 \$270.00	29% 25%
Fire Flow Test (report included)	\$473.00		\$405.00	17%
Restricted Access to Water Meter (for meter reading or maintenance)	\$123.00		\$100.00	23%
Service Requests (customer requested) During business hours (7:30 a.m. - 4:00 p.m.) After business hours (after 4:00 p.m.)	\$145.00 \$266.00	per hour per hour	\$108.00 \$162.00	34% 64%
Meter Tampering Fee (plus staff time and materials)	\$108.00		\$100.00	8%
Backflow Device Test Fee During business hours (7:30 a.m. - 4:00 p.m.) After business hours (after 4:00 p.m.)	\$140.00 \$338.00	per hour per hour	\$108.00 \$270.00	29% 25%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Library and Community Services - Recreation and Sports				
Community Services				
Non-resident fees are 135% of resident fee unless a non-resident fee is listed.				
Commercial (for-profit use) fees are 150% of resident fee unless a commercial fee is listed.				
Nonprofit fees are 100% of resident fee unless a nonprofit fee is listed.				
Hyperlocal resident fees are 65% of resident fee unless a Hyperlocal resident fee is listed.				
Arrillaga Family Recreation Center				
Cancellation fee for dropped classes			\$15.00	
Equipment replacement and facility maintenance fee		per class	\$2.00 to \$5.00	
Promotional Discounts—sliding scale—5% to 15%				
Menlo Madness				
— Weekly Camps— fee dependent on camp		per week	\$159.00 to \$410.00	
— Camp Registration Deposit (non-refundable)			\$25.00	
— Extended Care— 10 hours a week			\$54.00	
(Non-resident fees are 135% of resident fee unless a non-resident fee is listed.)				
Recreation classes (fees vary by class content, duration, and other factors)				
Resident	\$0-\$65	per hour		
Non-Resident	\$5-\$100	per hour		
Hyperlocal	\$0-\$20	per hour		
Recreation camps (fees vary by camp content, duration, and other factors)				
Resident	\$0-\$65	per hour		
Non-Resident	\$5-\$100	per hour		
Hyperlocal	\$0-\$20	per hour		
Teen program				
Daily	\$5	per day		
Monthly	\$12	per month		
Annual	\$70	per year		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Gymnastics Classes (All gymnastics fees for non-residents are 135% of resident fee.)		per hour-fee		
1-2 hours	\$17	per week	\$16.00	5%
3 hours	\$16	per week	\$15.00	5%
6 hours	\$14	per week	\$13.00	5%
9 hours	\$13	per week	\$12.00	5%
12 hours	\$12	per week	\$11.00	5%
Menlo Children's Center / BHDC / BYHC participant	\$8	per hour fee	\$8.00	5%
Private Lessons				
1/2 hour – resident - up to two children	\$40		\$38.00	5%
- each additional child	\$16		\$15.00	5%
1 hour – resident - up to two children	\$70		\$67.00	5%
- each additional child	\$26		\$25.00	5%
Private or Drop-in Insurance fee	\$1	per registration		
Low Income – Reduced Fee Program - sliding scale	\$5.00 to \$10.00	per hour	\$5.00 to \$10.00	
Gymnastics Program T-Shirt	\$11	each	\$10.00	10%
Gymnastics – Registration / Insurance fee	\$10	per registration	\$9.00	10%
Birthday Party Packages	\$250 to \$1,500		\$239.00 to \$1,061.00	
Birthday Party Cancellation Fee	\$55		\$50.00	10%
Youth Afterschool Sports		per season – per team		
Volleyball				
All Grades – resident	\$583		\$555.00	5%
All Grades – non-resident	\$793		\$755.00	5%
Basketball				
3rd & 4th Grades – resident	\$704		\$670.00	5%
3rd & 4th Grades – non-resident	\$882		\$840.00	5%
5th to 7th Grades – resident	\$908		\$865.00	5%
5th to 7th Grades – non-resident	\$1,092		\$1,040.00	5%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Adult Sports – Leagues		per season – per team		
Basketball	\$861		\$820.00	5%
Softball				
Men's	\$998		\$950.00	5%
Co-ed	\$777		\$740.00	5%
Noon	\$247		\$235.00	5%
Volleyball – Co-ed	\$819		\$780.00	5%
Non-resident Team Surcharge (more than 50% players are nonresidents)	10% surcharge			
Library and Community Services - Meeting room rentals				
Recreation rentals – all facilities				
See City website for rental policies, requirements, deposits, and booking information: menlopark.gov/meetingrooms				
Non-resident fees are 135% of resident fee unless a non-resident fee is listed. Commercial (for-profit use) fees are 150% of resident fee unless a commercial fee is listed. Nonprofit fees are 100% of resident fee unless a nonprofit fee is listed. Hyperlocal resident fees are 65% of resident fee unless a hyperlocal resident fee is listed.				
<p>Confirmation of the reservations of a room rental by the recreation staff requires that the Community Services Department receive at the time of application, full payment of the rental fee for the total number of hours required for the function as well as a security and cleaning deposit from the individual or group renting the facility. Compliance with the rental contract as well as the security and clean-up procedures is the determining factor in the refunding of all or part of the security/cleaning deposit. No function can end later than 11 p.m., for weekday rentals and 1 a.m. on weekends. The Community Services Department must be given two weeks notice of any cancellation of a weekend rental and one week notice for cancellation of a weekday rental to receive a full refund. There is a \$25.00 service charge on cancellations. Any exceptions to these requirements must be submitted to the director in writing two weeks before the activity takes place.</p>				
<p>Arrillaga Family Recreation Center Weekends (Friday evening, Saturday, and Sunday) Arrillaga – Weekend Rentals – Friday evening, Saturday, and Sunday (2 hour minimum)</p>				

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Sequoia Room –includes staff, tables, and chairs for inside use.				
Resident	\$223	per hour	\$212.00	5%
Non-resident	\$300	per hour	\$286.00	5%
Commercial	\$600	per hour		
Large Patio				
Resident	\$223	per hour	\$212.00	5%
Non-resident	\$300	per hour	\$286.00	5%
Commercial	\$600	per hour		
Elm Room –includes staff, tables and chairs for inside use.				
Resident	\$83	per hour	\$79.00	5%
Non-resident	\$111	per hour	\$106.00	5%
Cypress Room –includes staff, tables and chairs for inside use.				
Resident	\$83	per hour	\$79.00	5%
Non-resident	\$111	per hour	\$106.00	5%
Maple Room –includes staff, chairs for inside use.				
Resident	\$111	per hour	\$106.00	5%
Non-resident	\$150	per hour	\$143.00	5%
Willow Room –includes staff, tables and chairs for inside use.				
Resident	\$56	per hour	\$53.00	5%
Non-resident	\$78	per hour	\$74.00	5%
Oak Room –includes staff, tables and chairs for inside use.				
Resident	\$83	per hour	\$79.00	5%
Non-resident	\$111	per hour	\$106.00	5%
Juniper Room –includes staff, tables and chairs for inside use.				
Resident	\$83	per hour	\$79.00	5%
Non-resident	\$111	per hour	\$106.00	5%
Small Patio – additional charge with rental of Oak or Elm Rms	\$56	per hour	\$53.00	5%
Kitchen				
Resident	\$44	per hour	\$42.00	5%
Non-resident	\$61	per hour	\$58.00	5%
Arrillaga Family Recreation Center				
Weekdays (Monday through Thursday, and Friday morning/afternoon)				
Arrillaga –Weekday Rentals (2-hour minimum)				
Sequoia Room –includes staff, tables and chairs for inside use.				

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Resident	\$167	per hour	\$159.00	5%
Non-resident	\$226	per hour	\$215.00	5%
Commercial	\$450	per hour		
Large Patio				
Resident	\$167	per hour	\$159.00	5%
Non-resident	\$226	per hour	\$215.00	5%
Commercial	\$450	per hour		
Elm Room – includes staff, tables and chairs for inside use.				
Resident	\$61	per hour	\$58.00	5%
Non-resident	\$83	per hour	\$79.00	5%
Cypress Room—includes staff, tables and chairs for inside use.				
Resident	\$61	per hour	\$58.00	5%
Non-resident	\$83	per hour	\$79.00	5%
Maple Room—includes staff, chairs for inside use.				
Resident	\$83	per hour	\$79.00	5%
Non-resident	\$111	per hour	\$106.00	5%
Willow Room—includes staff, tables and chairs for inside use.				
Resident	\$39	per hour	\$37.00	5%
Non-resident	\$56	per hour	\$53.00	5%
Oak Room—includes staff, tables and chairs for inside use.				
Resident	\$61	per hour	\$58.00	5%
Non-resident	\$83	per hour	\$79.00	5%
Juniper Room—includes staff, tables and chairs for inside use.				
Resident	\$61	per hour	\$58.00	5%
Non-resident	\$83	per hour	\$79.00	5%
Small Patio – additional charge with rental of Oak or Elm Rms	\$56	per hour	\$53.00	5%
Kitchen				
Resident	\$28	per hour	\$27.00	5%
Non-resident	\$38	per hour	\$36.00	5%
Commercial	\$76	per hour		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
100 Terminal Avenue multi-service center Weekends (Friday evening, Saturday, and Sunday)				
Large event room - full room				
Resident	\$223	per hour		
Non-resident	\$300	per hour		
Commercial	\$600	per hour		
Hyperlocal resident	\$125	per hour		
Large event room - half room + terrace				
Resident	\$111	per hour		
Non-resident	\$150	per hour		
Commercial	\$300	per hour		
Hyperlocal resident	\$65	per hour		
Prep kitchen				
Resident	\$44	per hour		
Non-resident	\$60	per hour		
Commercial	\$120	per hour		
Hyperlocal resident	\$25	per hour		
In-house catering service	varies	100% of cost		
Gymnasium				
Resident	\$88	per hour		
Non-resident	\$120	per hour		
Commercial	\$250	per hour		
Hyperlocal resident	\$50	per hour		
Makerspace + terrace				
Resident	\$111	per hour		
Non-resident	\$150	per hour		
Commercial	\$300	per hour		
Hyperlocal resident	\$65	per hour		
Flex classroom				
Resident	\$83	per hour		
Non-resident	\$111	per hour		
Hyperlocal resident	\$40	per hour		
Movement Studio				
Resident	\$83	per hour		
Non-resident	\$111	per hour		
Hyperlocal resident	\$40	per hour		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
100 Terminal Avenue multi-service center Weekdays (Monday through Thursday, and Friday morning/afternoon)				
Large event room - full room				
Resident	\$167	per hour		
Non-resident	\$226	per hour		
Commercial	\$500	per hour		
Hyperlocal resident	\$85	per hour		
Large event room - half room + terrace				
Resident	\$85	per hour		
Non-resident	\$115	per hour		
Commercial	\$230	per hour		
Hyperlocal resident	\$50	per hour		
Prep kitchen				
Resident	\$30	per hour		
Non-resident	\$40	per hour		
Commercial	\$80	per hour		
Hyperlocal resident	\$15	per hour		
In-house catering service				
	varies	100% of cost		
Gymnasium				
Resident	\$88	per hour		
Non-resident	\$120	per hour		
Commercial	\$250	per hour		
Hyperlocal resident	\$50	per hour		
Makerspace + terrace				
Resident	\$85	per hour		
Non-resident	\$115	per hour		
Commercial	\$230	per hour		
Hyperlocal resident	\$50	per hour		
Flex classroom				
Resident	\$61	per hour		
Non-resident	\$83	per hour		
Hyperlocal resident	\$35	per hour		
Movement Studio				
Resident	\$61	per hour		
Non-resident	\$83	per hour		
Hyperlocal resident	\$35	per hour		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Arrillaga Family Gymnasium				
Court Rental fee (Arrillaga Gym only):				
Resident	\$88	per hour	\$84.00	5%
Non-resident	\$120	per hour	\$114.00	5%
Commercial	\$250	per hour		
Monthly Rental Agreement — one month — 10% discount				
Monthly Rental Agreement — 6 — 12 months — 20% discount				
Conference Room Rental		per hour	\$31.00	
Near-court storage rental		per square-foot per month	\$1.00	0%
Security Deposit — refundable if no damage during rental period			\$250.00 to \$500.00	
Arrillaga Family Gymnastics Center				
Gymnastics Classes		per hour fee		
— 1-2 hours		per week	\$16.00	
— 3 hours		per week	\$15.00	
— 6 hours		per week	\$13.00	
— 9 hours		per week	\$12.00	
— 12 hours		per week	\$11.00	
-		-	eliminated 2018	
MCC participant		per hour fee	\$8.00	
Private Lessons				
1/2 hour — resident — up to two children			\$38.00	
————— each additional child			\$15.00	
1 hour — resident — up to two children			\$67.00	
————— each additional child			\$25.00	
Low Income — Reduced Fee Program — sliding scale		per hour	\$5.00 to \$10.00	
Gymnastics Program T-Shirt		each	\$10.00	
Gymnastics — Registration / Insurance fee		per registration	\$9.00	

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Gymnastics Competition Fee			Based on Hourly billing rates and expenses	
All gymnastics fees for non-residents are 135% of resident fee.				
Birthday Party Packages—Residents (non-residents an additional 35%)			\$239.00 to \$1,061.00	
Birthday Party Cancellation Fee	\$50		\$50.00	
Room Rentals				
Gymnastics Floor				
Resident	\$179	per hour	\$170.00	5%
Non-resident	\$221	per hour	\$210.00	5%
Fitness Room				
Resident	\$28	per hour	\$27.00	5%
Non-resident	\$39	per hour	\$37.00	5%
Multi-Purpose Room				
Weekday – Resident	\$39	per hour	\$37.00	5%
Weekday – Non-resident	\$56	per hour	\$53.00	5%
Weekend – Resident	\$56	per hour	\$53.00	5%
Weekend – Non-resident	\$78	per hour	\$74.00	5%
Security Deposit - One Day Rental	\$263		\$250.00	5%
- Multi-Day Rental	\$525		\$500.00	5%
Miscellaneous Rental Items				
Use of indoor furniture outdoors—Patio and certain picnic areas				
—Table		each	\$5.00	
—Chair		each	\$1.00	
EZ Up Canopy (rental including setup and take down)	\$75	per day - each	\$75.00	0%
Micellaneous equipment rentals (varies by equipment)	\$1 to \$250	per day - each		
Above fees include equipment and furnishings replacement fee				
Fee added to all room rental fees above for residents		per hour	\$5.00	
Fee added to all room rental fees above for non-residents		per hour	\$8.00	
Cleaning Fee	\$115		\$115.00	0%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Use of the Arrillaga Recreation Center by Recreation Department sponsored or co-sponsored groups on weeknights after 10 p.m. (Fridays after 7:00 p.m.), or on weekends shall be charged a staff fee		per hour	\$17.50	
Birthday Party Packages – Residents (non-residents an additional 35%)			\$239.00 to \$1,061.00	
Non-Profit use of facilities – 50% discount off hourly room rates				
Multi-room Discount – 30% discount on any additional room(s)				
Advertising Rates – Activity Guide And City Spotlight				
Activity Guide Ad (as space available)	\$50.00 to \$900.00		\$50.00 to \$900.00	
Video Display Ad	\$10	per month	\$10.00	0%
Athletic Fields Usage – Natural Turf – Non-Profit Groups (Little League, AYSO, MAASL, etc.)		per hour – per team		
Baseball/Softball				
– Youth – resident			\$11.00	
– Youth – non-resident			\$19.00	
– Adult – resident			\$28.00	
– Adult – non-resident			\$42.00	
Soccer				
– Youth – resident			\$17.00	
– Youth – non-resident			\$28.00	
– Adult – resident			\$38.00	
– Adult – non-resident			\$56.00	
Athletic Fields Usage – Natural Turf – For-Profit Groups And Non-Profit Camps And Clinics		per hour – per group		
Resident			\$35.00	
Non-resident			\$76.00	

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Athletic Fields Usage—Synthetic Turf—Non Profit Groups (AYSO, CYSA, MAASL, etc.)		per hour—per team		
Soccer				
—Youth—resident			\$27.00	
—Youth—non-resident			\$36.00	
—Adult—resident			\$42.00	
—Adult—non-resident			\$57.00	
Athletic Fields Usage—Synthetic Turf—For Profit Groups And Non-Profit Camps And Clinics		per hour—per group	-	
Resident			\$63.00	
Non-resident			\$106.00	
Lighting Fee—All Fields—All Groups				
Resident			\$10.00	
Non-resident			\$21.00	

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Library and Community Services - Athletic fields				
<p>Non-resident fees are 135% of resident fee unless a non-resident fee is listed. Commercial (for-profit use) fees are 150% of resident fee unless a commercial fee is listed. Nonprofit fees are 100% of resident fee unless a nonprofit fee is listed. Hyperlocal resident fees are 65% of resident fee unless a hyperlocal resident fee is listed.</p>				
Natural Turf				
Baseball				
Resident	\$22	per hour		
Non-Resident	\$30	per hour		
Softball				
Resident	\$26	per hour		
Non-Resident	\$35	per hour		
Soccer/Lacrose				
Small Field(7v7)				
Resident	\$25	per hour		
Non-Resident	\$34	per hour		
Medium Field(9v9)				
Resident	\$50	per hour		
Non-Resident	\$68	per hour		
Large Field(11v11)				
Resident	\$100	per hour		
Non-Resident	\$135	per hour		
Synthetic turf				
Small Field(7v7)				
Resident	\$30	per hour		
Non-Resident	\$41	per hour		
Commercial	\$85	per hour		
Hyperlocal resident	\$20	per hour		
Medium Field(9v9)				
Resident	\$50	per hour		
Non-Resident	\$60	per hour		
Commercial	\$120	per hour		
Hyperlocal resident	\$30	per hour		
Large Field(11v11)				
Resident	\$120	per hour		
Non-Resident	\$162	per hour		
Commercial	\$225	per hour		
Hyperlocal resident	\$65	per hour		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Lighting Fee - All Fields				
Resident	\$10	per hour		
Non-Resident	\$12	per hour		
Commercial	\$25	per hour		
Hyperlocal resident	\$5	per hour		
Banner / signage fee	\$100	per season		
Library and Community Services - Other outdoor facilities				
Non-resident fees are 135% of resident fee unless a non-resident fee is listed.				
Commercial (for-profit use) fees are 150% of resident fee unless a commercial fee is listed.				
Nonprofit fees are 100% of resident fee unless a nonprofit fee is listed.				
Hyperlocal resident fees are 65% of resident fee unless a hyperlocal resident fee is listed.				
Tennis Courts				
Yearly Court Key—Calendar Year				
—Purchased Jan through Jun—Residents			\$63.00	
—Purchased July through Dec—Residents			\$42.00	
—Purchased Jan through Jun—Non-residents			\$127.00	
—Purchased July through Dec—Non-residents			\$84.00	
Key Rental—Day Use—Up to One Week		per day	\$5.00	
Court Rental—Special Events*				
—Resident		per hour	\$17.00	
—Non-resident		per hour	\$22.00	
*Hourly Fee in Addition to Yearly Tennis Key Purchase				
Tennis / Pickleball Courts				
Court reservations				
Resident	\$10	per hour		
Non-Resident	\$15	per hour		
Commercial	\$25	per hour		
Hyperlocal resident	\$6	per hour		
Picnic Areas				
(fees vary by area, amenities, and other factors)				
Resident	\$10.00 to \$15.00	per hour	\$10.00 to \$15.00	
Non-resident	\$15.00 to \$20.00	per hour	\$15.00 to \$20.00	
Auxiliary Field – Non-Athletic Field Parks				
Resident	\$17	per hour – per area	\$16.00	5%
Non-resident	\$23	per hour – per area	\$22.00	5%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Weddings In Park (Sharon Park only)				
Residents	\$165		\$150.00	10%
Non-residents	\$275		\$250.00	10%
NOTE: The above fees do not include field preparation or equipment.				
Bedwell Bayfront Park (non-exclusive use of park)				
Special Event Park Usage	\$150	per day	\$100.00	50%
Library and Community Services - Child development				
Non-resident fees are 135% of resident fee unless a non-resident fee is listed.				
Menlo Children's Center – Preschool		per month		
Hot Lunch Fee (Friday only, varies by vendor)	\$5.00-\$10.00	per day	\$5.00	0%
Toddler Resident 1/2 Day	\$1,363	per month		
Early Preschool 1/2 Day	\$1,125	per month		
Transitional Kindergarten	\$1000-1200	per month		
Menlo Children's Center - School-Age				
Menlo Children's Center School-Age Child Care – Afterschool Program		per month		
(Non-resident fees are 135% of resident fee unless a non-resident fee is listed)				
1st through 5th grades				
Full-time 5 day	\$497	per month	\$473.00	5%
Full-time 4 day	\$445	per month	\$424.00	5%
Full-time 3 day	\$363	per month	\$346.00	5%
Full-time 2 day	\$282	per month	\$269.00	5%
Full-time 1 day	\$167	per month	\$159.00	5%
Morning Kindergarten				
Full-time 5 day				
Full-time 3 day				
Full-time 2 day				
Afternoon Kindergarten				
Full-time 5 day	\$538	per month	\$512.00	5%
Full-time 3 day	\$387	per month	\$369.00	5%
Full-time 2 day	\$307	per month	\$292.00	5%
Menlo Children's Center School-Age Child Care – Extended Care				
One-half hour per day				
– Resident		per week		
– Non-resident		per week		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Menlo Children's Center - Seasonal programs				
Menlo Children's Center School- Seasonal Programs (Field Trips subject to extra fees)				
Non-resident fees are 135% of resident fee unless a non-resident fee is listed				
Fees reduced by 5% when pre-enrolling two continuous sessions				
Field Trips subject to extra fees				
Daily rate	\$56-\$63	per day		
Parents Night Out – 3 hours of unlicensed care				
First Child	\$25	each		
Additional Sibling	\$20			
Children not enrolled in a season program	\$30			
Morning Birds		per hour		
Morning Program – 8:30 am to Noon				
5 days a week	\$611	per month	\$582.00	5%
3 days a week	\$387	per month	\$369.00	5%
2 days a week	\$272	per month	\$259.00	5%
Extended Morning Program – 8:30 am to 2:00 pm				
5 days a week		per month		
3 days a week		per month		
2 days a week		per month		
–Wise Owls		per hour		
Menlo Children's Center – Miscellaneous Childcare Fees				
Late Tuition Payment Fee – assessed if payment not received by the 5th of the month	\$21		\$20.00	5%
Late Pick-up Fee – if child is not picked-up by scheduled closing time		per child		
First 10 minutes	\$16		\$15.00	5%
Lunch Fee (varies by vendor)	\$5-\$10		\$10.00	0%
Non-notification of Absence Fee	\$26		\$25.00	5%
Waiting List Application Fee	\$53		\$50.00	5%
Menlo Children's Center				
Facility Rental (2 hour minimum)	\$121	per hour	\$115.00	5%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Belle Haven Child Development Center				
Belle Haven Programs:-				
GDC Preschool (non-certified program)		per month		
Resident – Full Day	\$1,042	per month	\$1,042.00	0%
Resident – Part Day				
Non-resident – Full Day	\$1,406	per month	\$1,406.00	0%
Non-resident – Part Day				
Toddler – Resident				
Toddler – Non-resident				
Late Pick-up (if child is not picked up by scheduled closing time)		per child		
First 10 minutes	\$15		\$15.00	0%
Each additional minute	\$1		\$1.00	0%
Parents Night Out – 3 hours of unlicensed care				
First Child	\$21		\$20.00	5%
Additional Sibling	\$11	each	\$10.00	5%
Children not enrolled in a season program	\$26		\$25.00	5%
Belle Haven Youth Center - School-Age				
Belle Haven School Age Child Care – Afterschool Program				
Kindergarten – standard start (resident)	\$109	per month	\$109.00	0%
1st through 6th grade – standard start (resident)	\$99	per month	\$99.00	0%
Kindergarten – early start (resident)	\$129	per month	\$129.00	0%
*Program fees charged based on extremely low income levels set by the San Mateo County Housing Office. Subsidized rates for eligible residents only. Non-resident fees 135% of the resident fee				
Library and Community Services - Library				
Fees				
Library Card				
—Replacement fee for lost or forgotten library card			\$2.00	
Processing fee for lost and overdue (more than 30 days) materials	-		\$5.00	
Proctor exam—Residents	-	each		
Proctor exam—Non-residents	-	each		
Lost or damaged Materials Fee				
The value of the damaged item plus \$5.00 for processing	\$5.50	minimum	\$5.50	0%

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Library and Community Services - Aquatics				
Aquatics fees in this section shall take effect effective April 1, 2024, or on the date the aquatics Non-resident fees are 135% of resident fee unless a non-resident fee is listed.				
Memberships				
Resident swim passes and/or swim memberships are valid at all locations				
Lap & Open Swim				
General Resident	\$65	Monthly		
General Non-Resident	\$88	Monthly		
Senior Resident	\$52	Monthly		
Senior Non-Resident	\$82	Monthly		
Masters				
General Resident	\$114	Monthly		
General Non-Resident	\$153	Monthly		
Senior Resident	\$104	Monthly		
Senior Non-Resident	\$140	Monthly		
Team	\$30	Annual		
Aqua Fit				
General Resident	\$78	Monthly		
General Non-Resident	\$105	Monthly		
Senior Resident	\$70	Monthly		
Senior Non-Resident	\$95	Monthly		
Aqua Therapy				
General Resident	\$119	Monthly		
General Non-Resident	\$160	Monthly		
Drop-in				
Lap Swim				
General - Resident	\$9	Daily		
General - Non-Resident	\$10	Daily		
Senior - Resident	\$8	Daily		
Senior - Non-Resident	\$9	Daily		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Fee Assisted (Resident only)	\$5	Daily		
Spectator - Resident	\$4	Daily		
Spectator - Non-Resident	\$5	Daily		
Open Swim				
General - Resident	\$9	Daily		
General - Non-Resident	\$12	Daily		
Child - Resident	\$5	Daily		
Child - Non-Resident	\$7	Daily		
Family - Resident	\$28	Daily		
Family - Non-Resident	\$38	Daily		
Fee Assisted (Resident only)	\$5	Daily		
Spectator - Resident	\$4	Daily		
Spectator - Non-Resident	\$5	Daily		
Masters				
General - Resident	\$20	Daily		
General - Non-Resident	\$27	Daily		
Fee Assisted (Resident only)	\$5	Daily		
Spectator - Resident	\$4	Daily		
Spectator - Non-Resident	\$5	Daily		
Aqua Fit				
General - Resident	\$20	per session		
General - Non-Resident	\$27	per session		
Fee Assisted (Resident only)	\$5	per session		
Spectator - Resident	\$4	per session		
Spectator - Non-Resident	\$5	per session		
Aqua Therapy				
General - Resident	\$25	per session		
General - Non-Resident	\$34	per session		
Spectator - Resident	\$4	per session		
Spectator - Non-Resident	\$5	per session		
Swim Lessons				
Group Lessons - Resident	\$25	per session		
Group Lessons - Non-Resident	\$35	per session		
Group Lessons - Fee Assisted (Resident only)	\$5	per session		
Water Babies - Resident	\$25	per session		
Water Babies - Non-Resident	\$35	per session		
Water Babies - Fee Assisted (Resident only)	\$5	per session		

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Level 1 & 2 Resident	\$25	per session		
Level 1 & 2 Non-Resident	\$35	per session		
Level 1 & 2 - Fee Assisted (Resident only)	\$5	per session		
Level 2 & 3 Resident	\$25	per session		
Level 2 & 3 Non-Resident	\$35	per session		
Level 2 & 3 - Fee Assisted (Resident only)	\$5	per session		
Swim School Adult Lessons	\$35	per session		
Bridge Program Resident	\$16	per session		
Bridge Program Non-Resident	\$22	per session		
Bridge Program - Fee Assisted (Resident only)	\$5	per session		
Pre Bridge Program Resident	\$16	per session		
Pre Bridge Program Non-Resident	\$22	per session		
Pre Bridge Program - Fee Assisted (Resident only)	\$5	per session		
Beginner Resident	\$16	per session		
Beginner Non-Resident	\$22	per session		
Beginner - Fee Assisted (Resident only)	\$5	per session		
Intermediate Resident	\$16	per session		
Intermediate Non-Resident	\$22	per session		
Intermediate - Fee Assisted (Resident only)	\$5	per session		
Private Lessons Resident	\$76	per session		
Private Lessons Non-Resident	\$103	per session		
Subcontractor Per Lane Fee	\$18			

Department - Area - Service	February 8, 2024 Recommended Fee Amount	Unit	Current Fee Amount	Recommended % increase 2/8/2024
Public Works - Engineering				
Recreation Fees				
Residential Subdivision Recreation in Lieu Fees: See Subdivision Ordinance Section 15.16.020 for detailed explanation.				
Single Family (RE and R-1):				
	\$127,400.00	per unit	0,013 X number of units X market value of acreage to be subdivided	
Multiple Family Development (All other districts that allow residential development):				
	\$78,400.00	per unit	0.008 X number of units X market value of acreage to be subdivided	
Newsracks				
Appeal	\$550.00		\$465.00	18%
Protest	\$550.00		\$465.00	18%

COMMUNITY DEVELOPMENT - BUILDING

Miscellaneous Construction Fees

Effective 3/11/24

	Current Fee Amount		Recommended Fee Amount		
	<u>Plan Check</u>	<u>Permit</u>	<u>Plan Check</u>	<u>Permit</u>	
<u>ACCESSORY STRUCTURES</u>					
Water feature/ fountain - built in			\$ 238	\$ 327	New fee
Antennas on an existing tower			\$ 230	\$ 250	New fee

COMMUNITY DEVELOPMENT - BUILDING

Miscellaneous Construction Fees

Effective 3/11/24

	Current Fee Amount		Recommended Fee Amount		
	<u>Plan Check</u>	<u>Permit</u>	<u>Plan Check</u>	<u>Permit</u>	
<u>ALTERATION FOR RESIDENTIAL STRUCTURES</u>					
Handrail / Guardrail			\$ 168	\$ 220	New fee
<u>HOURLY INSPECTION RATES</u>					
Disabled Access Compliance Inspection / handicap ramps, parking	-0-	\$ 204	-0-	\$ 204	Update fee name

COMMUNITY DEVELOPMENT - BUILDING

Mechanical Plan Check and Permit Fees

		Current Fee Amount		Effective 3/11/24 Recommended Fee Amount		
<u>MECHANICAL PERMIT FEES</u>		<u>Plan Check</u>	<u>Inspection</u>	<u>Plan Check</u>	<u>Inspection</u>	
	Heating					
Mini Splits				\$ 119	\$ 152	New fee
Package Units				\$ 119	\$ 152	New fee
Electric Heat Pump Furnace / Air Conditioner				\$ 110	\$ 208	New fee
	Cooling					
Chiller				\$ 198	\$ 240	New fee

COMMUNITY DEVELOPMENT - BUILDING

Electrical Plan Check and Permit Fees

ELECTRICAL PERMIT FEES

	Current		Effective 3/11/24		
	Fee Amount		Recommended		
	<u>Plan Check</u>	<u>Inspection</u>	<u>Plan Check</u>	<u>Inspection</u>	
Electrical Service or Switch Gear w/ New Pedestal			\$ 210	\$ 224	New fee
Conduits, Conductors, Switches, Outlets, and Fixed Lighting					
EV Car Charger (Residential) 1 - 10 units			\$ 71	\$ 93	New fee
EV Car Charger (Non residential) 1 - 10 units			\$ 143	\$ 157	New fee
Battery Storage			\$ 84	\$ 88	New fee

COMMUNITY DEVELOPMENT - BUILDING

Plumbing Plan Check and Permit Fees

Effective 3/11/24

Current
Fee Amount

Recommended
Fee Amount

PLUMBING PERMIT FEES

Plan Check

Inspection

Plan Check

Inspection

Water Heaters

Heat Pump Water Heater

\$ 124 \$ 192

New fee

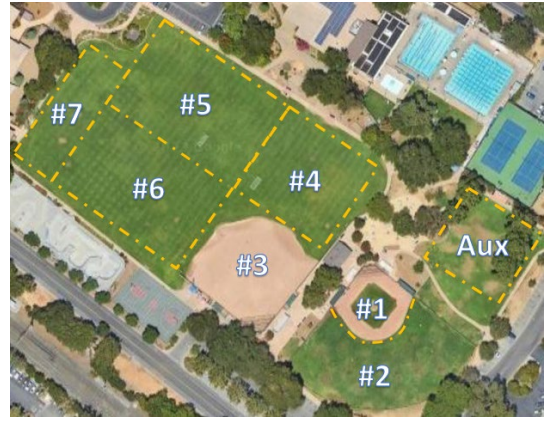
CITY OF MENLO PARK
ATHLETIC FIELD SUBDIVISIONS
DECEMBER 5, 2023

BURGESS PARK

CURRENT



RECOMMENDED NEW



#5 and #6 = 9v9 fields
#4 and #7 = 7v7 fields

HILLVIEW MIDDLE SCHOOL

CURRENT



RECOMMENDED



Entire field = 11v11 field
#1 and #2 = 9v9 fields

LA ENTRADA MIDDLE SCHOOL

CURRENT



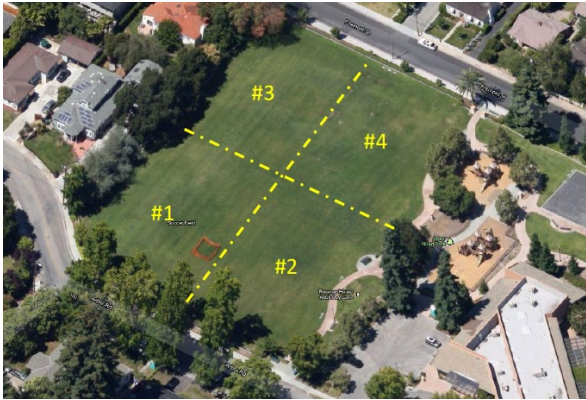
RECOMMENDED NEW



#1 through #5 = 7v7 fields

JACK LYLE PARK

CURRENT



RECOMMENDED NEW



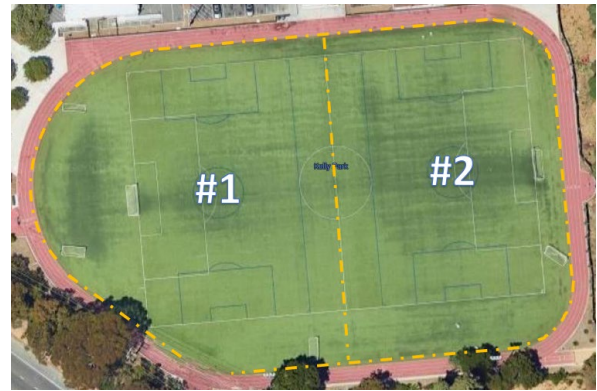
Entire field = 9v9 field
#1 and #2 = 7v7 fields

KELLY PARK

CURRENT



RECOMMENDED



Entire field = 11v11 field
#1 and #2 = 9v9 fields

NEALON PARK

CURRENT



RECOMMENDED NEW



Softball field = larger than little league

OAK KNOLL ELEMENTARY

CURRENT



RECOMMENDED



#2 is a little larger than 7v7 but smaller than 9v9

WILLOW OAKS PARK

CURRENT



RECOMMENDED



#2 through #4 = 7v7 fields
#3 and #4 combined = 9v9 field



STAFF REPORT

City Council
Meeting Date: 12/5/2023
Staff Report Number: 23-264-CC

Regular Business: **Adopt a resolution to appropriate and allocate expenditures and revenues to support Belle Haven Community Campus opening and ongoing operations**

Recommendation

City staff recommends that the City Council adopt a resolution to appropriate and allocate expenditures and revenues to support opening and operating the Belle Haven Community Campus (BHCC) multi-service center facility currently under construction at 100 Terminal Ave. At City Council’s direction, staff has prepared two operating budget options – Option A and Option B – for City Council deliberation and potential action, along with a draft resolution with a space to insert the option selected by City Council (Attachment A).

Policy Issues

City Council sets policy and goals and provides direction to staff regarding municipal services to the Menlo Park community; and allocates resources to support and maintain city facilities and operations and provide services to residents.

Background

On Nov. 7, City Council convened a study session and provided direction to City staff regarding the BHCC operating budget, including the service needs, staffing analysis, related personnel considerations, potential revenue sources, and three proposed expenditure scenarios (Attachment B). City Council directed staff to develop two operating budget options for a final review and potential City Council action Dec. 5.

On Nov. 14, City Council, consistent with the City’s naming policy, selected the name, “Belle Haven Community Campus” for the new multi-service center facility at 100 Terminal Ave. Before Nov. 14, the project was referred to by the working title Menlo Park Community Campus (MPCC) or the earlier working title Belle Haven Community Center and Library (BHCCL). Background information and references to the project before Nov. 14 use those previous working titles.

Analysis

Personnel considerations

The Nov. 7 staff report included analyses of current staffing, potential new/restored staffing, and new job assignments; descriptions of the City’s recruitment and advancement processes; and information about contract instructors (Attachment B).

BHCC service needs

The BHCC is a large, complex multiservice public facility, comprised of 37,080 square feet on two levels. It will incorporate some current programs, including a senior center, youth center and branch library which are currently operating in other locations. These programs will move to and expand in the new center. However, much of the service need in the BHCC is for restoring services in the Belle Haven neighborhood that were suspended or substantially reduced during construction, and for expanding existing services to operate the new facility in the manner envisioned by the City Council and community and for which the facility was designed, including new programs which currently do not exist. These service needs are substantial, and will require additional staff capacity to deliver safely, efficiently and effectively, assuming that service levels at the new center are to be comparable or equivalent to current service levels at the Burgess campus.

New public facilities like the BHCC commonly experience significantly increased usage compared to the old facilities they replace – often 2-3 times higher usage. The former community center’s closure for construction coincided with the COVID-19 pandemic, widespread facility closures, and personnel reductions made necessary by economic downturn. LCS staffing capacity has not fully recovered from these personnel reductions yet, meanwhile services that were closed during the pandemic at the Burgess campus have been restored.

BHCC operating budget options

There currently are no expenditures or revenues allocated in the City budget specifically to support opening and operating the new facility. Assuming no additional unforeseen construction delays, the issuance of the temporary certificate of occupancy (TCO) for the new facility is tentatively anticipated during the first quarter of calendar year 2024. City staff estimates that opening the new facility to the public will occur approximately 60-90 days after issuance of the TCO. City staff estimates a lead time of three to six months is needed to prepare, recruit, hire, onboard and train new/restored staff positions. With this timeline, it is of critical importance to confirm the staffing levels for the new center at the earliest opportunity.

In order to open and operate the BHCC in the manner envisioned by the City Council and community without reducing services in other locations, City staff recommends that City Council adopt a resolution to appropriate operating expenditures and revenues to:

- Restore community programs that were suspended or reduced in the Belle Haven neighborhood during the BHCC construction, such as gymnasium, fitness center, recreation services, aquatics center and community facility rentals
- Staff an expanded public library space that spans two floors instead of the current one floor space
- Support new services that do not currently exist, such as makerspace and teen zone
- Allow for development of a new job classification to support enhanced nutrition services, planning and preparation of nutritious meals for senior center and youth center participants, provide nutrition and health/wellness education services to program participants
- Reinstate overhead and operating costs for a new 37,080 square foot facility, including utilities, supplies and services.

At City Council’s direction, City staff has prepared two expenditure options (Option A and Option B) for consideration and potential City Council action. In both options, operating expenses and revenues are presented in amounts representing a full year of operations; however, it is anticipated that operations at the BHCC facility are likely to begin more than halfway through the current fiscal year.

Both of the expenditure options presented below are focused on the most critically important needs for providing core services and open hours at BHCC in a manner equivalent or comparable to the current service levels at Burgess campus facilities, however with some service model changes as noted below.

Both of the revenue options presented below are estimated projections based on current and past revenues primarily from user fees. City Council on Nov., 7 expressed interest in reviewing planned user fees in the master fee schedule, which is the subject of a separate item on the Dec. 5 agenda for City Council's consideration.

Both options focus new/restored full-time equivalent (FTE) personnel on job classifications that include the ability to supervise and lead front-line staff, especially given the reliance on temporary hourly personnel to provide ongoing core services. Additionally, both options would result in some service model changes focused on gaining efficiencies in multiple operational areas in order to absorb the new service demands presented by the new facility within the proposed staffing capacity, and would result in perceptible changes to the service levels to which Menlo Park residents are currently accustomed at both the BHCC and Burgess Campus facilities, including:

- Increase use of self-service and automation technology
- Reduce some customer service activities and increase response times to some inquiries
- Reduce or defer workload in some service areas such as library collection development and facility rentals
- Increase programming by third party partners who may charge fees to the City and/or directly to program participants
- Focus BHCC makerspace programming primarily to senior center and youth center participants
- Defer the launch of desired new programs such as BHCC afterschool homework tutoring, health care navigation and/or job seeker programs, pending identification of grants or partners to absorb the costs to wholly operate the programs
- Leverage technology and increase centralization of administrative support tasks.

Pro-rate factor for a partial fiscal year of operations

Notably, the expenditure and revenue amounts shown in both options represent a full 12 months of building operations. Because the new facility is not expected to be operational for the entire 12 months of fiscal year (FY) 2023-24, the options also include columns showing pro-rated expenditure and revenue amounts representing operations for 40% of the fiscal year, consistent with the new facility's estimated completion timeline.

Option A

This option would include approximately \$986,000 in non-personnel operating expenses and \$693,000 in personnel expenses, including 4.0 FTE new/restored personnel and approximately 6,700 hours of temporary/hourly staff capacity, with offsetting projected revenues of \$715,000 primarily from user fees and \$964,000 from the One-Time Developer Payments special revenue fund (Fund 111) (Table 1). The main difference between Option A and Option B is that Option A includes a Senior Program Assistant among the proposed new/restored FTE personnel, per City Council's direction Nov. 7. As noted above, the pro-rated actual amounts in FY 2023-24 are anticipated to be approximately 40% of the full 12-month amounts.

Table 1: Option A						
BHCC item	FTE	Description	Revenues* (full fiscal year)	Expenditures* (full fiscal year)	Revenues pro-rated (40% of fiscal year)	Expenditures pro-rated (40% of fiscal year)
Revenues		User fees, rentals, charges, reimbursements, donations	\$715,000		\$286,000	
Revenues		One-Time Developer Payments special revenue fund (Fund 111)	\$964,000		\$386,000	
Librarian I/II	1	Lead staff for expanded library space, makerspace, teen zone, supervision of subordinate personnel including temps		\$147,000		\$59,000
Recreation Coordinator	1	Lead staff for gymnasium, recreation center, fitness center, movement studio, facility rentals, supervision of subordinate personnel including temps		\$138,000		\$55,000
Senior Program Assistant	1	Support staff for gymnasium, recreation center, fitness center, movement studio, facility rentals		\$128,000		\$51,000
Nutrition Services Coordinator***	1	Lead staff for senior center daily meal service, youth center food service, nutrition/health/wellness education		\$141,000		\$56,000
Temporary staff		Front line customer service support, room set up, related tasks. Approx. 6,700 total hrs/year (approx. 8 individuals @ 16hrs/week)		\$139,000		\$57,000
Non-personnel operating		IT support (internal service charges), supplies, contracts, repairs & maintenance, utilities, training		\$986,000		\$394,000
		Subtotal	\$1,679,000*	\$1,679,000*	\$672,000	\$672,000
Net impact to General Fund				\$0*		\$0

* Amounts shown reflect a full 12 months of building operations.

** FTE expenditures reflect estimated total compensation, salary plus benefits.

*** Nutrition services coordinator cost is estimated, benchmarked to recreation coordinator compensation, and would require City Council approval to add to the salary schedule.

Option B

This option was presented to City Council Nov. 7, and would include approximately \$969,000 in non-personnel operating expenses and \$582,000 in personnel expenses, including 3.0 FTE new/restored personnel and approximately 7,500 hours of temporary/hourly staff capacity, with offsetting projected revenues of \$715,000 primarily from user fees and \$836,000 from the One-Time Developer Payments special revenue fund (Fund 111) (Table 2). As noted above, the pro-rated actual amounts in FY 2023-24 are anticipated to be approximately 40% of the full 12-month amounts.

Table 2: Option B						
BHCC item	FTE	Description	Revenues* (full fiscal year)	Expenditures* (full fiscal year)	Revenues pro-rated (40% of fiscal year)	Expenditures pro-rated (40% of fiscal year)
Revenues		User fees, rentals, charges, reimbursements, donations	\$715,000		\$286,000	
Revenues		One-Time Developer Payments special revenue fund (Fund 111)	\$836,000		\$334,000	
Librarian I/II	1	Lead staff for expanded library space, makerspace, teen zone, supervision of subordinate personnel including temps		\$147,000		\$59,000
Recreation Coordinator	1	Lead staff for gymnasium, recreation center, fitness center, movement studio, facility rentals, supervision of subordinate personnel including temps		\$138,000		\$55,000
Nutrition Services Coordinator***	1	Lead staff for senior center daily meal service, youth center food service, nutrition/health/wellness education		\$141,000		\$56,000
Temporary staff		Front line customer service support, room set up, related tasks. Approx. 7,500 total hrs/year (approx. 9 individuals @ 16hrs/week)		\$156,000		\$62,000
Non-personnel operating		IT support (internal service charges), supplies, contracts, repairs & maintenance, utilities, training		\$969,000		\$388,000
		Subtotal	\$1,551,000*	\$1,551,000*	\$620,000	\$620,000
		Net impact to General Fund		\$0*		\$0

* Amounts shown reflect a full 12 months of building operations.

** FTE expenditures reflect estimated total compensation, salary plus benefits.

*** Nutrition services coordinator cost is estimated, benchmarked to recreation coordinator compensation, and would require City Council approval to add to the salary schedule.

Additional operational information

Statistical data

On Nov. 7, City Council requested information about past and current operations as they relate to the comparable facilities on the Burgess civic center campus, including comparisons of staffing at the Burgess Campus facilities and the BHCC, facility usage and visitor data, and related information. A compilation of information and data is included as Attachment C.

Possible methods to provide support for seekers of City jobs

On Nov. 7, City Council requested information about possible methods to provide job readiness support for people who are seeking City jobs, to help Menlo Park residents be more competitive for City jobs, specifically in library and community services and the new BHCC. As City staff understood the information request, the desire was to understand the possibilities and what role the City plays in helping residents prepare and compete for City jobs. Information on this topic is included as Attachment D.

Impact on City Resources

Based on City Council direction Nov. 7, the proposed funding source for the above noted expenditures is the One-Time Developer Payments special revenue fund (Fund 111). The fund's current balance is approximately \$2.8 million, with an additional \$1.5 million in revenue payments anticipated in the current fiscal year. City Council has not yet identified specific expenditures for Fund 111, and the full balance of approximately \$4.3 million remains unencumbered at this time. On Nov. 7, City Council expressed interest in authorizing the use of Fund 111 to offset up to \$1 million of the BHCC's annual operating expenditures in its initial years of operation.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. In addition, the City sent electronic notices directly to project email and text update subscribers from the project page (Attachment E).

Attachments

- A. Resolution
- B. Hyperlink – “Provide direction regarding operational expenditures and potential revenue sources to support Menlo Park Community Campus opening and ongoing operations” (agenda item G1), Nov. 7: menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2023-meetings/agendas/20231107/g1-20231107-cc-mpcc-operations.pdf
- C. Additional operational information – statistical data
- D. Additional information – possible methods to support seekers of City jobs
- E. Hyperlink – BHCC project webpage. menlopark.gov/communitycampus

Report prepared by:

Sean S. Reinhart, Library and Community Services Director

RESOLUTION NO. XXXX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROPRIATING AND ALLOCATING REVENUES AND EXPENDITURES FOR
FISCAL YEAR 2023–24 TO SUPPORT BELLE HAVEN COMMUNITY CAMPUS
OPENING AND OPERATIONS**

WHEREAS, the City of Menlo Park, acting by and through its City Council, having considered the proposed budget appropriation and related written and oral information at the meetings held April 4, May 23, June 1, June 13, June 27, November 7, and December 5, 2023, and the City Council having been fully advised in the matter and good cause appearing therefore.

WHEREAS, the City of Menlo Park and its partners are constructing a new multi-service public facility at 100 Terminal Ave in Menlo Park's Belle Haven neighborhood (the Belle Haven Community Campus or BHCC for short); and

WHEREAS, the BHCC project includes 37,080 square feet of floor space on two levels, and will incorporate a public gymnasium, senior center, branch library, aquatics center, youth center (school-age child care), fitness center, makerspace, meeting rooms, and event hall, among other features; and

WHEREAS, the issuance of the temporary certificate of occupancy (TCO) for the new BHCC facility is tentatively anticipated during the first quarter of calendar year 2024, assuming no additional unforeseen construction delays, and opening the new facility to the public is anticipated to occur approximately 60-90 days after issuance of the TCO; and

WHEREAS, in order to open and operate the BHCC in the manner envisioned by the City Council and community without reducing services in other locations, a budget appropriation is needed to:

- Restore community programs that were suspended or reduced in the Belle Haven neighborhood during the campus construction, such as gymnasium, fitness center, recreation services, aquatics center and community facility rentals
- Staff an expanded public library space that spans two floors instead of the current one floor space
- Support new services that do not currently exist, such as makerspace and teen zone
- Create a new job classification to support enhanced nutrition services, planning and preparation of nutritious meals for senior center and youth center participants, provide nutrition and health/wellness education services to program participants
- Reinstate overhead and operating costs for a new 37,080 square foot facility, including utilities, supplies and services; and

WHEREAS, a primary goal of the BHCC project is to prioritize service levels at the new center to be comparable or equivalent to current service levels at the Burgess campus; and

WHEREAS, the One-Time Developer Payments special revenue fund (Fund 111) and anticipated future revenue payments into the fund remain unencumbered at this time, and City Council has identified Fund 111 as an available and eligible source of revenue to offset up to \$1 million of the BHCC's annual operational expenditures in its initial years of operation.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby appropriate revenues and expenditures for fiscal year 2023–24 as

summarized in Exhibit A, columns A, B, C, F and G reflecting the partial year pro-rated amounts, and as modified according to majority City Council direction.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this __ day of December, 2023.

Judi A. Herren, City Clerk

Exhibits:

A. Appropriations to support BHCC opening and operations

(OPTION A)

Table 1: Option A						
A	B	C	D	E	F	G
BHCC item	FTE	Description	Revenues* (full fiscal year)	Expenditures* (full fiscal year)	Revenues pro-rated (40% of fiscal year)	Expenditures pro-rated (40% of fiscal year)
Revenues		User fees, rentals, charges, reimbursements, donations	\$715,000		\$286,000	
Revenues		One-Time Developer Payments special revenue fund (Fund 111)	\$964,000		\$386,000	
Librarian I/II	1	Lead staff for expanded library space, makerspace, teen zone, supervision of subordinate personnel including temps		\$147,000		\$59,000
Recreation Coordinator	1	Lead staff for gymnasium, recreation center, fitness center, movement studio, facility rentals, supervision of subordinate personnel including temps		\$138,000		\$55,000
Senior Program Assistant	1	Support staff for gymnasium, recreation center, fitness center, movement studio, facility rentals		\$128,000		\$51,000
Nutrition Services Coordinator***	1	Lead staff for senior center daily meal service, nutrition/ health/ wellness education, supervision of subordinate personnel including temps		\$141,000		\$56,000
Temporary staff		Front line customer service support, room set up, related tasks. Approx. 6,700 total hrs/year (approx. 8 individuals @ 16hrs/week)		\$139,000		\$57,000
Non-personnel operating		IT support (internal service charges), supplies, contracts, repairs & maintenance, utilities, training		\$986,000		\$394,000
		Subtotal	\$1,679,000*	\$1,679,000*	\$672,000	\$672,000
Net impact to General Fund				\$0		\$0

* Amounts shown reflect a full 12 months of building operations.

** FTE expenditures reflect estimated total compensation, salary plus benefits.

*** Nutrition services coordinator cost is estimated, benchmarked to recreation coordinator compensation, and would require City Council approval to add to the salary schedule.

EXHIBIT A
(OPTION B)

Table 1: Option B						
A	B	C	D	E	F	G
BHCC item	FTE	Description	Revenues* (full fiscal year)	Expenditures* (full fiscal year)	Revenues pro-rated (40% of fiscal year)	Expenditures pro-rated (40% of fiscal year)
Revenues		User fees, rentals, charges, reimbursements, donations	\$715,000		\$286,000	
Revenues		One-Time Developer Payments special revenue fund (Fund 111)	\$836,000		\$334,000	
Librarian I/II	1	Lead staff for expanded library space, makerspace, teen zone, supervision of subordinate personnel including temps		\$147,000		\$59,000
Recreation Coordinator	1	Lead staff for gymnasium, recreation center, fitness center, movement studio, facility rentals, supervision of subordinate personnel including temps		\$138,000		\$55,000
Nutrition Services Coordinator***	1	Lead staff for senior center daily meal service, nutrition/ health/ wellness education, supervision of subordinate personnel including temps		\$141,000		\$56,000
Temporary staff		Front line customer service support, room set up, related tasks. Approx. 7,500 total hrs/year (approx. 9 individuals @ 16hrs/week)		\$156,000		\$62,000
Non-personnel operating		IT support (internal service charges), supplies, contracts, repairs & maintenance, utilities, training		\$969,000		\$388,000
		Subtotal	\$1,551,000*	\$1,551,000*	\$620,000	\$620,000
Net impact to General Fund				\$0		\$0

* Amounts shown reflect a full 12 months of building operations.

** FTE expenditures reflect estimated total compensation, salary plus benefits.

*** Nutrition services coordinator cost is estimated, benchmarked to recreation coordinator compensation, and would require City Council approval to add to the salary schedule.

ADDITIONAL OPERATIONAL INFORMATION – STATISTICAL DATA

1. Comparison of proposed staffing capacity at BHCC and corresponding Burgess campus facilities.

When BHCC opens, City of Menlo Park library and community services will operate eight public facilities housing twelve programs that serve the residents of Menlo Park (Table 1):

Facility	Address	Approx. size
Arrillaga Family Gymnasium	600 Alma St.	22,395 SF
Arrillaga Family Gymnastics Center	501 Laurel St.	17,520 SF
Arrillaga Family Recreation Center	700 Alma St.	16,579 SF
Belle Haven Community Campus – includes Belle Haven Library, Belle Haven Pool, Belle Haven Youth Center, Menlo Park Senior Center, and Onetta Harris Community Center	100 Terminal Ave.	37,080 SF
Belle Haven Child Development Center	410 Ivy Dr.	6,980 SF
Burgess Pool	501 Laurel Street	6,310 SF
Menlo Children's Center	801 Laurel St.	12,409 SF
Menlo Park Library	800 Alma St.	33,470 SF

Table 2 provides a summary comparison of proposed staffing capacity in four major program areas at BHCC and Burgess campus facilities. The summary comparison in Table 1 assumes 4.0 full-time equivalent (FTE) new/restored staffing capacity plus approximately 6,700 additional hours per year of hourly/temporary staffing capacity to support BHCC operations. To maintain operational efficiency, flexibility, continuity, effectiveness, and responsiveness to changing community needs, some individual staff positions and assignments are dedicated to specific facilities, and some have rotating assignments at multiple facilities. Staffing assignments and rotations to specific facilities can vary depending on seasonal needs and other factors. However, the overall staffing capacity is proposed to remain generally consistent for each facility and program area regardless of individual staff assignments or rotations.

BELLE HAVEN COMMUNITY CAMPUS	FTE staff	Approx. # of hourly/temp employees**	BURGESS CAMPUS	FTE staff	Approx. # of hourly/temp employees**
Onetta Harris Community Center	3.0	4-8	Arrillaga Gym / Recreation Center	8.75	8-12
Belle Haven Library	3.0	4-8	Menlo Park Library	11.5	8-12
Menlo Park Senior Center	5.25	8-12	No comparable facility to senior center	-	-
Belle Haven Youth Center	1.0	2-10	Menlo Children's Center Afterschool	0.75	2-10
Total	12.25 FTE*	18-38 hourly/temp**	Total	21.0 FTE*	18-34 hourly/temp**

*Assumes 4.0 FTE new/restored positions plus approximately 6,700 additional hours per year of temporary staff capacity are added to support BHCC operations

** Numbers of hourly/temp employees vary by season, individual employees' schedule availability, and organizational need. Hourly/temp employees work 8-12 hours per week on average, and do not work more than 1,000 hours in a year.

2. Facility usage and visitor data

The City of Menlo Park collects and reports facility usage and visitor data in various formats, including through the City of Menlo Park annual operating budget, Annual Consolidated Financial Report (ACFR), and department-level statistics reported to advisory bodies and posted to the City website. The available historical data is focused at the Citywide level and does not consistently include data broken down by individual City facilities. The City migrated its recreation registration system to a new platform in 2022, which will greatly improve the granularity of data collection and reporting going forward. Figure 1 includes current and recent department-level statistics. Figures 2 and 3 include historical Citywide level visitor data from past budgets and ACFRs. Figure 4 includes an archived dataset from the previous recreation registration platform, eGov, which is no longer extant. Figure 5 includes LCS department summary revenues of the past five years from the City of Menlo Park FY 2023-24 operating budget.

Figure 1. Excerpts from Library and community services department statistical report, October 2023

Library items circulated										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
800 Alma St.	48,847	43,930	50,395	46,190	47,023	49,544	49,616	49,164	45,192	43,407
413 Ivy Dr.	1,193	929	1,320	1,205	1,285	1,088	1,112	1,197	918	877
Online / Digital	8,702	8,219	8,827	8,707	9,374	9,891	10,368	9,970	10,332	11,598

Library cards										
	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
New library cards issued – MP residents	303	240	239	253	232	330	322	207	181	150
Total MP resident library cardholders	21,189	21,299	21,417	21,512	21,601	21,733	21,189	21,808	22,105	22,020

Library patron questions answered										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
800 Alma St.	2,967	2,714	3,347	2,834	2,393	3,496	3,282	3,294	2,753	3,046
413 Ivy Dr.	209	262	340	279	306	744	264	345	337	244

Library holds filled (item requests)										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
Incoming holds 800 Alma St.	4,375	3,934	4,763	4,393	4,256	4,472	3,968	4,121	4,043	4,076
Outgoing holds 800 Alma St.	2,879	2,788	3,142	2,665	2,773	3,252	3,050	3,968	3,238	3,062
Incoming holds	-	-	-	-	-	144	195	183	154	154

413 Ivy Dr.										
Outgoing holds	-	-	-	-	-	159	183	157	190	190
413 Ivy Dr.										

Library foot traffic (gate count)										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
800 Alma St.	-	-	-	-	-	13,108	-	-	-	13,541
413 Ivy Dr.	881	1,189	1,365	1,241	1,288	1,231	1,034	1,261	1,169	1,248

Library program attendance										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
Total program attendance 800 Alma St.	893	847	730	888	606	822	1,653	1,405	883	1,121
Number of programs 800 Alma St.	30	29	25	31	28	27	30	36	30	36
Total program attendance 413 Ivy Dr.	87	173	156	98	67	116	157	296	132	116
Number of programs 413 Ivy Dr.	8	8	8	8	7	8	8	8	9	7

School age child development (after school enrichment) - enrollment										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
Menlo Children's Center - After School	28	28	28	28	28	28	30	27	28	30
Belle Haven Youth Center	42	42	42	42	42	42	28	56	54	54

Senior Center services										
Location	Jan 2023	Feb 2023	Mar 2023	Apr 2023	May 2023	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023
Lunches served	376	560	555	551	624	656	570	482	519	642
Grocery boxes distributed	480	480	460	460	460	576	460	460	460	460
Senior shuttle trips	1,058	902	1,018	898	1,053	1,124	1,010	1,006	1,158	1200
Rideshare trips	220	236	294	288	225	252	0	0	0	0

Senior Center classes

	Winter 2022-23	Spring 2023	Summer 2023	Fall 2023 (to date)
Enrollment – residents	145	108	437	139
Enrollment – non-residents	240	216	264	89
Classes offered	42	42	42	14

Recreational classes				
	Winter 2022-23	Spring 2023	Summer 2023	Fall 2023 (to date)
Enrollment – residents	263	239	166	-
Enrollment – non-residents	126	117	67	-
Classes offered	77	88	73	-
Number of instructors	24	22	28	-

Fall registration for 23-24 not yet opened

Sports classes				
	Winter 2022-23	Spring 2023	Summer 2023	Fall 2023 (to date)
Enrollment – residents	195	70	242	36
Enrollment – non-residents	129	97	181	7
Classes offered	20	12	40	3
Number of instructors	5	5	10	2
Drop-in basketball visits	243	280	172	268
Drop-in volleyball visits	637	534	513	238
Leagues – individual registrations	1,400	84	1239	0
Leagues – team registrations	142	12	111	35

Facility rentals				
	Winter 2022-23	Spring 2023	Summer 2023	Fall 2023 (to date)
Recreation center rentals – residents	57	24	18	11
Recreation center rentals – non-residents	46	89	76	31
Athletic field rentals (hours reserved)	899	1,533	1,042	537
Tennis court keys (annual) – residents	166	50	72	12
Tennis court keys (annual) – non-residents	41	12	10	1

Figure 2. Excerpt from City of Menlo Park 2019-20 operating budget (workload indicators)

	2015-16	2016-17	2017-18	2018-19 Est.
LIBRARY WORKLOAD INDICATORS				
Library facility operations				
Service population served	33,273	35,670	35,670	35,670
Main open hours/week	59	59	59	59
BH open hours/week	32	32	34.5	55
Total open hours/year	4,732	4,732	4,862	4,996
Library foot traffic				
Visits/year – Main	-	302,729	293,998	273,636
Visits/year – BH	-	11,550	14,939	24,446
Total visits per capita	0.0	8.8	8.7	8.4
Library books, media, periodicals				
Main annual circulation	543,295	545,918	594,979	544,115
BH annual circulation	12,781	19,041	18,380	13,631
Total circulation per capita	16.7	15.8	17.2	15.6
E-library use				
E-books and e-audio	31,833	56,302	70,901	65,346
Electronic periodicals/ databases	0	4,546	9,930	11,069
Internet/ wifi sessions	173,550	188,471	305,099	398,868
Library programs and events				
Pre-K attendance	25,431	18,509	11,178	11,983
K-12 attendance	3,852	6,797	3,553	3,596
Adult attendance	1,907	2,100	2,285	1,677
Library support services				
Reference interactions	44,655	24,907	30,930	23,205
New library items processed	8,760	8,884	10,226	14,473
Requested items (holds) processed	98,859	100,175	105,822	91,000
Literacy program tutoring hours	2,724	1,998	1,877	1,962
	2015-16	2016-17**	2017-18	2018-19 Est.
COMMUNITY SERVICES WORKLOAD INDICATORS				
General Fund Subsidy per participant hour	1.22	0.88	0.90	0.90
Field usage percentage	85%	88%	82%	84%
Programs within the City Council cost recovery	100%	100%	100%	100%
Recreation programs conducted	19,242	20,000	17,300	16,250
Special events and performing arts programs attendance	17,000	17,000	17,000	16,000
Total annual participant hours	618,959	260,748	287,355	298,694
Total annual participants	195,430	36,677	34,282	31,314

**Beginning with FY 2016-17, total participant and total participants hours tracked with registration software report

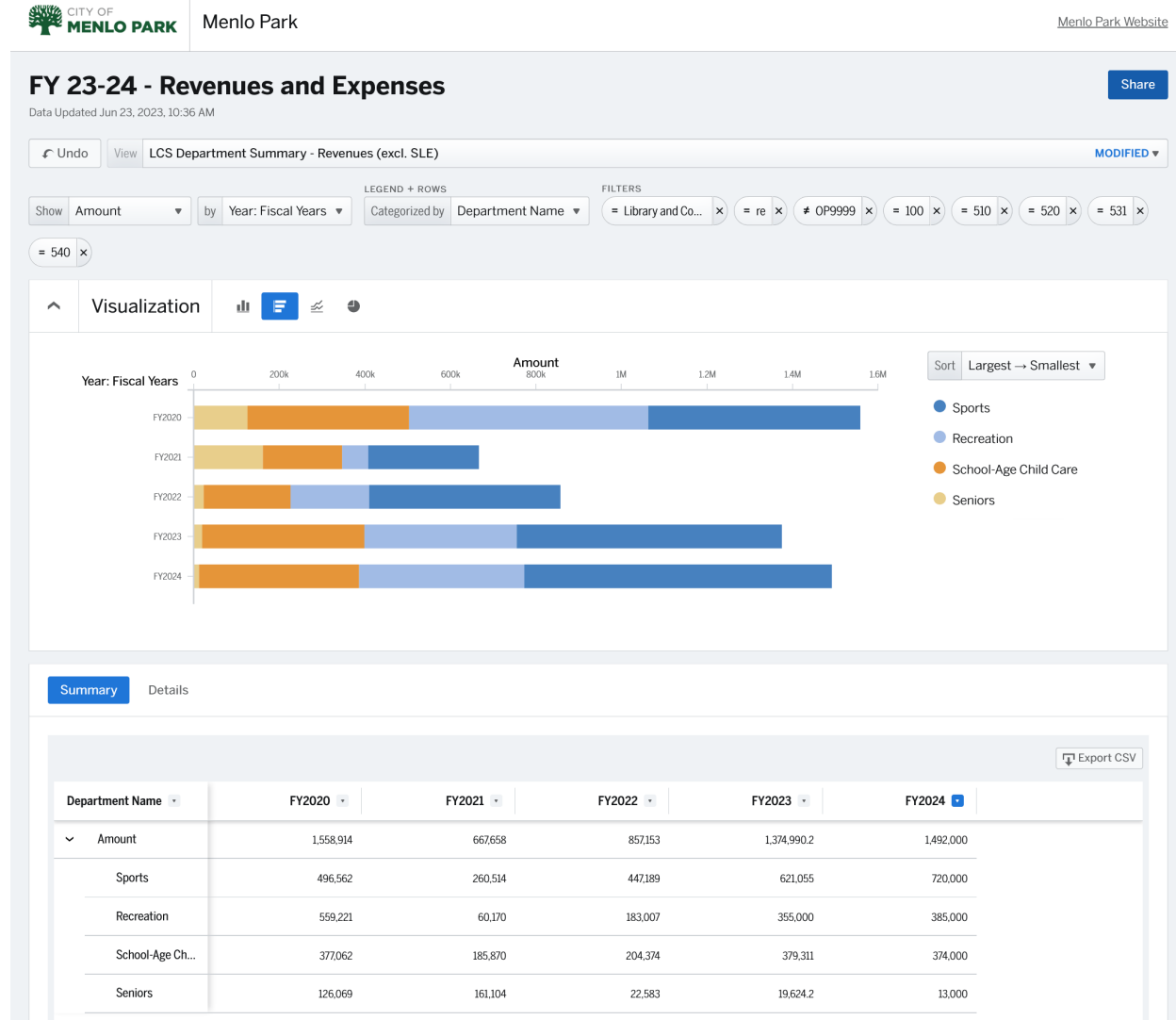
Figure 3. Excerpt from 2022 Annual Consolidated Financial Report (Operating Indicators by Demand/Level of Service, by Function/Program)

		Fiscal Year Ending June 30th									
FUNCTION/PROGRAM		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Public Safety	Incidents	41,206	40,964	39,605	39,456	39,122	39,553	42,031	38,392	28,042	29,891
	Calls for Service	22,383	21,021	21,293	21,384	21,487	22,659	23,639	23,124	20,290	20,140
	Officer Initiated Incidents	18,823	19,943	18,312	18,072	17,635	16,894	18,392	15,268	7,752	9,751
Public Works	<u>Transportation:</u>										
	Shuttle Passengers	80,774	82,420	82,663	71,597	57,737	60,508	50,611	33,131	7,700	13,184 *
	<u>Engineering:</u>										
	Encroachment Permits Issued	300	365	372	447	406	550	552	380	634	539
Culture and Recreation	<u>Parks and Recreation:</u>										
	Number of Activity Hours Provided (1)	2,403,979	3,095,612	3,312,426	3,354,773	3,339,783	3,209,611	3,192,116	2,019,835	424,165	3,605,682
	Number of Recreational Activities Participants (2)	931,490	1,119,365	1,196,406	981,761	1,009,084	950,392	980,852	595,707	119,141	1,057,110
	<u>Library:</u>										
	Books Volumes held	157,155	165,118	167,970	149,524	135,200	141,352	129,275	111,447	122,318	93,147
	Video/DVD held	13,348	16,704	17,344	17,556	16,643	16,659	16,118	14,921	13,954	12,583
	Books Volumes added	11,183	10,966	10,202	8,760	8,884	12,880	12,961	8,610	7,382	5,210
Total Circulations	672,967	682,381	609,387	587,909	621,261	544,893	593,479	456,294	149,359	554,478	

Figure 4. Archived dataset from the previous recreation registration platform, eGov (no longer extant as of 2022), comparing data from years 2018, 2019, and 2022.

Location	Activities 2018	Activities 2019	Activities 2022	Registrations 2018		Registrations 2019		Registrations 2022	
				Course Enrollment	Drop-in	Course Enrollment	Drop-in	Course Enrollment	Drop-in
Onetta Harris Community Center	125	111	n/a	Course Enrollment	Drop-in	Course Enrollment	Drop-in	n/a	
				685	483	790	1387		
Belle Haven Branch Library (OHCC interim services)	n/a	n/a	35	n/a		n/a		Course Enrollment	Drop-in
								95	12
Senior Center	91	100	70	Course Enrollment	Drop-in	Course Enrollment	Drop-in	Course Enrollment	Drop-in
				1085	102	1368	42	626	35
Belle Haven Youth Center	29	35	21	584		754		409	
Arrillaga Recreation Center	488	478	297	Course Enrollment	Drop-in	Course Enrollment	Drop-in	Course Enrollment	Drop-in
				3086	1804	2830	1726	1270	684
Arrillaga Gymnasium*	58	49	52	Course Enrollment	Drop-in	Course Enrollment	Drop-in	Course Enrollment	Drop-in
				492	2203	640	3113	777	3823

Figure 5. Excerpt from City of Menlo Park FY 2023-24 operating budget – LCS department summary revenues (sports, recreation, school-age child care, seniors), FY 2020 – FY 2024



ADDITIONAL INFORMATION – SUPPORT FOR SEEKERS OF CITY JOBS

Possible methods to provide support for seekers of City jobs

On Nov. 7, City Council requested information about possible methods to provide job readiness support for people who are seeking City jobs, to help Menlo Park residents be more competitive for City jobs, specifically in library and community services and the new BHCC. As City staff understood the information request, the desire was to understand the possibilities and what role the City plays in helping residents prepare and compete for City jobs.

The City's human resources (HR) department is currently working on several initiatives to help guide and support seekers of City jobs, including:

- Adding "how to" information about applying for City jobs on the HR page of the City's website to help demystify the process, along with answers to frequently asked questions (FAQs)
- Placing flyers/postcards advertising City employment opportunities at the front counters of City facilities that are open to the public, including BHCC once it opens
- Participating in and potentially helping to organize local job fairs in San Mateo County and Menlo Park.

Additional methods used by other agencies which the City could potentially deploy locally. These would be longer-term efforts to design and implement that would require additional resources and coordination to implement across the City organization, including:

- Partnerships with local nonprofit agencies, such as Menlo Park-based JobTrain, that work with employers and educators to provide vocational training, academics, and essential skills development to assist job-seekers with assessment, job skills, and career placement.
- Interactive programs that inform and educate local community members on the inner workings of the City and help prepare them to be community leaders and possibly take on roles on Boards/Commissions/Council
- Youth internship program through which City departments would seasonally employ paid summer interns from local schools -- for example, graduating high school seniors and college students -- to assist with projects and get an inside look at what it is like to be a part of the daily operations in local government. In addition to projects, interns could attend weekly professional development workshops and trainings like interview skills and resume writing. As one example, the City of Menlo Park previously has placed students in internships with the City organization through the [Sponsored Employment Program \(SEP\)](#).
- Youth leadership academy in which participants interact with City departments in a structured cohort to discuss the inner workings of the City, to provide education to the community and prepare students for potential careers in public service.

The City also contracts with local instructors to teach classes in City recreation facilities on a seasonal basis. These instructors are not City employees, but are independent contractors who receive compensation for their services through a contract with the City, usually as a share of the revenue from the registration fees paid by class participants, but sometimes as a one-time flat payment to the instructor. Many of the recreation classes in the activity guide are provided by these independent contractors. The City recruits for instructors on an ongoing basis through an online interest form on the City website. City staff anticipates that additional recruiting specifically for contract instructors in the new facility will begin in the first quarter of 2024.

Additionally, City staff has been researching the topic of local hiring preference through professional avenues including the Society of Human Resources Management and by reaching out to HR staff at other public agencies in our region. To date, City staff's research and inquiries have located no agency that has a local hiring preference. Some agencies focus on local outreach to ensure that residents are aware of job opportunities, particularly for entry-level and community-based jobs.

City staff's initial research into Equal Employment Opportunity (EEO) laws indicates that a "bona fide occupational qualification (BFOQ)" is required to justify a hiring preference. A narrowly interpreted exception to EEO laws, a BFOQ allows employers to base employment decisions for a particular job on such factors as sex, religion or national origin if they are able to demonstrate that such factors are an essential qualification for performing a particular job. The law construes the BFOQ standard very narrowly and only allowable in a few situations (e.g., a female juvenile hall counselor for female juvenile hall residents). Past legal precedent suggests that residency in the local community would not qualify as BFOQ under current EEO laws. Absent a legal precedent upholding the use of local residency as a BFOQ or a substantial showing that residency is an essential qualification, applicants who do not live in the local area who are rejected through the application process could potentially file a legal claim against the City. It may still be possible to include "knowledge of / familiarity with the City" (rather than residency) as part of the selection criteria. City staff is further researching this and other potential approaches.



INFORME DEL PERSONAL

Consejo municipal
Meeting Date: 12/5/2023
Staff Report Number: 23-264-CC

Asuntos ordinarios: **Aprobación de una resolución a fin de asignar y destinar gastos e ingresos para apoyar la apertura del Campus Comunitario de Belle Haven y las operaciones en curso.**

Recomendación

El equipo del Ayuntamiento recomienda que el consejo municipal adopte una resolución a fin de asignar y destinar gastos e ingresos para apoyar la apertura y el funcionamiento del centro multiservicios del Campus Comunitario de Belle Haven (BHCC) que está actualmente en construcción en 100 Terminal Ave. Por indicación del consejo municipal, el equipo ha elaborado dos opciones para el presupuesto operativo, la opción A y la opción B, a fin de que el consejo municipal las estudie y adopte las medidas oportunas, junto con un proyecto de resolución que incluye un espacio para insertar la opción seleccionada por el consejo municipal (anexo A).

Asuntos relacionados con las políticas

El consejo municipal establece las políticas y objetivos, y ofrece directrices al equipo sobre los servicios municipales prestados a la comunidad de Menlo Park; además, asigna recursos destinados a apoyar y mantener las instalaciones y operaciones de la ciudad, así como a prestar servicios a los residentes.

Antecedentes

El 7 de noviembre, el consejo municipal convocó a una sesión de estudio y orientó al equipo del Ayuntamiento sobre el presupuesto operativo del BHCC que incluye las necesidades de servicio, el análisis de la plantilla, las consideraciones relativas al personal, las posibles fuentes de ingresos y tres situaciones de gastos propuestas (Anexo B). El consejo municipal encargó al equipo que elaborara dos opciones de presupuesto operativo para una revisión final y una posible acción del consejo municipal el 5 de diciembre.

El 14 de noviembre, el consejo municipal, de acuerdo con la política de asignación de nombres de la ciudad, eligió el nombre de "Campus Comunitario Belle Haven" para el nuevo centro de servicios múltiples situado en 100 Terminal Ave. Antes del 14 de noviembre, el proyecto se conocía como Campus Comunitario de Menlo Park (MPCC) o como Centro Comunitario y Biblioteca de Belle Haven (BHCCCL). Los antecedentes y referencias al proyecto antes del 14 de noviembre utilizan esos nombres provisionales.

Análisis

Consideraciones relativas al personal

El informe del equipo del 7 de noviembre analizaba las plantillas actuales, las posibles plantillas nuevas/actualizadas y las nuevas asignaciones de puestos de trabajo, describía los procesos de contratación y promoción del municipio e informaba sobre los instructores contratados (Anexo B).

Necesidades de servicios del BHCC

El BHCC es una instalación pública multiservicios grande y compleja, de una superficie de 37 080 pies cuadrados



STAFF REPORT

City Council
Meeting Date: 12/5/2023
Staff Report Number: 23-269-CC

Regular Business: Adopt a resolution approving the 2024 City Council regular meeting schedule

Recommendation

Staff recommends the City Council adopt a resolution (Attachment A) approving the City Council's 2024 meeting schedule (Attachment B).

Policy Issues

The proposed action conforms to the current practice of having the City Council set its meeting schedule annually. According to the City's Municipal Code, §2.04.010, a regular meeting of the City Council shall be held on the second and fourth Tuesday of every month commencing at 6 p.m., unless the City Council adopts a different schedule by resolution.

Background

The purpose of the annual City Council meeting schedule is to provide the City Council, staff and the public with advance notice of proposed meeting dates. The meeting schedule has typically been approved by the City Council before the last calendar regular meeting in December each year.

Analysis

Staff is proposing a meeting schedule for the 2024 calendar year. The proposed dates have been scheduled taking into consideration City holidays, elections and school breaks. The City Council can approve or modify any of the proposed meeting dates.

Once a meeting schedule is approved by the City Council, it will be used by staff to create a tentative calendar to identify when items will likely be considered by the City Council at upcoming meetings. The City Council is requested to keep Tuesday evenings free so that meetings, including closed sessions, study sessions or other special meetings, can be scheduled as the need arises.

Staff has proposed the following rescheduling of the regular second and fourth Tuesday of the month meetings in Table 1. Generally, staff attempts to avoid meetings following a Monday holiday and back-to-back meetings. The proposed summer recess would involve cancellation of one City Council meeting on July 23 so that no City Council meetings would occur from July 10 – Aug. 12. The City Council can approve this summer recess or a modified summer recess at this meeting

Table 1: Proposed changes to second and fourth Tuesday schedule				
Current second/fourth Tuesday	Proposed reschedule date	Action	Reason	Implications/consideration s/ results
April 9	April 2	Reschedule	Spring break for school districts	Back-to-back meeting with March 26
April 23	April 16	Reschedule	Passover	No-work holiday
May 14	May 7	Reschedule	Avoid back-to-back meetings with May 21	
May 28	May 21	Reschedule	Memorial Day	Avoid meeting following a Monday holiday
July 23	n/a	Cancel	Proposed summer recess	No meetings from July 10 – Aug. 12
Nov. 26	Nov. 19	Reschedule	Thanksgiving week	Back-to-back meeting with Nov. 12
Dec. 24	Dec. 17	Reschedule	Christmas	Back-to-back meeting with Dec. 10

Table 2 outlines neighboring jurisdiction governing board meeting schedules.

Table 2: Regular governing board meeting schedule	
Board	Meeting schedule
City of East Palo Alto	First and third Tuesdays of each month at 6:30 p.m.
City of Palo Alto	First three Mondays of each month, at 6 p.m.
City of Redwood City	Second and fourth Mondays of each month at 6 p.m.
Las Lomas School District	First Wednesday of each month at 7 p.m.
Menlo Park City School District	Second Thursday of each month at 5 p.m.
Menlo Park Fire Protection District	Third Tuesday of each month at 5:30 p.m.
Ravenswood City School District	Second and fourth Thursdays of each month at 6:30 p.m.
Sequoia Union High School District	Wednesdays at 6 p.m. – adopted by Board
Town of Atherton	Third Wednesday of each month at 6 p.m.
Town of Portola Valley	Second and fourth Wednesdays of each month at 7 p.m.
Town of Woodside	Second and fourth Tuesday of each month at 7:30 p.m.
West Bay Sanitary District	Second and fourth Wednesdays of each month at 7 p.m.

Impact on City Resources

There is no impact on City resources.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Attachments

- A. Resolution
- B. Proposed 2024 City Council meeting schedule

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING THE 2024 CITY COUNCIL REGULAR MEETING SCHEDULE**

WHEREAS, the City of Menlo Park ("City") wishes to adopt the 2024 City Council regular meeting schedule as described in Exhibit A;

WHEREAS, Ordinance No. 1080 allows the modification of the approved City Council meeting scheduled through the adoption of a resolution; and

WHEREAS, Section 2.04.010 of the Menlo Park Municipal Code reads as follows:

2.04.010. Regular Meetings – Days and time. **
A regular meeting of the City Council shall be held on the second and fourth Tuesday of every month commencing at six p.m., unless the City Council adopts a different schedule by resolution. A regular meeting of the City Council may be canceled (i) by notice at a prior City Council meeting, or (ii) by notice to all of the City Council members of not less than twenty-four (24) hours prior to the meeting and by posting a notice of cancellation at all locations where public notices are regularly posted by the City.

** For state law as to council meetings, see Government Code sections 36805 to 36808, 54950 to 65960.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MENLO PARK HEREBY RESOLVES:

The 2024 City Council regular meeting schedule us adopted as described in Exhibit A.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December, 2023, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of December, 2023.

Judi A. Herren, City Clerk

Exhibits:

- A. 2024 City Council regular meeting schedule



PROPOSED CITY COUNCIL MEETING SCHEDULE 2024

JANUARY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

MARCH

S	M	T	W	T	F	S
					1	2
3	4	5*	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

31
*March 5 election

APRIL

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

MAY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JUNE

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

30

JULY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

OCTOBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER

S	M	T	W	T	F	S
					1	2
3	4	5*	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

*Nov. 5 election

DECEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-270-CC

Study Session: Provide direction on potential updates to level of service, transportation impact analysis and transportation demand management policies

Recommendation

Provide direction on potential updates to level of service (LOS), transportation impact analysis and transportation demand management policies. Staff has outlined near-term and long-term options in the Analysis section below and is seeking City Council confirmation and/or direction on both near-term and long-term strategies.

Policy Issues

General Plan policy CIRC-3.4 establishes a goal to seek LOS D as a City policy. General Plan policies CIRC-1.1, 1.7, 1.8, 1.9, and 2.7 establish goals related to the safety and comfort of transportation system users in Menlo Park.

Updating the City's Transportation Demand Management (TDM) program guidelines is consistent with General Plan program CIRC-6.A, which seeks to apply these guidelines to residential and non-residential developments throughout the City. Chapters 16.43, 16.44 and 16.5 of the Municipal Code require new development in the Office (O), Residential Mixed Use (R-MU) and Life Sciences (LS) districts to implement a TDM plan to reduce trips by 20%.

Updating TIA and TDM guidelines is also consistent with advancing toward the City's Climate Action Plan goal to reduce vehicle miles traveled (VMT).

Chapter 13.26 of the City's Municipal Code establishes the City's Transportation Impact Fee to "to protect the health, safety, and general welfare of the citizens to facilitate transportation and to promote economic well-being within the city."

Chapter 11.64 of the City's Municipal Code requires employers with fewer than 100 employees to establish a transportation system management program, provide a transportation contact person, and provide information about multimodal transportation options.

Background

Three policy areas shape how the transportation impacts of new development projects are quantified and assessed:

- Transportation Impact Analysis (TIA) guidelines – define how transportation impacts from development are evaluated, including VMT and LOS policy standards established in the General Plan.
- TDM – the City requires certain developments to reduce the number of single occupant vehicle trips in

the City.

- Parking – the City’s Zoning Code defines parking requirements for developments, although certain State laws limit the City’s ability to apply parking requirements. The City also provides on and off-street parking that is managed through the application of various parking policies (time limits, pricing, etc.), although the City does not have an established parking policy.

While the three areas are closely related, this staff report is focused on the first two areas. The City recently applied for and received a grant from the Metropolitan Transportation Commission (MTC) to conduct a parking study that will review parking supply and utilization and identify strategies that the City could use to manage parking supply more efficiently. This work is expected to start by summer 2024.

Transportation impact analysis

The City’s General Plan includes a goal to seek LOS D at intersections throughout the City, which has been in place at least since the 1994 update of the General Plan. During the most recent update in 2016, the City Council directed staff to retain the LOS D standard, while adding a VMT metric, consistent with new State requirements. Senate Bill (SB) 743, adopted in 2013, required jurisdictions to replace the use of LOS with VMT for the purposes of evaluating transportation impacts within the California Environmental Quality Act (CEQA). VMT measures the amount of travel for all vehicles in a defined area, such as within the City boundaries. It is calculated by multiplying estimates of the number of vehicle trips by the distance each vehicle travels. Consistent with state guidance, the City uses an efficiency metric for most types of development (e.g., VMT per person or per employee, depending on whether evaluating residential or office development).

On June 6, 2020, the City Council adopted updated TIA guidelines that included a VMT metric, thresholds of significance for an environmental impact, and other updates to conform with state requirements under SB 743. At that meeting the City Council directed staff to retain the evaluation of LOS as part of evaluating consistency with General Plan policies and to explore the development of multimodal transportation impact metrics that provide a broader consideration of potential development impacts.

On Jan. 11, 2022, City Council adopted minor updates to the TIA guidelines to change how the VMT thresholds are calculated and directed staff to explore multimodal metrics. Staff have done some initial research on multimodal metrics, but have not had capacity to complete a full evaluation. Based on the preliminary review, additional work would also require consultant support, which would need to be included in a future City budget. Attachment A provides a hyperlink to the current TIA guidelines.

Since late 2022, the City has been developing a Vision Zero Action Plan (VZAP) that could inform future updates to the TIA guidelines. The VZAP identifies needed safety improvements across the transportation network, some of which will be near future development sites. Where developments are required to make frontage improvements, they will be informed by the VZAP projects without requiring a new metric. The VZAP is expected to be completed by January 2024.

Transportation Demand Management guidelines

Adopted in 2015, the City’s TDM program guidelines provide a list of potential measures for developers to implement to reduce reliance on the single occupant vehicles. The guidelines provide an approach to estimating peak hour trip credits for various types of transportation measures that can reduce the VMT impact of a potential development to less than significant by reducing the number of single occupant vehicle trips. Attachment B provides a hyperlink to the current TDM guidelines.

The City’s existing TDM guidelines were based on guidelines originally developed by the City/County

Association of Governments (C/CAG) of San Mateo County. C/CAG revised their guidelines in 2021 (Attachment C) and no longer use the credit system. The C/CAG TDM guidelines now use a tiered approach that considers the size of the project, land use type, and whether the site is located near high quality transit. Each development then has a list of required and recommended TDM measures to meet established trip reduction thresholds. These trip reductions align with a single occupant vehicle mode share target of 73% for small projects and 67% for large projects. The guidelines now also include monitoring every two years that is administered by Commute.org. Updates to City guidelines to be consistent with C/CAGs are considered in the analysis section below.

Development in the Bayfront Area, specifically properties in the O, R-MU and LS districts, is also subject to the City’s TDM ordinance that requires new development of 10,000 square feet or greater to develop a TDM plan that will reduce their project’s trips by 20%. This plan also includes annual monitoring and reporting to the City. Several developments have been approved with TDM requirements recently, including Menlo Uptown, Menlo Portal, Menlo Flats, 111 Independence Dr., 123 Independence Dr., 1350 Adams Ct., Willow Village and Hotel Moxy, but none are yet completed and occupied.

In 2021, the City completed a Transportation Management Association (TMA) Feasibility Study that considered options to create a citywide or sub-regional TMA. A TMA is a nonprofit organization that coordinates efforts of employers, developers, housing managers, and other institutions to manage trip-making works to reduce the use of automobiles through a variety of programs. Due to the COVID-19 pandemic, remote work and changing travel patterns, City Council approved a phased approach, initially joining other regional TMAs. In January 2022, the City joined Commute.org.

Analysis

As part of implementing the 1994 General Plan update, the City developed LOS standards and strict thresholds of significance with an intent to reduce the impact of traffic from new developments on City intersections and streets. However, these strict thresholds and methodology often had the opposite effect by encouraging housing development in locations far from employment, increasing the distances people have to travel to reach employment. Attempts to reduce LOS impacts also led to recommendations to widen roads, which further encourages vehicle traffic and has a negative impact on pedestrian and bicycle travel by increasing crossing distance and exposure to vehicle traffic. When using VMT as the transportation metric under CEQA, measures to address traffic impacts focus on reducing vehicle travel and encouraging the use of other modes like transit, walking and biking. Table 1 summarizes the differences between VMT and LOS metrics.

Table 1: Comparison of VMT and LOS metrics	
LOS	VMT
Measures project vehicles at intersections	Measures total project vehicle miles generated
Measures peak period only	Measures travel all day
Focuses on automobile travel	Focuses on all modes of travel
Tends toward recommended improvements that increase vehicle capacity	Tends toward recommended improvements that enhance pedestrian, bicycle and transit access
Encourages suburban and greenfield development	Encourages urban and infill development
Increases GHG emissions	Reduces GHG emissions

LOS analysis in Menlo Park

As a non-CEQA metric, developers are required to evaluate intersection LOS to be consistent with the City’s general plan. The City’s TIA guidelines include the following requirements:

- Developments that produce at least 100 vehicle trips per day must evaluate the impact of additional vehicle travel at intersections, with certain exceptions (e.g., projects that are in low-VMT areas near transit (Attachment D) or that are consistent with the El Camino Real and Downtown Specific Plan)
- Intersections are evaluated where the development is expected to add 10 or more trips per lane, as identified by the City’s travel demand model
- Potential changes to intersections are proposed if the additional traffic would either:
 - Change an intersection that meets the General Plan standard to be worse than the standard, or
 - For intersections that are already worse than the standard, if the new trips would add 0.8 additional seconds of delay per vehicle on the most critical movements
- Improvements are identified that would return the intersection to the pre-project condition. Improvements are considered infeasible if they have significant right-of-way cost or would require removing multimodal infrastructure (e.g., sidewalks or bike lanes).

Intersections are evaluated both in the near term (i.e., project opening date) and cumulative (generally 2040, inclusive of other planned development from the City’s General Plan). Proposed improvements have different implementation paths depending on the timing of impact (when the project opens or in the future) and its relationship to the City’s Transportation Impact Fee (TIF) nexus study (Attachment E), which was adopted by City Council in November 2019 (Table 2).

Table 2: LOS improvement types		
Impact	In TIF	Not in TIF
Near term	<ul style="list-style-type: none"> • Typically built by developer • Developer receives credit against TIF 	<ul style="list-style-type: none"> • Typically built by developer • Developer receives fair share payment from other developments that have similar impacts
Cumulative (2040)	<ul style="list-style-type: none"> • Developer makes TIF payment that counts as the contribution to these projects 	<ul style="list-style-type: none"> • Developer makes a fair share contribution to the improvement • Improvement would need to be approved for implementation by the City Council

LOS policies in neighboring cities

Staff compared Menlo Park’s LOS policies and TIA guidelines to other cities to provide context about how other cities use LOS since the transition to VMT (Table 3). Note that not all cities on the Peninsula have published TIA guidelines that are readily accessible, but the following provides a variety of city sizes and locations within the Peninsula. The table includes:

- The LOS standard(s) set in city general plans
- The number of expected new trips at an intersection that triggers an evaluation
- The amount of additional delay at already deficient intersections that is considered significant

Table 3: LOS standards and thresholds in neighboring cities				
City	LOS standard	Exceptions	Additional trips trigger (#)	Additional delay threshold for deficient intersections (Sec)
Menlo Park	D	E in some locations	10	0.8
Select jurisdictions in San Mateo County				
Redwood City	D	E downtown	30	5.0
San Bruno	None*		N/A	4.0
San Carlos	D		N/A	Staff determination
San Mateo	D		100**	4.0
South San Francisco	None		N/A	None identified
Select jurisdictions in Santa Clara County				
Palo Alto	D	E/F in some locations		4.0
Santa Clara County cities (VTA)	E			4.0

* No explicit standard, varies by location

** For intersections not within 500 feet of the project

Summary findings from this review of other cities general plans and guidelines include:

- Most cities have retained a LOS standard within their general plan documents and generally use LOS D, though a few are using LOS E in select locations or exclude certain areas (such as downtowns or transit rich areas). A few are starting to remove LOS from their general plans altogether (i.e., South San Francisco).
- Menlo Park had the most conservative additional trips and additional delay thresholds of all the cities that set formal thresholds in their guidelines. Generally, other jurisdictions require 4 to 5 additional seconds of delay per vehicle at already impacted intersections before conducting further analysis, compared to 0.8 seconds of delay in Menlo Park.
- Some cities restrict the focus of the analysis not just by potential trips generated or increase in delay, but also by distance from the project. For example, Redwood City generally restricts analysis to within 1 mile of the project and San Mateo only analyzes intersections that are more than 500 feet from the project if they are expected to add 100 or more new trips.
- A few cities also require proposed intersection capacity expansion improvements to evaluate the potential impact on VMT from those capacity expansions as a result of induced demand.
- Like Menlo Park, many cities exclude developments in areas well served by transit from these analyses. Some cities exclude all affordable housing developments, regardless of location, from a transportation analysis. In Belmont, even 50% affordable housing developments are excluded.

Since adoption of the VMT metrics in 2020, the City has approved eight new developments subject to the VMT and LOS analyses. This extensive analysis is provided as part of the decision making process for new development projects, but due to the level of detail and complexity of the analysis, it can be confusing and difficult for community members to understand the outcomes expected for a project. The recommended infrastructure changes can then result in negative impacts that are not desired by the community. One prominent example of this is the Menlo Uptown development, which was approved by City Council on Sept.

14, 2021. This project had proposed LOS-related intersection changes brought back to City Council twice (on Aug. 9, 2022 and Jan. 10,) to remove three of the proposed requirements from the associated development approvals. The proposed intersection changes were removed to address potential concerns about pedestrian and bicycle safety, impact on heritage trees, and increased potential for cut-through traffic.

Transportation demand management

Currently, the City’s TDM ordinance applies to three zoning districts in the Bayfront Area. In addition, a few development projects in the Bayfront Area are subject to trip caps or annual monitoring. Development in the downtown area is required to prepare a TDM plan, but annual monitoring is not required. As noted earlier, the City’s TDM guidelines are based on an earlier version of C/CAG’s TDM guidelines.

In 2021, C/CAG updated their TDM guidelines that are required for all new development in San Mateo County that generate 100 average daily trips (Attachment C). These guidelines are exempt if the City has their own guidelines that were approved for use by C/CAG. Currently, new development is evaluated against the new C/CAG guidelines and in some cases the City’s guidelines. C/CAG’s current trip reduction thresholds are stricter than required by the City, except for non-residential and multi-family projects with fewer than 100 daily trips.

One option the Council may want to consider is to apply a consistent TDM policy citywide. This could be accomplished through C/CAG’s current guidelines, which apply to all developments that produce over 100 daily trips. However, there are some differences between the City’s TDM ordinance in the Bayfront area and the C/CAG guidelines (Table 4). Another possibility is to revise the City’s current zoning requirements for TDM to be consistent with C/CAG or more stringent and have it apply citywide.

Category	City TDM ordinance	C/CAG TDM policy
Trip reduction targets	• 20% trip reduction applied to daily, a.m. and p.m. peak hour trips	• 35% daily trip reduction, 25% for TOD and small multi-residential development
Mode share targets	• None	• 73% for small and 67% for large projects
Trip generate rates	• Uses ITE Trip Generation rates	• Considers different trip generation data sources
Development s applied to	• Bayfront Zoning Districts O, R-MU and LS	• All new projects generating 100 daily trips
Monitoring	• Annual monitoring using driveway counts for life of the project	• Biennial monitoring using employee surveys and focused on non-residential uses, ends after 20 years of occupancy
Penalty	• None, except for developments with a trip cap	• None

One challenge with the trip reduction targets is that they compare to a baseline rate that does not always consider site-specific characteristics such as the mix of land uses, project site location, and proximity to transit and other amenities that reduce the need for a vehicle. An alternative would be to set a mode share target (e.g., percent of trips using single-occupant vehicles) that may be easier to communicate. Using a mode share target can also help to identify areas to target or improve TDM measures.

When the City completed the TMA feasibility study in 2021, remote work was the norm for most major employers and traffic volumes were at historic lows. The City Council accepted the consultant’s recommendation to start slow by working through existing sub-regional TMAs, such as Commute.org that

provide some trip reduction strategies (e.g., first/last mile shuttles, guaranteed ride home).

Since then, several changes have made highlighted the potential need for a Menlo Park-based TMA:

- Employers are increasing requirements for in-person work and traffic volumes have increased.
- New developments that require TDM plans being built and occupied, requiring additional monitoring and coordination.
- The City is nearing completion of its Housing Element update, which is anticipate to generate significant residential development opportunities near downtown and the Caltrain station.

A Menlo Park-based TMA could help manage a wide range of TDM strategies from providing information about commute options to coordinating carpool and vanpool programs to purchasing transit passes for employees or residents. A collective approach to these strategies would be more likely to reduce VMT and more cost effective than if individual employers or developers manage their own programs. A TMA could also take the lead on TDM plan monitoring and coordination with project owners/tenants to address any non-compliance. The City would participate in a TMA and may need to provide startup funds, but the expectation is that the organization would become self-sustaining over time. The City’s participation would repurpose resources historically allocated to employee transit benefits.

Options for City Council

Staff has identified short term and long-term actions to refine City traffic analysis and TDM policies to advance City goals to reduce VMT. Table 5 describes the potential short-term actions.

Table 5: Potential short term options for City Council direction	
Potential action	Considerations
1a. Remove LOS from TIA guidelines except for site access and circulation	<ul style="list-style-type: none"> • Allows TIA to focus on site access and reducing vehicle trips through TDM measures. Significant reduction in analysis required of developers and review time by staff
1b. Update TIA guidelines to limit analysis by geography (within ¼ mile or to the nearest signalized intersection) or provide additional exclusions for affordable housing	<ul style="list-style-type: none"> • Similar to 1a, but retains a subset of LOS analysis. • Some reduction in analysis required of developers, but less than 1a
2. Update TDM guidelines	<ul style="list-style-type: none"> • C/CAG TDM policy supersedes existing guidelines; updates would clarify direction to developers and staff on how the TDM ordinance is applied • Could include cleanup of Title 16 of the Menlo Park Municipal Code (Zoning) to make current requirements consistent with C/CAG

* Neither of these changes would impact the collection of the City’s transportation impact fee

Staff have also identified potential long-term actions that could be pursued if directed by City Council, though these would require additional resources. Specific long-term actions include:

- Develop multimodal metrics. City Council has previously directed staff to explore adding a multimodal metric to replace or complement LOS. Staff has reviewed approaches used by other jurisdictions and does not recommend that the City pursue such a metric at this time. This effort would require a new project to evaluate and define a new metric and such a metric could create substantial effort for both staff and developers. The City already has a mechanism, through the Transportation Impact Fee to implement multimodal improvements.
- Update General Plan Circulation Element. When the City next embarks on a comprehensive update to the Circulation Element, staff recommends updating the LOS policy language. Updating the Circulation

Element would require a public process and staff time from both Public Works and Community Development and would be a significant undertaking.

- Explore a TMA . A TMA could play a role in implementing City efforts to reduce VMT. Greater coordination of existing and new TDM programs would increase their effectiveness, which will grow in importance as the City seeks to implement the Housing Element. This Updates to TDM requirements in the Municipal Code could provide a means to encourage or require participation in a Menlo Park-focused TMA. Staff recommends beginning to explore a TMA further and returning with options for City Council to consider at a future date.

Impact on City Resources

Click here to enter text. Some Table 6 summarizes the estimated staff time and cost to implement the short-term actions.

Table 6: Estimate impact on City resources by potential action			
Potential actions	Staff effort	Expected duration	Budget need
1. Remove LOS from TIA guidelines except for site access and circulation	Low	Three to six months	Included in baseline operations
2. Update TIA guidelines to restrict analysis by geography or number of trips	Medium	Six to nine months	\$30,000 - \$60,000*
3. Update TDM guidelines	Low	Three to nine months	Included in baseline operations

* Additional budget would be need to obtain consultant help to identify and evaluate potential options.

The long-term options related to developing new multimodal metrics or conducting a more comprehensive update of the City’s Circulation Element will require substantial resources, including staff time and consultant support. If City Council directs staff to pursue either of these options, staff would develop a work scope and estimate the cost needed to implement these actions as part of a future goal setting and/or budget process.

The long-term option to explore the TMA could begin with a relatively modest level of effort, but would also require both staff time and consultant support. It may be appropriate to connect this work to programs in the City’s Housing Element intended to advance development of affordable housing downtown.

Environmental Review

This action is not a project within the meaning of the CEQA Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Hyperlink – TIA guidelines:menlopark.gov/files/sharedassets/public/v/2/public-works/documents/transportation/transportation-projects/tia-guidelines-modifications-approved.pdf

- B. Hyperlink – TDM guidelines: menlopark.gov/files/sharedassets/public/v/1/public-works/documents/transportation/menlo-park-tdm-guidelines_july-2015.pdf
- C. Hyperlink – C/CAG TDM policy: ccagtdm.org/wp-content/uploads/2021/12/FINAL-CCAG_TDM-Policy-Update-Documents_9-9-2021.pdf
- D. Hyperlink – VMT per capita map: experience.arcgis.com/experience/1cf6ba554bdd4476bd15cd2d1db6a80d
- E. Hyperlink – Transportation Impact Fee Nexus Study: menlopark.gov/files/sharedassets/public/v/1/public-works/documents/city-of-menlo-park-transportation-impact-fee-nexus-study.pdf

Report prepared by:
Kristiann Choy, Senior Transportation Engineer

Report reviewed by:
Hugh Louch, Assistant Public Works Director – Transportation



STAFF REPORT

City Council

Meeting Date: 12/5/2023

Staff Report Number: 23-271-CC

Informational Item: City Council agenda topics: December 2023

Recommendation

The purpose of this informational item is to provide the City Council and members of the public access to the anticipated agenda items that will be presented to the City Council. The Mayor and city manager set the City Council agenda so there is no action required of the City Council as a result of this informational item.

Policy Issues

In accordance with the City Council procedures manual, the Mayor and city manager set the agenda for City Council meetings.

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through Dec. 12. The topics are arranged by department to help identify the work group most impacted by the agenda item.

Specific dates are not provided in the attachment due to a number of factors that influence the City Council agenda preparation process. In their agenda management, the Mayor and city manager strive to compile an agenda that is most responsive to the City Council's adopted priorities and work plan while also balancing the business needs of the organization. Certain agenda items, such as appeals or State mandated reporting, must be scheduled by a certain date to ensure compliance. In addition, the meeting agendas are managed to allow the greatest opportunity for public input while also allowing the meeting to conclude around 11 p.m. Every effort is made to avoid scheduling two matters that may be contentious to allow the City Council sufficient time to fully discuss the matter before the City Council.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. City Council agenda topics: December 2023

Report prepared by:

Judi A. Herren, Assistant to the City Manager/City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
1	Recognition of outgoing Mayor	Regular	No action	CMO
2	Selection of Mayor and Vice Mayor	Regular	Decide	CMO
3	Appoint City Council representatives and alternates to various local and regional agencies and as liaisons to City Council advisory bodies	Regular	Decide	CMO
4	Appoint City Councilmembers to various standing and ad hoc subcommittees, and disband inactive ad hoc subcommittees	Regular	Decide	CMO
5	Provide direction to the City's voting delegate regarding regional vacancies for the next City Selection Committee meeting Dec. 15	Regular	Decide	CMO
6	City Council agenda topics: Jan 2024	Informational	Receive and file	CMO
7	Transmittal of city attorney billing (Oct 2023)	Informational	No action	CMO



STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-272-CC

Informational Item: **Community Wellness and Crisis Response Team (CWCRT) – overview for City Council**

Recommendation

The purpose of this informational item is to provide an update to the public and to the City Council on the recent agreement of Menlo Park Police Department (on behalf of the City Organization) in partnership with the County of San Mateo and the local nonprofit StarVista to pilot the addition of a Mental Health Clinician within the response of the Menlo Park Police Department.

Policy Issues

In accordance with the City Council procedures manual, the city manager and the Mayor set the agenda for City Council meetings. While the nature of the recently signed agreement does not require City Council approval, the city manager and police chief believe that it is important to brief the City Council and the public on this initiative.

Analysis

The County of San Mateo began the CWCRT through adoption of a resolution in early 2020. The CWCRT Pilot Program created a partnership among four City Police Departments (Daly City, South San Francisco, San Mateo and Redwood City) and the County, to embed in each of those cities' police departments one mental health clinician to provide a crisis co-response to crisis calls involving mental health issues. Though slightly delayed by the pandemic, the program launched in December 2021 as a co-responder strategy for crisis calls related to mental health issues.

This strategy has now been successfully implemented in San Mateo County's larger cities of Daly City, Redwood City, San Mateo and South San Francisco. The County has committed to funding a similar pilot for the next tier of cities within this County by population - East Palo Alto, Menlo Park and San Bruno. In May 2023, the county was awarded an Edward Byrne Memorial Justice Assistance Grant (JAG Grant) of just over \$3 Million to engage in this program among the three cities, including Menlo Park, through June 2026.

To implement this program, the County has contracted with local nonprofit StarVista, which will provide the clinicians to be embedded within each of the three departments. The program also partners with Stanford's Gardner Center to collect and evaluate data related to the program. Expected outcomes from this enhanced response strategy and on-hand expertise include residential stability, improved mental health and connection to needed services and treatment, reduced use of acute and emergency services, and reduced contact with the criminal justice system.

Attachment A provides an informational report which summarizes this initiative.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Memorandum – informational report – CWCRT Pilot Program in Menlo Park

Report prepared by:
Dave Norris, Police Chief



MEMORANDUM

Date: 12/05/23
To: City Council via City Manager Murphy
From: Police Chief Dave Norris
Re: Informational Report – Community Wellness and Crisis Response Team
– Menlo Park PD Pilot Program

Honored City Council –

The search for alternatives to armed police response has been a popular topic throughout the past few years, as we have examined and re-evaluated contemporary approaches to public safety. One of the key elements of this has been an ongoing discussion on the approach to calls for service involving persons in mental health crisis. Because the safety nature of mental health crisis calls can be difficult to assess on their outset for the exact public safety needs, separating these calls entirely from the police can be a risky endeavor (Ratcliffe, 2021). In light of this, one of the more prevalent and safety-prioritized strategies for exploring alternative response has been what is known as the “Co-Response” model.

In the Co-Response model, a police officer is paired with a clinician to respond to a call, make a safety assessment, and utilize the clinician to the greatest degree possible during the call. In some cases, there is an immediate safety need to be remedied, with the police taking a primary role until the scene is secure. In other cases, there is little to no public safety need, and the police officer can cede primary duties to the clinician for a lower level approach that relieves any stress to the involved party of interacting with armed or uniformed personnel. Most cases are somewhere on this continuum, best served by a collaborative approach that assures safety and minimizes any unnecessary discomfort or concern to the party needing service.

An excellent outside example of this type of program is currently in Boulder, CO. Boulder Police are co-responding with clinicians and are closely monitoring their own progress as well (Boulder Police Department, 2023).

Background on alternatives and augments to crisis response

Alternatives to this type of crisis response include utilization of officers specifically trained in crisis intervention (known as CIT – Crisis Intervention Trained), the aforementioned Co-Response, and what has been termed “Community-Based Response,” or a response involving non-police directly to mental or behavioral health crisis situations.

This is reported in detail in a recently published resource from the Police Executive Research Forum, which outlines each of these models, and suggests eight “Action Steps” for modern police agencies in their efforts to address alternatives to crisis-response (Police Executive Research Forum, 2023):

1. Start planning now – don’t wait for a crisis
2. Review current response procedures and assess needs
3. Research options for response programs
4. Identify and assemble community stakeholders

5. Create a common vision and team structure
6. Draft a response program and implement a pilot test
7. Train all agency personnel who interact with the public on how to respond to persons in crisis
8. Conduct ongoing evaluation and improvement

This provides an excellent outline for an approach that best fits the current capacities and capabilities of every department individually. The majority of the work to accomplish those eight recommended steps is being done collaboratively in San Mateo County, with the current strategy of Co-Response in implementation with the larger San Mateo County policing agencies as a template for the smaller ones.

Research in the area of alternative response to mental health crises has been sporadic and to this date not fully conclusive. However, several programs are reporting modest anecdotal and evidence-based successes, with more conclusive evidence and research in the works in several jurisdictions. A research article in *Psychiatry Online* outlines all of these options well, and acknowledges that police are often the first responders in crisis situations, and a collaborative approach enhances our ability as police to respond (Balfour, 2021).

It is important to note that up to this point, Menlo Park Police Officers, like many of our colleagues in San Mateo County law enforcement positions, are additionally trained and certified in Crisis Intervention, or CIT, through a 40-hour course above and beyond police academy training (San Mateo County Behavioral Health, 2023). We strive to and are regularly close to 100% certification among our personnel, and CIT-trained officers respond currently to any service call involving mental health crises, often to great effect in de-escalation and peaceful resolution.

San Mateo County initiates support of co-response model pilot in four cities

In early 2020, San Mateo County Board of Supervisors adopted a resolution initiating the Community Wellness and Crisis Response Team (CWCRT) Pilot Program, funding a Co-Response Pilot involving the embedding of mental health clinicians into the four largest municipal police departments in the County (Daly City, Redwood City, San Mateo, and South San Francisco). This was accomplished by contracting mental health clinicians through one of San Mateo County's most effective non-profits in behavioral health and recovery, StarVista (StarVista, 2023). To ensure credibility and evaluate effectiveness, the County also brought Stanford's Gardner Center into the program to collect data and monitor outcomes for evidence-based conclusions (Stanford University, 2023). The pilot program provides transparent data on their response systems in each of the four cities through the County website (County of San Mateo, 2023)

The CWCRT Pilot has been in operation in these larger cities now since around the end of 2021. Agencies are reporting about 20-25 responses per month that involve the embedded clinicians. Although the programs continue to make adjustments to learn better from responses through more consistent data collection between jurisdictions, the agencies are reporting an overall reduction in mental health holds (known as "5150s" – Welfare and Institutions Code 5150 provides authority for first responders to place an individual on a temporary hold for mental health evaluation). While this is not yet conclusive, the agencies and the Gardner Center speculate that the added case management and follow-up care facilitated through the embedded clinicians may be leading to reduced needs to place these holds. The Gardner Center produced a report in March of 2023 that provides an overview of data collected throughout 2022 in the four pilot cities, as well as some insights gained and next steps to further hone in on the evaluation process (Pyne, 2023).

In addition to data collected from the co-Responder jurisdictions, the Gardner Center is also collecting data

from local jurisdictions not utilizing this program, for comparison. Menlo Park is already a committed contributor to this data as a non-clinician agency. For perspective, Menlo Park Police take about 10-12 “5150s” per month, and respond to about another 85-90 calls per month that are described as “transient” or “welfare check,” based on call data from the past 18 months. While not all of these calls necessarily represent situations that could benefit from co-response, it is possible that many of them could.

Evolution of the pilot program – co-response in the next tier of population cities

With the interim success of the CWCRT pilot program to date, the County of San Mateo applied for and was approved for an Edward Byrne Memorial Justice Assistance Grant (JAG Grant) of just over \$3 Million to engage in this program among the three cities next most populous in our County – East Palo Alto, Menlo Park, and San Bruno. The plan is to establish similar embedded mental health clinicians, working in co-response with police officers, with funding through June of 2026.

Menlo Park’s CWCRT pilot program

The City of Menlo Park, through the City Manager and the Police Chief, has accepted this opportunity. This program is in the planning stages currently, with each city agreeing to engage in the program. Next steps are being identified, with a timeline to implementation within calendar year 2024.

Here are the highlights of the agreement:

- The agreement is between the three City Police Departments – East Palo Alto, Menlo Park, and San Bruno; San Mateo County Behavioral Health and Recovery Services (BHRS); and StarVista
- The grant is funded for 3 fiscal years, commencing August 2023 and funding through June 2026, with each city embedding a mental health clinician within their respective Police Departments
- The purpose of the program is to enhance each City’s response to members of our communities experiencing mental health crises
 - Safety will always be the key element, and will be the primary evaluative tool for each situation – the public safety situation of every incident is evaluated to ensure that co-response is possible, and re-evaluated when the situation is safe and appropriate for co-response if a safety response is required first
 - Police and mental health experts respond together, working collaboratively with their respective expertise to assess each mental health crisis situation
 - The goal of co-response will be to provide de-escalation and support the safety of the individual in crisis, as well as members of the public and other responders involved
 - The mental health clinician will then be able to assess the “client” involved in the mental health crisis, determine the best immediate course of action, and follow-up support and referrals to provide stability and potentially prevent repeat crises or repetitive calls for service
- A key goal is that clients coming into contact and interacting with police receive early intervention, guidance, and follow-up to include education on appropriate and available health services
 - In addition to improving outcomes for clients upon contact, police personnel also benefit from first-hand observation and lessons in effective intervention strategies, and officers’ knowledge of the range of mental health conditions is broadened
 - The County also benefits from this service in facilitating an early and direct response to community members experiencing a mental health crisis, enhancing response times to those in need of these services, and creating a broader and more effective continuum of care
 - This program will also serve to strengthen the relationships between all these partnering service

providers and with their community

- Anticipated important outcomes include, but are not limited to:
 - Residential stability
 - Improved mental health and connection to needed services and treatment
 - Reduced use of acute and emergency services
 - Reduced contact with the criminal justice system
- Each of the Police Departments will establish policies and protocols for their embedded clinicians, including response duties and responsibilities, chain-of-command, and evaluation
 - Departments will provide clinicians with workspace and access to police radio and information systems as needed for efficient operation
- Each Police Department will track and record activity, and report data to the Gardner Center in furtherance of the monitoring and evaluation of this program
- Departments and their clinicians will participate in collaborative trainings when available and appropriate
- A steering committee is established including all involved departments, the County, StarVista, and the Gardner Center to monitor progress of the program, identify needs, and make adjustments when needed

Please keep in mind as we embark on this important mission that there is much that needs to be lined up and put in place. Menlo Park PD will be working diligently in partnership with the County, StarVista, and the Gardner Center to get our program going. Great exemplars for policy, protocol, and reporting are within reach from our partnering police agencies. Once we are operational, expect to see transparent reporting of our progress as you can with the current pilot agencies through the County's CWCRT webpage (County of San Mateo, 2023).

Our next steps include:

- Complete and finalize the agreement
- Work with StarVista to identify a clinician who represents a good fit with Menlo Park PD and ensuring proper background and onboarding are commenced
- Identify workspace and equipment / access needs for our clinician
- Complete updated policy and protocol for co-response, and conduct training with our dispatch and patrol personnel to understand our new operating procedures
- Bring in the clinician and introduce them to our people and practices, as well as providing any needed training for in-field co-response
- Connect with the Gardner Center to understand data reporting needs and set up appropriate practices to contribute to data collection and program evaluation
- Conduct outreach to our community through public meetings as well as conventional and social media to introduce the program and our clinician

We will keep the City Council and community informed of our progress.

As we begin to employ this added element of our response, the hours will be limited – we only have one clinician. The clinician will be working a full work-week designed to cover peak times for crisis responses, and Menlo Park PD will continue to send CIT-trained officers when the clinician is not available.

In addition, the county is in the process of establishing a countywide, 24-hour response hotline and team to assist covering crisis incidents in hours when a clinician is not on-duty with our department. The County hopes to bring this resource online in early 2024 as well, and are bringing more information on this upcoming resource forward in a study session with the San Mateo County Board of Supervisors on

December 5. I have already volunteered to sit on the steering committee for this resource on behalf of the San Mateo County Chiefs & Sheriff Association.

On behalf of our Police Department, the City of Menlo Park, and our community, I am excited and proud to be involved in this partnership. We greatly look forward to bringing this added element to our public safety approach, and are excited in anticipation of what this program can bring to the future of public safety and service in Menlo Park.

References

- Balfour, M. (2021). Cops, clinicians, or both? Collaborative approaches to responding to behavioral health emergencies. *Psychiatric Services*, DOI: <https://doi.org/10.1176/appi.ps.202000721>.
- Boulder Police Department. (2023). *Crisis Intervention Response Team*. Retrieved from [bouldercolorado.gov: https://bouldercolorado.gov/services/crisis-intervention-response-team](https://bouldercolorado.gov/services/crisis-intervention-response-team)
- County of San Mateo. (2023). *Community wellness and crisis response team*. Retrieved from [smcgov.org: https://www.smcgov.org/ceo/community-wellness-and-crisis-response-team](https://www.smcgov.org/ceo/community-wellness-and-crisis-response-team)
- Police Executive Research Forum. (2023). *Rethinking the Police Response to Mental Health-Related Calls - Promising Models*. Police Executive Research Forum - <https://www.policeforum.org/assets/MBHResponse.pdf>.
- Pyne, J. (2023). *Interim report: San Mateo County's community wellness and crisis response team pilot program*. Stanford University: John W. Gardner Center.
- Ratcliffe, J. (2021). Policing and public health calls for service in Philadelphia. *Crime Science Journal*, DOI <https://doi.org/10.1186/s40163-021-00141-0>.
- San Mateo County Behavioral Health. (2023). *Crisis Intervention Training Program*. Retrieved from [smchealth.org: https://www.smchealth.org/article/crisis-intervention-training-program](https://www.smchealth.org/article/crisis-intervention-training-program)
- Stanford University. (2023). *John W. Gardner center for youth and communities*. Retrieved from [stanford.edu: https://gardnercenter.stanford.edu/](https://gardnercenter.stanford.edu/)
- StarVista. (2023). *Community wellness and crisis response team (CWCRT)*. Retrieved from [star-vista.org: https://star-vista.org/programs/community-wellness-and-crisis-response-team/](https://star-vista.org/programs/community-wellness-and-crisis-response-team/)



STAFF REPORT

City Council

Meeting Date: 12/5/2023

Staff Report Number: 23-273-CC

Informational Item: Update on the Caltrain quiet zone study

Recommendation

This is an informational item and does not require City Council action. The report transmits an update on the Caltrain quiet zone implementation plan.

Policy Issues

The City Council identified the Caltrain quiet zone implementation plan as a high priority project in their 2021 work plan. The quiet zone project is included in the five-year capital improvement program.

Background

On July 12, 2022, the City Council approved a scope of work with Kimley-Horn and Associates (KHA) to conduct the Caltrain quiet zone implementation plan. This study examined the five at-grade crossings of the Caltrain railroad tracks (Ravenswood Avenue, Oak Grove Avenue, Glenwood Avenue, Encinal Avenue, and the pedestrian crossing in the Menlo Park station area).

The implementation plan included:

- Background analysis and information about the process to establish a quiet zone
- Improvement concepts for the at grade crossings
- A site visit with representatives of the City, Caltrain, the California Public Utility Commission, and the Federal Railroad Administration (FRA)
- Outreach

The implementation plan identified options to implement a quiet zone, including installing four quadrant gates at two at-grade street crossings (Ravenswood Avenue and Oak Grove Avenue) or at all four at-grade street crossings. Because FRA considers the average risk of all crossings in the proposed quiet zone, not the individual risk at each crossing, installing four quadrant gates at two crossings with the highest risk scores is sufficient to implement a quiet zone under current regulations.

On April 25, the City Council conducted a study session on the draft implementation plan. The City Council directed staff to:

- Pursue an agreement with Caltrain to advance final design
- Pursue four quadrant gates at two crossings to implement a quiet zone more quickly including design work and budget impacts for all four gates
- Draft a letter to seek reimbursement from California High-Speed Rail Authority
- Pursue left-turn restrictions from Oak Grove Avenue to Merrill Street and Garwood Way including community outreach

Analysis

Implementation plan final report

Since the completion of the April study session, KHA has completed the final report for the implementation plan, which is now posted on the City's website (Attachment A).

Agreement with Caltrain

Caltrain staff requested that the City take the lead on contracting for design services for the two at grade crossings (Ravenswood Avenue and Oak Grove Avenue), with Caltrain reviewing designs. Caltrain staff provided a service agreement to review designs, which was executed.

Staff developed an RFP and solicited proposals from design consultants to develop the railroad gate designs. Staff received proposals from two consultants and, in coordination with Caltrain, selected BKF to complete the final design. The BKF Engineers (BKF) team, which also includes RSE Corporation, has significant experience working on gate design on the Caltrain corridor. The City contracted with the BKF team through the City's existing master agreement.

High Speed Rail letter

Staff reached out to staff from the California High Speed Rail Authority (CAHSR) to discuss the potential for funding contributions to the implementation of four quadrant gates. CAHSR staff indicated that no funding was available to support projects to install four quadrant gates at this time. CAHSR has several major unfunded projects, and 'sealing' the Caltrain corridor (i.e., installing four quadrant gates, grade separating or closing all crossings) was not as high a priority as these other projects, which include tunnels to connect from the Bay Area to the Central Valley, new stations and others. While the Caltrain corridor must be fully sealed for trains to operate faster than 79 mph, high speed rail trains could operate on the corridor at lower speeds.

CAHSR staff were supportive of the project and were interested and willing to provide letters of support and coordination on the pursuit of grants to help install four quadrant gates. As such, staff will continue to coordinate with CAHSR staff on seeking funding for the railroad gate design.

Oak Grove Avenue turn restrictions

On Sept. 12, the City Council approved additional left turn restrictions from Oak Grove Avenue onto Merrill Street and Garwood Way. The City is working with our on-call signage and striping contractor to implement the turn restriction. The materials used in the existing medians adjacent to the railroad tracks are currently on back order. Staff hopes to install these the median closure in early 2024.

Impact on City Resources

The City Council allocated funding for design of four-quadrant gates at Ravenswood Avenue and Oak Grove Avenue in the capital improvement program as part of the fiscal year 2023-24 budget.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Hyperlink – final report for the implementation plan: menlopark.gov/Government/Departments/Public-Works/Capital-improvement-projects/Caltrain-Quiet-Zone

Report prepared by:

Hugh Louch, Assistant Public Works Director – Transportation



STAFF REPORT

City Council
Meeting Date: 12/5/2023
Staff Report Number: 23-274-CC

Informational Item: Update on the City’s Five Year Street Maintenance Plan

Recommendation

Staff recommends that the City Council receive an update on the City’s Five Year Street Maintenance Plan (Plan). The Plan identifies potential street maintenance projects for inclusion in the capital improvement program (CIP) over the next five years.

Policy Issues

This Plan is consistent with the City’s goal of maintaining and enhancing its municipal infrastructure and extending the life and safety of its streets. The Circulation Element of the City’s General Plan also includes policies related to the maintenance and safety of the roadway network.

Background

Existing pavement management system

The City maintains approximately 96 miles of roadways across 348 streets. Staff uses StreetSaver, a pavement analysis software endorsed by the Metropolitan Transportation Commission (MTC), as the pavement management system (PMS) for cataloguing streets and identifying segments in need of repair. Through grants provided by MTC, a survey and inventory of City pavement conditions is performed every two years. Each street is assigned a pavement condition index (PCI) rating, a numeric identifier that has a scale of zero to 100, to classify the condition of the roadway (Table 1). As of March 2023, the City’s overall PCI is 76 (Good) and ranks sixth amongst the 20 municipalities in San Mateo County.

Table 1: PCI classification	
PCI rating	Street condition
0 to 25	Failed
25 to 50	Poor
50 to 70	Fair
70 to 90	Good
90 to 100	Excellent or brand-new street

The goal of the City’s pavement management approach is to maintain the City’s overall PCI in the good category through cost effective preventative maintenance measures. In general, streets with higher PCIs are candidates for cost effective surface treatments such as slurry seals, which extend the life of existing

good pavement. By contrast, streets with lower PCIs require more intensive and expensive repairs such as deep overlays or full street reconstruction. Table 2 shows different roadway repairs and unit cost estimates of the repair. With proper maintenance, the number of streets requiring full reconstruction can be minimized.

PCI	Recommended repair	Estimated unit cost (square yard)
70 to 100	Slurry seal	\$6
50 to 69	Overlay (1 to 3-inches)	\$34
26 to 49	Deep overlay (over 3-inches)	\$50
0 to 25	Full street reconstruction	\$200

The City maintains its PCI primarily through the implementation of the annual Street Resurfacing project included in the CIP. The project alternates asphalt overlay and slurry seal projects each year and identifies street segments for repair. The CIP also includes street improvement projects separate from the annual street resurfacing project for streets that have a larger scope, more involved traffic control coordination, and integrate multimodal infrastructure and other street or utility improvements. These separate CIP projects may require additional outreach, permitting with other agencies, multiple sources of funding, and higher complexities of design. Examples of these larger CIP projects include recently completed work at Ravenswood Avenue (from El Camino Real to Laurel Street) and Willow Road (from Middlefield Road to Chester Street).

Each year, staff reviews the StreetSaver recommendations based on PCI and available budget. Site evaluations are conducted to confirm the type of treatment needed for street segments in need of maintenance and to identify the general scope. Staff coordinates with other development or utility improvements, and projects are classified by scope and complexity of work. Isolated pavement repairs are addressed by maintenance staff or the City’s on-call contractor while larger projects are programmed in the CIP (under the annual Street Resurfacing project or as separate projects). Overall, the process for determining the street resurfacing needs involves the following:

- Review of pavement conditions through reports provided by the MTC and the use of StreetSaver to assess street segments for repair in the CIP;
- Gather public input and review of reported roadway damages by the community or staff;
- Coordinate with City departments, West Bay Sanitary District, Cal Water, and other utility agencies to eliminate overlaps with upcoming utility or development work;
- Review of projects for implementation of complete streets elements (e.g., pedestrian, bicycle and vehicular safety improvements) including curb ramp upgrades per the Americans with Disabilities Act;
- Conduct site visits and development of a cost/benefit analysis for the recommended pavement treatment;
- and
- Updates to the Plan and specific street segments and/or projects are included in the CIP based on the available budget.

At the completion of each construction project, staff updates the City’s GIS database and StreetSaver to catalogue constructed improvements and ensure the City’s PCI is up-to-date.

Analysis

The Plan is a framework to help guide and select future street maintenance projects in the CIP, and as such, proposed street locations in the Plan may change as conditions change and CIP projects are

programmed each year. To develop this proposed Plan, staff utilized StreetSaver to draft a preliminary list of street maintenance projects over the next five fiscal years. Damaged street segments, where reported by the public and staff, were also assessed for inclusion into the list. The list was used as the foundation for developing the Plan which was further refined as follows:

- Coordination with project stakeholders – Staff coordinated the Plan with other City departments and utility agencies to eliminate project overlaps and minimize construction impacts. In the event of project overlaps, the schedule was modified for the street maintenance to follow the completion of utility upgrades. Street segments with overlapping improvements by other agencies will be considered as candidates for cost sharing.
- Maximize the City’s overall PCI – Staff used StreetSaver to draft a list of projects based on a desired PCI of 80 over five years and revised the list to account for available budget, overlaps with other projects, and urgency of repair. Additionally, most street maintenance work is scheduled from late spring to early fall due to favorable weather conditions. Staff estimates that a maximum of 40 streets for slurry seal, or 20 streets for overlay, can be constructed in this timeframe. These constraints were used to fine-tune the number of streets that could be included on an annual basis. Ultimately, the City’s PCI will be maintained at 76 should the City adhere to the Plan’s recommendations.
- Achieve geographic distribution to service streets in most need of repair – Staff utilized StreetSaver to calculate average PCIs for each City Council district which yielded average PCIs in the “Good” classification ranging from 74 to 80 in each district per Table 3.

District	Average PCI
1	76
2	80
3	75
4	75
5	74

The results indicate that, on average, streets within all five districts generally have similar pavement conditions. When developing the Plan, staff gave priority to street segments determined to be in most need of repair based on the above metrics.

- Public input and engagement – While staff tracks public questions and concerns regarding street conditions for evaluation and incorporation into the street resurfacing projects, there has been no formalized process for engagement. Before finalizing the list of street segments for resurfacing each fall, staff will make the information available on the City’s website and solicit feedback. Public input will be used to finalize the planned work for the upcoming year, and for the selection of segments considered in future years.

The Plan

The Plan proposes to treat a total of 102 street segments totaling 22.9 centerline miles, representing approximately 24% of the City’s roadway network over five years. From this total, 97 street segments will be part of the annual Street Resurfacing Project while five streets are proposed to be resurfaced as separate CIP projects due to their complexity and coordination needs. Since the Plan is a dynamic document, the proposed project list may vary if conditions change.

The Plan also provides an opportunity to implement a number of City transportation priorities as identified in

the Transportation Master Plan, Vision Zero Action Plan (in development), and upcoming revisions to the Neighborhood Traffic Management Program. Where these plans or programs recommend minor striping changes to enhance safety or provide compete streets features, staff will work to integrate these into maintenance projects.

Street Resurfacing Project

The annual street maintenance effort alternates between slurry seal and overlay projects each fiscal year. Table 4 provides a summary of proposed projects under the Plan as categorized between base bid and bid alternates. The base bid segments represent streets in need of repair for which there is sufficient funding for (discussed in further detail in the Impact on City Resources section). Depending on budget availability, bid alternates are also included for the projects in each fiscal year. If the market conditions and/or funding revenues are favorable during construction bidding, staff will consider the addition of these street segments as part of the bid alternate process. If there is insufficient funding, these segments will need to be deferred until future years. A map of proposed base bid street maintenance projects over the five-year period is included as Attachment A. A map of the proposed bid alternate street maintenance projects over the five-year period is included as Attachment B.

Note that the proposed list of streets identified in the Plan will be reviewed during the annual planning phase to account for new or unforeseen conditions, and therefore, may change before construction. In addition, small areas of isolated pavement damage, as reported by roadway users or staff, are addressed separately from the Plan. These areas often need to be repaired quickly and are typically completed by Public Works maintenance staff or the City’s on-call contractor for asphalt repair.

Table 4: Summary of proposed annual street maintenance projects				
Fiscal year	Base bid		Bid alternate	
	Streets treated	Miles treated	Streets treated	Miles treated
Street Slurry Seal Project 2023 – 24	28	5.5	8	1.5
Street Overlay Project 2024 – 25	17	3.7	2	0.2
Street Slurry Seal Project 2025 – 26	21	4.9	17	4.6
Street Slurry Seal Project 2026 – 27	17	3.8	16	2.3
Street Overlay Project 2027 – 28	14	2.7	3	0.3
Separate CIP projects	5	2.3		
TOTAL	102	22.9	46	8.9

Separate CIP Projects

The Plan also includes five CIP resurfacing projects. These projects typically have more complex design, funding, or coordination needs and are summarized in Table 5.

In 2021, the City Council held a study session to review rubberized asphalt concrete and hot mix asphalt pavement resurfacing options for upcoming capital projects. Rubberized asphalt is composed of recycled tires, reduces vehicle noise and has a 20-year typical life expectancy compared to 15 years for hot mix asphalt. However, rubberized asphalt costs 20 to 25% more than hot mix asphalt and is generally more labor intensive to install. The City Council directed staff to use rubberized asphalt concrete as a bid alternate to hot mix asphalt for:

- Projects proposing a 1.2 to 2.4-inch top lift overlay
- Projects along arterial or collector streets
- Projects planned for summer construction

The streets identified in Table 5 meet the above criteria, therefore, rubberized asphalt will be included as a bid alternate on these projects.

Street	From	To	PCI	Tentative schedule
Bay Road	Van Buren Road	Ringwood Avenue	32	FY 2025 – 26
Middle Avenue	San Mateo Drive	El Camino Real	68	FY 2025 – 26
Sand Hill Circle	Sand Hill Road	End of Loop	27	FY 2026 – 27
Sand Hill Road	Sand Hill Circle	City Limit (adjacent to I-280 ramp)	46	FY 2026 – 27
Middlefield Road	Willow Road	City Limit	48	FY 2027 – 28

Notes:

1. Fiscal year (FY)
2. Sand Hill Circle has a PCI of 27. Although this road is not an arterial or collector street, its current pavement condition qualifies it for a deep overlay. Rubberized asphalt will be considered for this project, because it will be constructed as part of the same project as Sand Hill Road. Using two different types of asphalt concrete during a single project would not be cost effective.

Streets not in the Plan

Although the Plan is comprehensive, 25 street segments with a PCI lower than 50 could not be included for resurfacing due to budget constraints. This is included as Attachment C. As these are shorter segments and experience lower traffic, staff will assess if spot repairs can be made through the City’s on-call asphalt repair contract to improve these roads. If the streets require more extensive rehabilitation, they will be monitored and evaluated as part of the annual updates to the Plan, but given the overall budget constraints for the project, other streets may be displaced to accommodate this work unless other funding sources are identified. Given the extensive and costly rehabilitation needed for streets in poor condition, staff expects that repairing all these remaining streets will take more than the five-year planning horizon of this Plan. If more resources were allocated to repair more streets in poor condition, less preventative maintenance would be done and the overall pavement condition would be expected to worsen significantly over the next 10 years.

Impact on City Resources

The proposed Plan was developed to utilize the funding sources anticipated over the next five years. No additional appropriations or resources are requested at the present time. The Plan would be funded through a combination of the highway user’s (gas) tax, construction street impact fees, Measure W, Senate Bill 1 (SB-1), and the General Capital Fund (a nominal carry-over amount that was appropriated in prior fiscal years). Collectively, the City anticipates \$3,300,000 per fiscal year from these funding sources. Measure W, a countywide sales tax measure that provides funding for paving or transportation projects, may be applied toward transportation safety improvements (e.g., striping changes, traffic calming, closing small sidewalk gaps, etc.) which often accompany street maintenance projects. Staff anticipates programming Measure W funds into the street resurfacing projects starting in fiscal year 2024-25 to supplement the funding for pavement maintenance, and support the ability to achieve safety improvements as part of street

maintenance.

There is approximately \$5,100,000 remaining in available funding for the Plan this fiscal year. Per Table 6, staff anticipate that there will be sufficient funding for the Plan, however, available funds will be reviewed annually during the development of the CIP and as projects are planned to account for annual revenue fluctuations. The estimated costs include consultant services, staff administration fees, construction costs and contingencies. Staff also utilized an annual inflation factor of 5% for construction costs. Depending on bids and pricing, proposed street segments may be eliminated in the event of a funding shortfall. As described above, staff has outlined base bid and bid alternate street segments to reduce the likelihood of unanticipated funding shortfalls.

The Plan identifies five separate CIP projects which may include extensive scopes of work beyond street maintenance (such as intersection, traffic calming, sidewalks and utility upgrades). These projects may also draw from other funding sources, such as Measure A countywide sales tax measure for transportation, impact fees or grants. The City also uses a portion of the annual street maintenance budget for its on-call asphalt repair contract (typically used for small pavement damage in addition to the streets identified in the Plan).

Table 6: Estimated funding and project costs (base bid)						
	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	5 Year Total
Funding						
Highway User's Tax (Gas Tax)	\$1,680,000	\$890,000	\$920,000	\$980,000	\$950,000	\$5,420,000
Construction Impact Fees	\$2,360,000	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000	\$7,560,000
Measure W	\$50,000	\$565,000	\$290,000	\$310,000	\$300,000	\$1,515,000
SB-1 (HUT Repair and Maintenance)	\$840,000	\$720,000	\$740,000	\$785,000	\$760,000	\$3,845,000
General Fund	\$165,000					\$165,000
Cal-Rec Grants	-	-	\$250,000	-	-	\$250,000
Estimated funding total	\$5,100,000	\$3,475,000	\$3,500,000	\$3,375,000	\$3,310,000	\$18,760,000
Proposed projects						
Street Resurfacing Project	\$1,848,000	\$3,517,000	\$1,365,000	\$1,418,000	\$3,626,000	\$11,837,000
Separate CIP Projects						\$4,253,000
On-Call Asphalt Repair Contract	\$420,000	\$420,000	\$420,000	\$420,000	\$420,000	\$2,100,000
Estimated project costs						\$18,190,000

Notes:

1. The estimated project costs do not include the rehabilitation of street segments included as part of a bid alternate.

For the separate CIP projects, the estimates do not include the costs of rubberized asphalt concrete due to insufficient funding at this time. The projects will be bid with the use of rubberized asphalt as a bid alternate in order to preserve options for the City Council.

In summary, the Plan will maintain the City's PCI in the good category at the end of five fiscal years. The approach is proactive and addresses pavement deterioration to minimize more costly and invasive

treatment options associated with deferred maintenance.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Map of base bid street segments included in the Plan
- B. Map of bid alternate street segments that are included in the Plan
- C. Map of the street segments under 50 PCI, not included in the Plan

Report prepared by:

Michael Fu, Senior Civil Engineer

Report reviewed by:

Tanisha Werner, Assistant Public Works Director

Azalea Mitch, Public Works Director

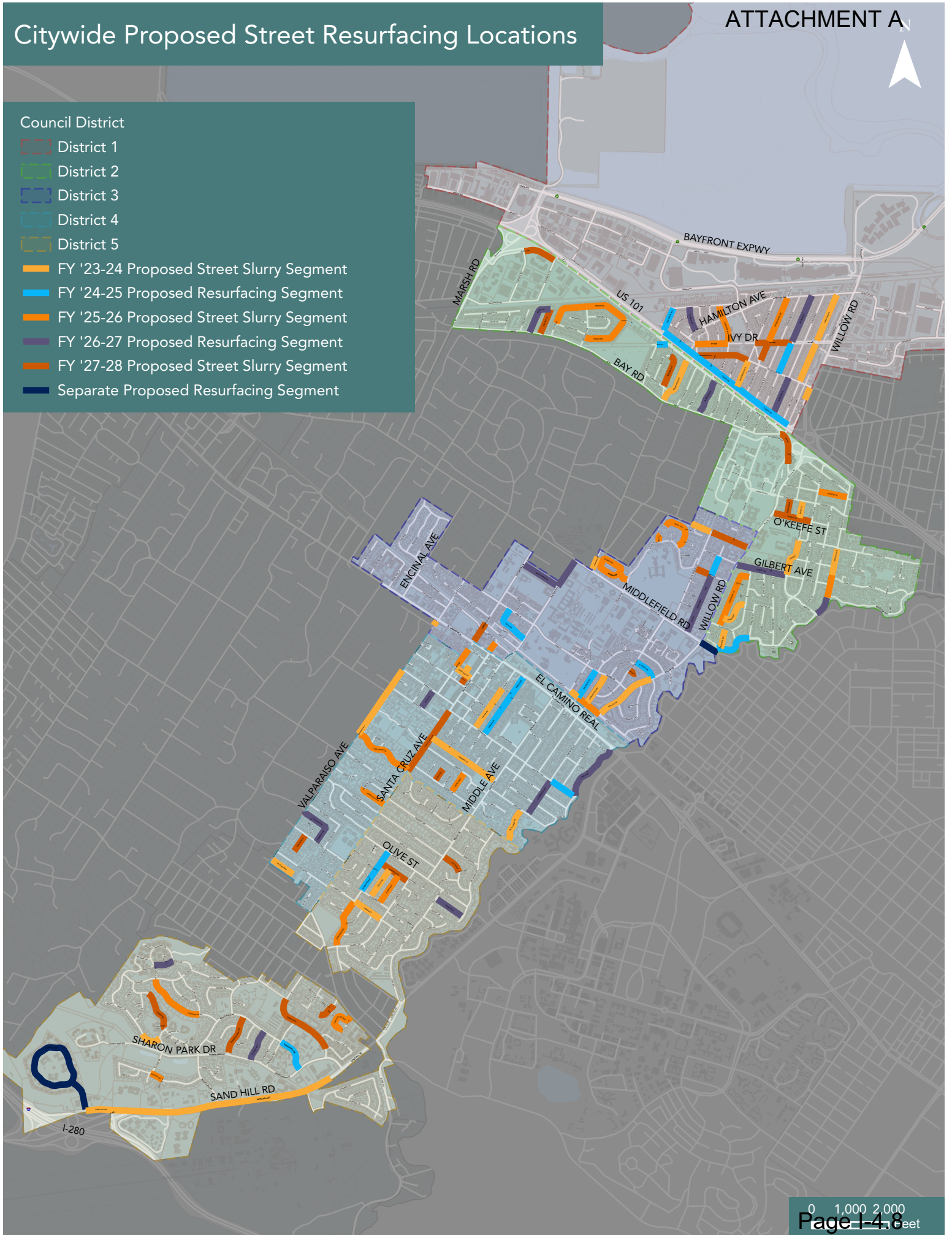
Citywide Proposed Street Resurfacing Locations



Council District

- District 1
- District 2
- District 3
- District 4
- District 5











- FY '23-24 Proposed Street Slurry Segment
- FY '24-25 Proposed Resurfacing Segment
- FY '25-26 Proposed Street Slurry Segment
- FY '26-27 Proposed Resurfacing Segment
- FY '27-28 Proposed Street Slurry Segment
- Separate Proposed Resurfacing Segment

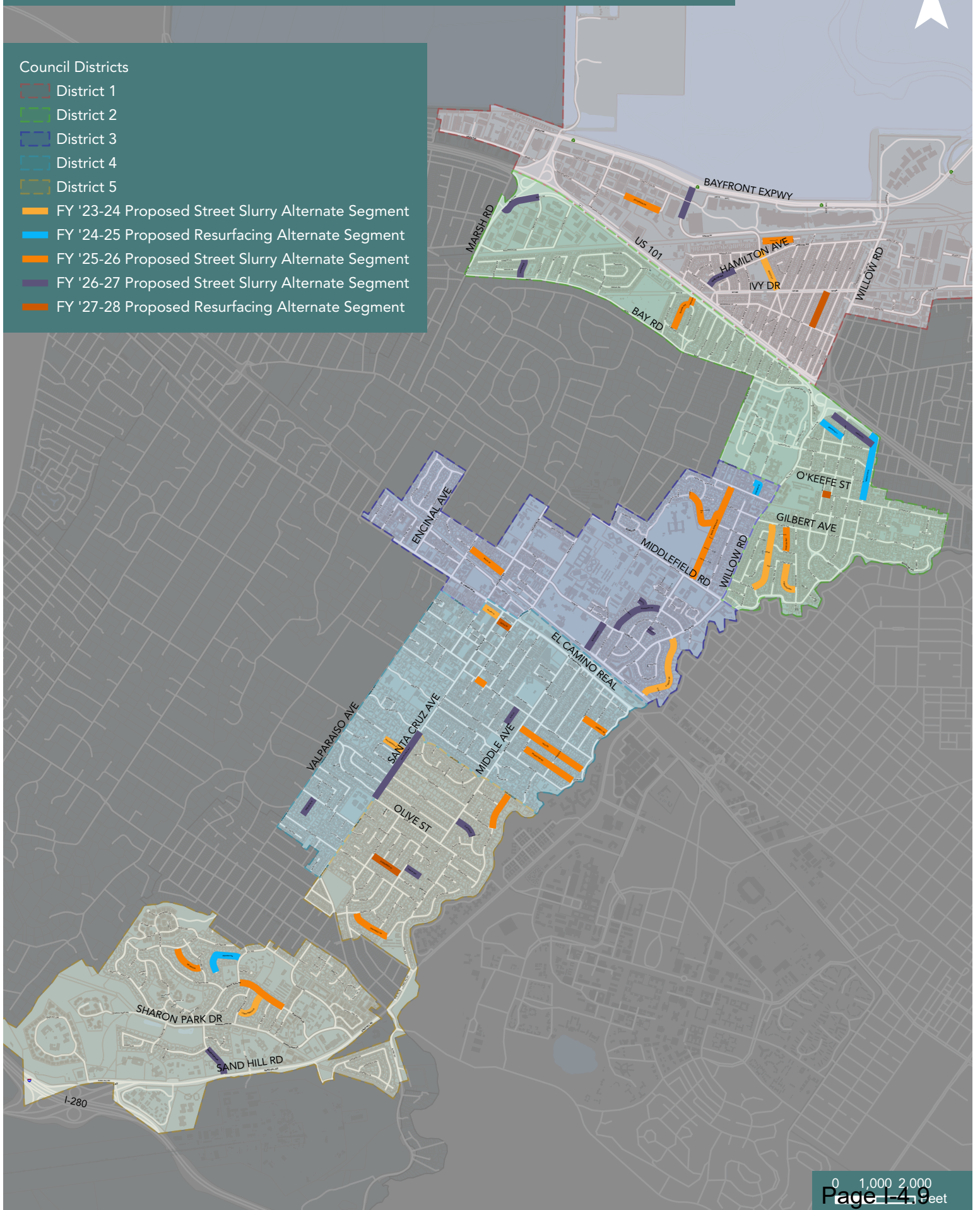


Citywide Proposed Alternate Street Resurfacing Locations



Council Districts

-  District 1
-  District 2
-  District 3
-  District 4
-  District 5
-  FY '23-24 Proposed Street Slurry Alternate Segment
-  FY '24-25 Proposed Resurfacing Alternate Segment
-  FY '25-26 Proposed Street Slurry Alternate Segment
-  FY '26-27 Proposed Street Slurry Alternate Segment
-  FY '27-28 Proposed Resurfacing Alternate Segment



Citywide Proposed Street Resurfacing Locations (PCI < 50)



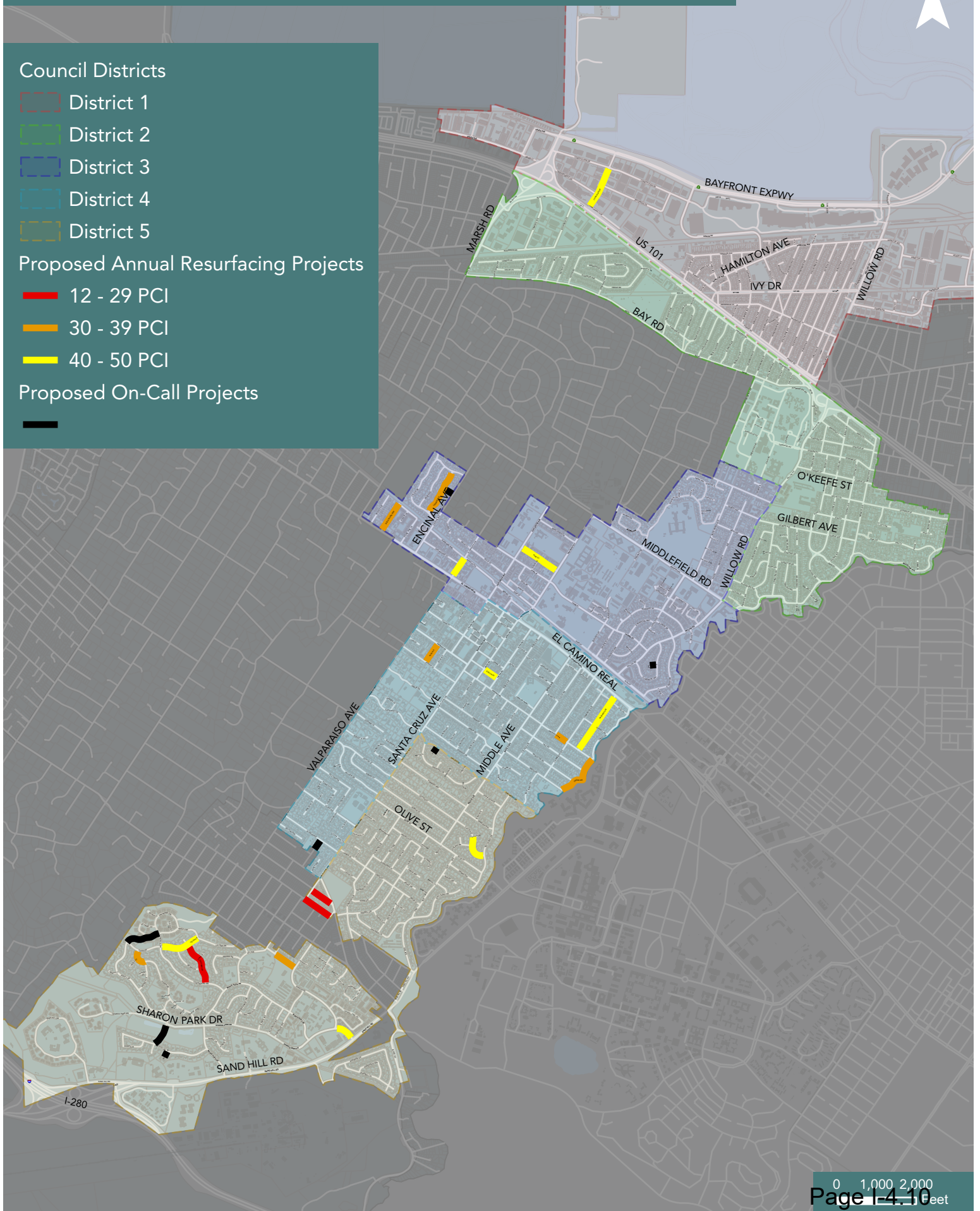
Council Districts

- District 1
- District 2
- District 3
- District 4
- District 5

Proposed Annual Resurfacing Projects

- 12 - 29 PCI
- 30 - 39 PCI
- 40 - 50 PCI

Proposed On-Call Projects





STAFF REPORT

City Council

Meeting Date:

12/5/2023

Staff Report Number:

23-275-CC

Informational Item:

Update on the Peninsula Clean Energy Solar for public buildings program

Recommendation

This is an information item and does not require City Council action. The report transmits an update on the Peninsula Clean Energy (PCE) Solar for public buildings program.

Policy Issues

The City Council declared a climate emergency (Resolution No. 6535) committing to accelerate actions to address climate change at a local level and adopted the 2030 Climate Action Plan (CAP) (Resolution Nos. 6575 and 6621) that aims to be carbon neutral by 2030. CAP strategy goal No. 5 aims to eliminate fossil fuel use in City operations by 2030. The installation of solar photovoltaic (PV) systems at City facilities would reduce operational costs and impacts to the grid as well as supporting resilience.

Background

PCE is the nonprofit locally-led electricity provider for San Mateo County with a mission to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. To achieve this aim they provide 100% carbon free electricity and administer programs to support electrification. In an effort to accelerate renewable energy at local government facilities to reduce energy costs and meet sustainability goals, PCE launched the Solar for public buildings program. Through the program, solar PV systems are designed, installed, operated and maintained at facilities for participating agencies at no upfront cost to the participating agencies. PCE has successfully installed systems for their first cohort and in January 2023 the City of Menlo Park was accepted to join 17 other agencies in the second cohort of the program.

The solar PV systems are financed through power purchase agreements (PPAs) with PCE. With the PPA model, PCE will arrange for the installation, operations and maintenance of the solar PV system, and the City would pay an agreed upon price per kilowatt-hour (kWh) for power generated throughout the system's life. The PPA will be provided "at cost" by PCE to cover equipment, installation, maintenance and administrative expenses. PCE established minimum requirements for site conditions and system sizes to improve the constructability of projects for participating agencies. City staff coordinated with PCE to identify projects, complete site assessments and submit interconnection applications for four qualifying facilities (Belle Haven Child Development Center, Burgess Aquatic Center, City Hall and Menlo Park Library). During this time, the deadline for a change to the Net Energy Metering (NEM) 2.0 rates was announced. PCE accelerated site design and planning elements of the program to submit before the deadline.

Staff presented information about the program and the proposed systems to the Environmental Quality Commission Oct. 18. The presentation is included as Attachment A. At their meeting the Environmental Quality Commission recommended the City Council direct staff to participate in the program.

PCE released a request for proposals in September 2023 and have been evaluating providers who would design, construct, operate and maintain the systems. Once selected, the provider will finalize the design and confirm the construction cost estimates and the final pricing for the PPA for each facility would be available early next year. There would be multiple PPAs, one for each facility. Staff intends to bring a single consent calendar item with all the PPAs back to the City Council early next year to authorize all the agreements at the same time.

Analysis

The installation of solar PV systems supports CAP strategy No. 5 to eliminate emissions from municipal operations by reducing operating costs to help make the transition to all-electric equipment more cost effective. In addition to the cost savings, installing systems to generate electricity on-site furthers community aims to be a leader in climate action by reducing the impact of City operations on the grid. When paired with energy storage options, these systems will also improve resilience.

The program would provide the benefits of installing PV systems, with no up-front costs, and would limit the impact on staff capacity to coordinate the construction of PV systems. This program also advances PCE's objectives to increase local renewable generation, help reduce energy costs, and help customers achieve sustainability goals. PCE has reduced risks to all parties by hiring an independent engineer to complete an analysis for buildings currently in the first cohort pilot portfolio. They believe that they can leverage economies of scale by combining projects from multiple agencies to obtain more competitive pricing and bring down costs for Menlo Park in-turn, streamline procurement, and reduce the amount of time required by City staff while obtaining environmental, economic and other community benefits.

This is not the first time Menlo Park has participated in a group procurement. The City participated in a similar group procurement organized by Alameda County in 2012 and solar carports and rooftop systems were installed in 2014 at several City facilities and have been generally operating successfully under PPAs, despite some leaks that had to be fixed after system installation. This predated the establishment of PCE, and the PPAs were with a for-profit company but held several of the same benefits promised by the current program. Aside from the rate security and savings over the lifetime of the systems, the primary financial benefits to the 18 participating agencies from the group procurement include better pricing and price security on equipment from buying in bulk and reduced design, installation, operation and maintenance costs. There is also a significant time savings from PCE taking on the administrative burden of managing the procurement.

Facilities overview

PCE staff submitted interconnection applications for the Belle Haven Child Development Center, Burgess Aquatic Center, City Hall and the Menlo Park Library. Table 1, below, shows the preliminary PV system details as well as the annual electricity usage from 2022 for each facility. The systems would generate enough electricity to offset most city usage. Under NEM 2.0, PV system sizes cannot exceed 120% of the current electricity usage. There are limitations on sizing PV systems to accommodate planned electrical load increases from new equipment or electrification projects, including that equipment would need to be installed ahead of the solar PV system. On June 27, the City Council approved \$138,000 with the Capital Improvement Program (CIP) budget for electrification of equipment at Belle Haven Child Development Center in order to meet the minimum system size requirements of the program. The electrification project for the Burgess Aquatic Center pool heating could not be included as a planned increase in electrical load for the purposes of sizing the PV system, as the equipment has not been confirmed and would not be installed in time. However, this program and these systems in no way restricts the City from electrifying the pool heating or other equipment at other facilities in the future.

Facility	System size (kW)	Estimated annual production (kWh)	2022 Annual usage (kWh)
Belle Haven Child Development Center	33	50,700	40,656
Burgess Aquatic Center	54	91,810	122,000
City Hall	379	558,000	576,887
Menlo Park Library	229	385,900	313,789

Roof replacements and system modifications

The system designs submitted with the applications show a shade canopy for the Burgess Aquatic Center, carports for City Hall and the Menlo Park Library, and a rooftop system for the Belle Haven Child Development Center. Roof-mounted systems would be advantageous because they are less expensive to install than carport systems, which results in a lower price per kWh rate in the PPA; and the preliminary carport designs would require the removal of heritage trees. The program requirements stipulated that roof-mounted systems be installed on roofs that have a minimum remaining useful life of at least 20 years, the length of the PPA. The facilities where carports were identified did not qualify because they required roof replacements within one to five years. In anticipation of this program the City Council approved \$700,000 for exterior improvements along with \$1,017,000 for Main Library (Menlo Park Library) improvements for this fiscal year as part of the five-year CIP June 27. The budgets for these projects are intended to cover the costs for roof replacements for City Hall, the City Council Chambers, the Belle Haven Child Development Center, and the Menlo Park Library. City staff are working to accelerate the roof replacements relative to their remaining useful life in order to replace the roofs ahead of the program construction schedule. Staff will be working with the provider selected by PCE to design and construct the systems to confirm whether rooftop installations will be possible. Staff are also identifying carport locations should rooftop systems prove impossible. Regardless of the Solar for public buildings program, proactive replacement of the roofs may result in long-term savings to the City as compared to emergency repair at the end of the roof's life.

Projected electricity costs/savings

There is no expected upfront cost to the City for the projects. The solar PV systems are expected to provide cost savings. The savings are expected to grow over time due to avoided increases in utility costs which are expected to rise as much as 5% or more per year according to proposals by Pacific Gas & Electric at the California Public Utilities Commission. If PCE is unable to offer a PPA rate for the proposed systems that will provide the City with net savings or other community benefits as determined by the City Council, then there would be no obligation to move forward.

Net Energy Metering deadlines

All interconnection projects submitted after April 13 operate under NEM 3.0 or Net Billing Tariff (NBT), the next iteration of solar tariffs. This rate is less advantageous for solar-only projects and will negatively affect project economics for the proposed systems. PCE was able to submit the interconnection applications for the City projects ahead of the deadline to qualify for NEM 2.0, but construction for solar-only projects must complete within three years of the interconnection application, which was submitted in April 2023. If this deadline is not met, the system would fall under the NBT rules and the economics of the project would be severely compromised. To continue under NEM 2.0 the systems must be similar in size to the original interconnection application and can only be modified once.

Next steps

PCE will soon select the provider to design, construct, operate and maintain the systems. Meanwhile, City

staff will continue to work to electrify the equipment at the Belle Haven Child Development Center, replace the roofs and refine carport locations to be ready to work with the selected provider to update the system designs submitted with the interconnection applications. Once the provider is selected PCE will provide a deadline to update the designs and if the designs can be updated early next year to meet City needs, the provider will be able to give final pricing for the PPAs. Staff intends to bring the PPAs for each facility back to the City Council as a single consent calendar item next year to relay the community benefits and fiscal impacts for the City Council to determine whether to authorize the agreements.

Impact on City Resources

If the City proceeds with the PPAs, there would be no upfront cost to install the PV systems and no operation or maintenance costs. The City would pay for the energy produced by the PV systems through monthly electricity bills for the facilities. Cost savings are expected over the 20-year term of the PPA. Preliminary estimates indicate cost savings between 20 – 40% on the price of electricity. More refined estimates will be available when the provider has been selected and the City evaluates the final pricing details.

The fiscal year 2023-24 capital budget includes sufficient funding for the roof replacements identified for accelerated replacement to participate in this program. There are \$700,000 in available funding from general capital funds for building exterior improvements and \$1,017,000 in available funding from general capital funds for the Main Library (Menlo Park Library) improvements. The Menlo Park Library improvement project is supported by the Building Forward Library Infrastructure Grant, which provided \$509,179 to the City and requires a 50% funding match. The State provided \$254,590 to the City upon submission of all required items. The remainder would be paid to the City upon completion of the project.

Environmental Review

There is no action for this informational item and is therefore not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines, as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Oct. 18 Environmental Quality Commission item D-3 staff presentation

Report prepared by:
Ori Paz, Management Analyst II

Report reviewed by:
Tanisha Werner, Assistant Public Works Director



PENINSULA CLEAN ENERGY SOLAR FOR PUBLIC FACILITIES OVERVIEW

October 18, 2023 Environmental Quality Commission Meeting

AGENDA

- PCE program overview
- Comparative economics
- City facilities overview
- Program sequence
- Discussion



PENINSULA CLEAN ENERGY OVERVIEW

- Peninsula Clean Energy (PCE) is San Mateo County's not for profit locally led electricity provider
- Mission: To reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions



Peninsula Clean Energy provides electricity from clean energy sources at lower rates than PG&E.

PG&E owns the power lines and delivers the power we generate. They send a consolidated bill.

As a **customer** of Peninsula Clean Energy, you are helping the environment and saving money.

Source: Peninsula Clean Energy

PCE SOLAR FOR PUBLIC BUILDINGS PROGRAM

Goal:

- Accelerate renewable energy at local government facilities to reduce energy costs and meet sustainability goals (Starting cohort #2)

Benefits:

- No upfront cost
- PCE handles design, procurement install, and maintenance
- Solar PV systems for city buildings through a power purchase agreement (PPA)
- The PPA term will run for 20 years, the City will have the option to extend, purchase the system, or have the panels removed
- Aggregation of projects brings vendors to the table
- Transparent with agency on financing details

HOW IT WORKS

- PCE installs and owns solar PV systems on city buildings/carports
- The electricity is sent to PCE customers through the grid
- The City buys electricity from PCE
- PCE discounts the electricity price for the amount produced by the systems on City property

COMPARATIVE ECONOMICS: GRID VS SOLAR PPA

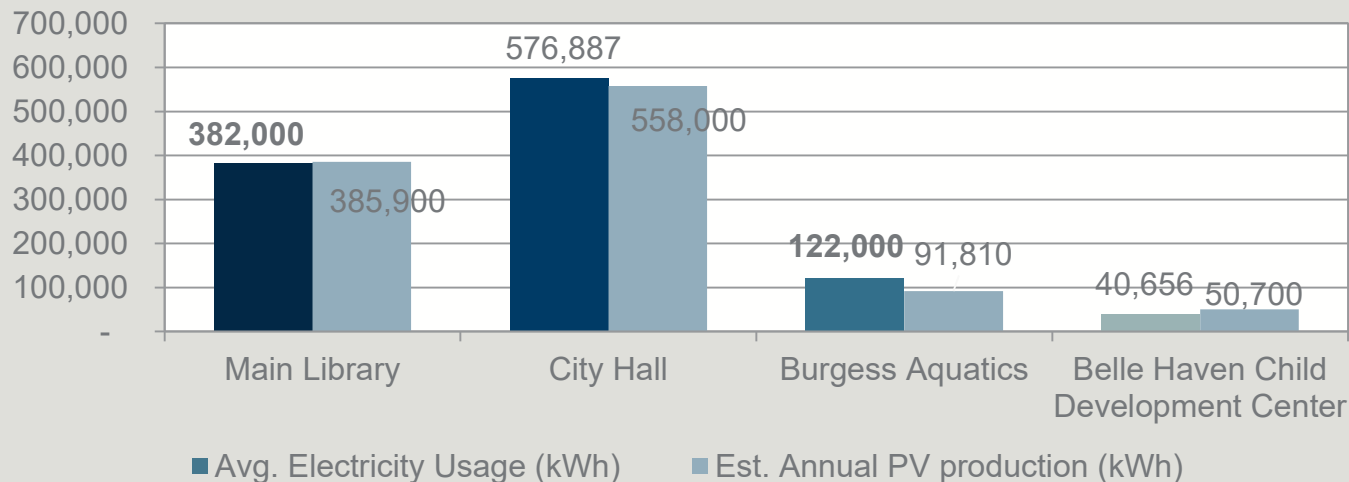
- PCE projecting a 4% annual electricity cost increase for current energy charges
- CPUC study in 2019 projected annual rate of escalation of 3.7% between 2020-2030
- In 2023, PG&E announced an **18% rate increase, and 5% annual increases through 2026**
- Additional factors that might drive up rate of escalation:
 - Power capacity constraints
 - Investment in grid infrastructure to support vehicle and building electrification
 - Grid hardening and underlining for wildfire mitigation
- Solar PPAs offer a hedge against rising energy rates

CITY FACILITIES

Facility	System Size
Main library	229.1 kW
City hall	379.0 kW
Burgess aquatic center	54.3 kW
Belle Haven child development center	33.1 kW

ESTIMATED SOLAR PV PRODUCTION

- Preliminary system sizes would generate enough electricity to offset most city usage
- Electricity would be sent to the grid, and purchased from PCE



CURRENT STATUS

- PCE submitted preliminary interconnection applications ahead of the NEM 3.0 start date (April 2023)
 - Three years to complete the projects to stay under NEM 2.0 (April 2026)
- The City included budget for this fiscal year CIP to reroof facilities to improve solar PPA rate
 - Main Library, City Hall, City Council Chambers, Belle Haven Child Development Center
 - City must complete projects ahead of solar installations
- PCE selected vendor will work to modify preliminary designs to roof-mounted systems
- City will consider carport system if roof-mounted not possible

PROGRAM SEQUENCE

- ~~City submitted application (Jan 2023)~~
- ~~PCE consultant came for 16 site assessments (Feb 2023)~~
- ~~PCE submitted 4 preliminary interconnection applications ahead of the NEM 3.0 start date (April 2023)~~
 - ~~Three years to complete the projects to stay under NEM 2.0 (April 2026)~~
- ~~City included budget for this fiscal year CIP to reroof facilities to improve solar PPA rate (July 2023)~~
 - ~~Main Library, City Hall, City Council Chambers, Belle Haven Child Development Center~~
 - ~~City must complete projects ahead of solar installations~~
- **Program discussion with Environmental Quality Commission (Oct 2023)**
- City evaluates general PPA terms (Nov 2023)
- PCE to select vendor to design, build and maintain systems (Dec 2023)
- Provider vendor to confirm final design (Jan 2024)
- City to review and approve final pricing (Feb 2024)
- If approved, construction of reroofs and system (April 2024)
- Operation begins (2025)

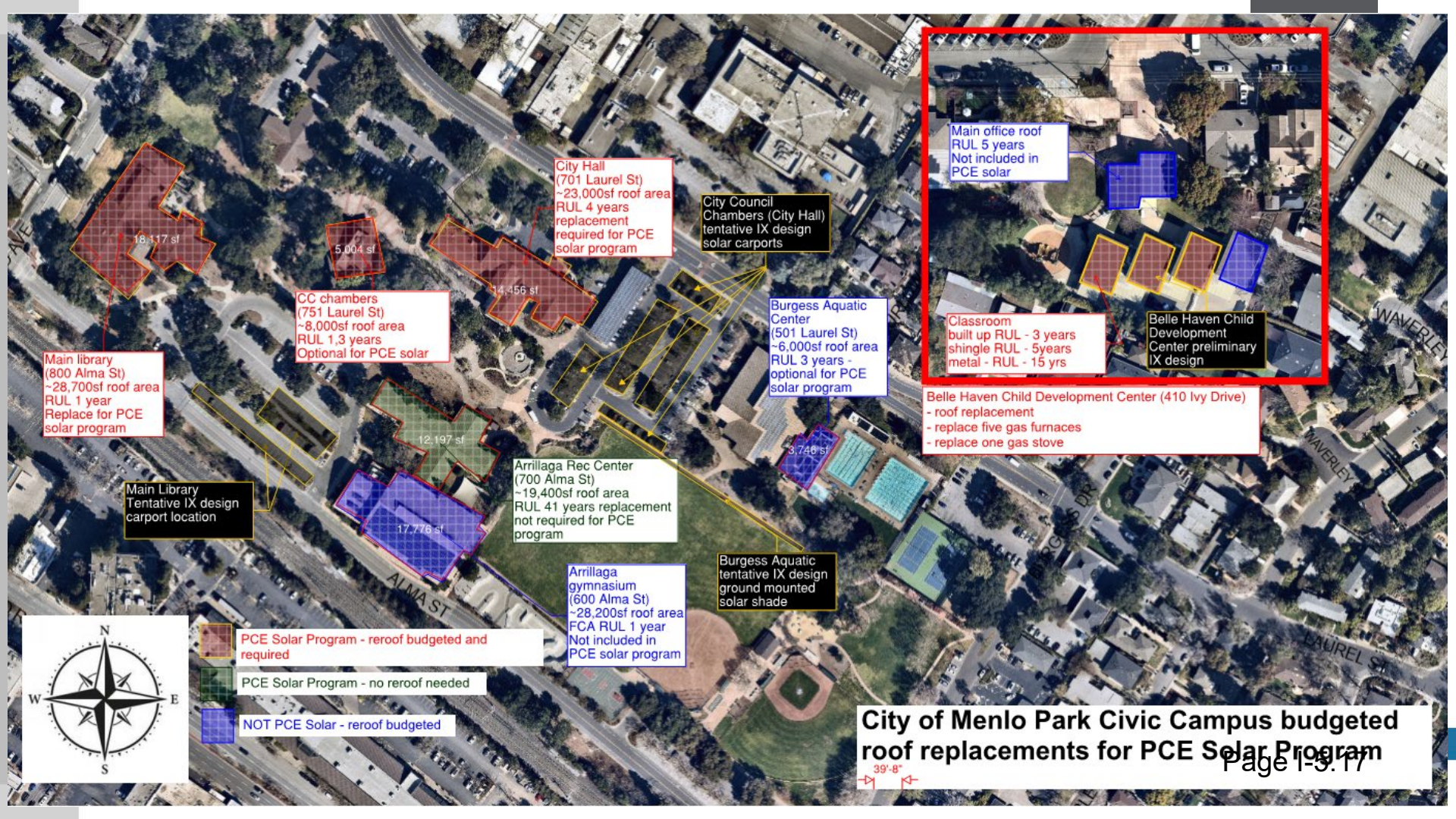


POSSIBLE ADVICE TO THE CITY COUNCIL

The EQC could recommend the City Council participate in the program.



DISCUSSION



Main library
(800 Alma St)
~28,700sf roof area
RUL 1 year
Replace for PCE
solar program

CC chambers
(751 Laurel St)
~8,000sf roof area
RUL 1,3 years
Optional for PCE
solar

City Hall
(701 Laurel St)
~23,000sf roof area
RUL 4 years
replacement
required for PCE
solar program

City Council
Chambers (City Hall)
tentative IX design
solar carports

Burgess Aquatic
Center
(501 Laurel St)
~6,000sf roof area
RUL 3 years -
optional for PCE
solar program

Main office roof
RUL 5 years
Not included in
PCE solar

Classroom
built up RUL - 3 years
shingle RUL - 5years
metal - RUL - 15 yrs

Belle Haven Child
Development
Center preliminary
IX design

Belle Haven Child Development Center (410 Ivy Drive)
- roof replacement
- replace five gas furnaces
- replace one gas stove

Main Library
Tentative IX design
carport location

Arrillaga Rec Center
(700 Alma St)
~19,400sf roof area
RUL 41 years replacement
not required for PCE
program

Burgess Aquatic
tentative IX design
ground mounted
solar shade

Arrillaga
gymnasium
(600 Alma St)
~28,200sf roof area
FCA RUL 1 year
Not included in
PCE solar program



- PCE Solar Program - reroof budgeted and required
- PCE Solar Program - no reroof needed
- NOT PCE Solar - reroof budgeted

City of Menlo Park Civic Campus budgeted roof replacements for PCE Solar Program
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STAFF REPORT

City Council Meeting Date: 12/5/2023
Staff Report Number: 23-276-CC

Informational Item: Potential updates to City Council procedures

Recommendation

Staff recommends that the City Council receive and file potential updates to the City Council procedures manual (Attachment A).

Policy Issues

City Council establishes procedures to document expectations of elected and appointed officials in the conduct of City business. Clear, accessible, and relevant procedures promote transparency and efficiency in operations. City Council retains sole discretion to adopt and amend its procedures.

Background

The City Council's 2019-20 adopted work plan included a project to update City Council procedures previously compiled in the City Council procedures manual. In March 2020, the City Council disbanded the subcommittee appointed to assist with the updates and directed staff to return with revisions. From 2020 – 2021, staff returned new and updated procedures to the City Council in an effort to transition from a single City Council procedures manual to individual procedures.

On Aug. 29, staff provided the City Council with an informational item in preparation of future updates to City Council procedures (Attachment B).

Analysis

Staff believes a comprehensive update of the City Council procedures manual and associated policies and procedures would enable the City Council, staff, and the public to more clearly understand and adhere to various policies.

At a future meeting, the procedures manual will be presented to the City Council with administrative and clarifying edits in order to update to current practices and standards. This staff report highlights the more substantial updates to content. Other minor revisions will be included as well. Staff will recommend repealing the policies and procedures related to governance in Table 1 and incorporating revised content into the manual.

Table 1: City Council policies and procedures to be repealed	
Procedure	Last adoption date
#CC-16-0001 – “Selection of Mayor”	2/23/2016
#CC-91-0003 – “Meeting Procedures”	1/7/1997
#CC-19-010 – “City Council powers and responsibilities”	11/12/2019
#CC-20-013 – “City Councilmember requests”	8/25/2020

Staff will also recommend the City Council consider the following updates to the manual.

Mission Statement

- There will be an opportunity to revisit the Mission Statement in the future, potentially through the annual City Council workshop process.

Chapter 1: Introduction – Overview of city documents

- Update General Plan section description.

Chapter 1: Introduction

Add “Key governance principles” section detailing:

- District election process.
- Serving the entire community (e.g., remaining united in its service to the community).
- Use of city resources (e.g., allocated based on long-term plans and citywide considerations of service levels and financial capacity).
- Distribution of duties and events (e.g., advisory liaison and outside agency appointments).
- Communications and access to information (e.g., equal access to information).

Chapter 2: City Council powers and responsibilities

- Add “City Council elections and vacancies” section.
- Add “Appointment of Mayor and Vice Mayor” section (repealing #CC-16-0001 – Selection of Mayor) as found in the Menlo Park Municipal Code §2.04.120.
- Add detail to “Role of Mayor and Vice Mayor” related to meeting decorum.
- Update city attorney information and description.
- Update Emergency Operations Center (EOC) activation options (e.g., locations).

Chapter 3: City Council meetings

- Update Roberts Rules of Order reference with current practice.
- Include additional presiding officer description.
- Update “Seating arrangement of the City Council” section.
- Update and add meeting types and agenda items and descriptions (e.g., Regular, special, etc. meetings. agenda review, public hearings, city manager report, etc.).
- Update Brown Act requirement language.
- Insert repealed #CC-20-013 – “City Councilmember requests” policy language.
- Update written communications.
- Update public comment presentation procedure.

- Update voting procedures and requirements.
- Update item “Reconsideration.”
- Add security protocol procedure.
- Add attendance expectations and requirements.

Chapter 4: City Council communications

- Add “Representation on regional committees and joint powers authorities” section.

Chapter 5: Interactions with City staff

- Add communication guidelines.

Chapter 6: Support provided to City Council

- Update hardcopy agenda material pickup options.

Chapter 8: Conflicts and liability

- Add Assembly Bills 1234 and 1661 required ethics and sexual harassment prevention trainings.

Impact on City Resources

There is no impact on City resources.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Current City Council procedures manual
- B. Hyperlink – Aug. 29 City Council staff report: menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20230829-city-council-regular-agenda-packet-w-pres.pdf#page=241

Report prepared by:

Judi Herren, Assistant to the City Manager/City Clerk

Procedures Manual Menlo Park City Council

CITY OF MENLO PARK

Mission Statement

It is the mission of the City government to ensure that Menlo Park is a desirable and vibrant community in which to live and do business, and to respond to the values and priorities of the residents so as to provide for the community's current and future needs.

Explicitly, the City fulfills its function by:

- Addressing the needs of the residents through the City Council, the appointed commissions and the City staff.
- Providing easy and open access to information and encouraging dialogue, enabling residents to actively engage in civic life.
- Providing for the safety of its residents, businesses and visitors.
- Providing timely and responsive service.
- Providing special assistance to those in need.
- Functioning effectively, efficiently and with accountability.
- Creating a positive and desirable workplace environment for City employees.
- Managing change for the betterment of the City.
- Creating and maintaining a viable revenue stream and providing for the unpredictable nature of our economy.
- Implementing and maintaining City infrastructure, facilities and programs.
- Formulating sound environmental policies.
- Recognizing and supporting the City's diverse neighborhoods and population.
- Acting as a responsible member of the greater region.

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- C. List of City Council Policies
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Introduction

The Menlo Park City Council establishes policies and priorities for the community and is responsible for the fiscal health of the public corporation.

Purpose of the Procedures Manual

City of Menlo Park staff prepared a procedures manual to assist the City Council by documenting currently accepted practices. Through agreement of the City Council and staff to be bound by these practices, the effective administration of City Council affairs is greatly enhanced. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide councilmembers in their actions. It is anticipated that this Procedures Manual will be reviewed and revised from time to time.

Overview of city documents

This procedures manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, policies, plans and documents exist which bind the City Council to certain courses of action and practices. A summary of some of the most notable documents that establish City Council direction is provided below.

Municipal Code: The Municipal Code contains local laws and regulations adopted by ordinances. The administrative chapter of the Municipal Code addresses the role of the City Council, Mayor and Mayor Pro Tempore. It also describes the organization of City Council meetings and responsibilities as well as the appointment of certain city staff positions and advisory commissions. In addition to these administrative matters, the Municipal Code contains a variety of laws. The Municipal Code is available on the City's website.

California Government Code: The California Government Code contains many requirements for the operation of city government. Many of these requirements are also replicated within the Municipal Code to ensure there is broad awareness of such requirements. Menlo Park is a "General Law" city, which means it is organized in accordance with provisions of the Government Code. Also described within the Government Code is the Council-City Manager form of government. This form of government prescribes that the City Council's role is to establish policies and priorities, while the role of the City Manager is to oversee the operations of the city government.

Annual Budget: The City's annual budget provides a description of city services and the resources used to provide services. The document contains both a broad overview of the budget as well as descriptions of programs and services organized for convenience by lead department. The City operates on a July 1 through June 30 fiscal year.

General Plan:

The General Plan is a legal document, required by the California Government Code, which serves as the City of Menlo Park's "constitution" for the development and the use of its land. It is a comprehensive, long-term document, detailing proposals for the physical development of the city, and of any land outside its boundaries but within its designated "sphere of influence."

Orientation of new councilmembers

It is important that councilmembers have an understanding of the full range of services and programs provided by the organization. As new members join the City Council, the City Clerk coordinates with department heads to provide tours of City facilities and meetings with key staff.

City Council: Powers and Responsibilities

City Council generally

The powers of the City Council to establish policy are quite broad. Essentially, the City Council may undertake any action related to city affairs other than those forbidden or preempted by state or federal law. Specifically, the City Council has the power, in the name of the city, to do and perform all acts and things appropriate to a municipal corporation and for the general welfare of its inhabitants which are not specifically forbidden by the Constitution and laws of the State of California.

It is important to note that the City Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Mayor and Mayor Pro Tem have some additional ceremonial and administrative responsibilities as described below, in the establishment of policies, voting and in other significant areas, all councilmembers are equal. It is also important to note that policy is established by at least a majority vote of the City Council. While individual councilmembers may disagree with decisions of the majority, a decision of the majority does bind the City Council to a course of action. In turn, it is staff's responsibility to ensure the policy of the City Council is upheld. Actions of staff to pursue the policy direction established by a majority of the City Council do not reflect any bias against councilmembers who held a minority opinion on an issue.

The City Council has occasionally debated whether it should take positions of a broader nature or limit itself to purely municipal functions. Historically, Menlo Park's city councils have chosen to not take positions on issues outside of their immediate authority to effect, such as issues of international concern. The propensity of the City Council to involve itself in such issues reflects the personalities and outlooks of the councilmembers who make up the two-year City Council sessions.

A councilmember may not simultaneously hold two public offices that are incompatible. Offices are incompatible, if any significant clash of duties exists between the two offices, if the dual office holdings would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory or removal power over the other. Councilmembers are encouraged to and often participate and provide leadership in regional and state programs and meetings. Councilmembers are strongly encouraged to report to the City Council on matters discussed at subcommittees and other regional or state board/agency/group activities in which they have been involved.

Role of Mayor and Mayor Pro Tempore

Mayor: As reflected in the Municipal Code, the Mayor is to preside at all meetings of the City Council and perform such other duties consistent with the office as may be imposed by the City Council or by vote of the people. The Mayor does not possess any power of veto. As presiding officer of the City Council, the Mayor is to faithfully communicate the will of the City Council majority in matters of policy. The Mayor is also recognized as the official head of the city for all ceremonial purposes.

The Mayor, unless unavailable, shall sign all ordinances, and other documents that have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by City Council action to sign documents. In the event the Mayor is unavailable, the Mayor Pro Tempore's signature may be used.

Traditionally, the Mayor has also been assigned by the City Council to consult and coordinate with the City Manager in the development of agendas for meetings of the City Council. The scope of such review focuses on the timing of business items and the volume of business that can be considered at any one meeting. Such review does not allow for a unilateral unlimited delay of items to be considered by the City Council or the introduction of new items not otherwise part of the City Council's identified priorities or staff's work plan. Should any significant disagreement arise regarding the scheduling of items, these matters are to be resolved by the full City Council. The staff maintains a "tentative" City Council agenda item calendar that programs when matters will likely be considered at future meetings.

Mayor Pro Tempore: The City Council has specified that the Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence. The Mayor Pro Tempore shall serve in this capacity at the pleasure of the City Council.

Appointment of City Manager, City Attorney

The City Council appoints two positions within the city organization: the City Manager and City Attorney. Both positions serve at the will of the City Council. The City Manager is an employee of the City and has an employment agreement that specifies certain terms of employment including an annual evaluation by the City Council. The City Manager is responsible for all other personnel appointments within the City. The current City Attorney is a part-time employee, and a partner in a local law firm that has served the City for many years.

Role during a disaster

The City Council has some special, extraordinary powers in the case of a disaster. Some meeting restrictions and expenditure controls are eased in such extreme situations. In critical situations the City Council may be directed by the City Manager/ Emergency Services Director to assemble in the City's Emergency Operations Center (EOC), located within the Police Department, to provide policy guidance and to receive information in an emergency. Should the City Council not be available during an emergency, state law specifies a hierarchy of others who may serve in place of the City Council. The most likely scenario is that the County board of supervisors would serve in the place of the City Council. When necessary, the Incident Commander of the City EOC or Disaster Coordinator may request the activation of a MAC (Multi-Agency Coordination Center). One possible location of a MAC could be the Menlo Park Fire District's USAR Building located in Menlo Park.

The City Council also has the responsibility to declare a local emergency. Emergency proclamations are normally made when there is an actual incident or threat of disaster or extreme peril to the safety of persons and property caused by natural or man-made situations. The local proclamation is the first step toward a State and Federal declaration which would then activate eligible State and Federal disaster relief programs to provide financial relief to both local government and the public.

Appointment of advisory bodies

The city has a number of standing advisory bodies. City Council Policy #CC-01-004, Commissions/Committees Policies and Procedures and Role, contains guidelines on the appointment, roles and responsibilities of the various commissions. These procedures apply to all appointments and reappointments to standing advisory bodies.

In addition, resident committees and task forces are occasionally appointed by the City Council to address issues of interest. A task force or other ad hoc body is a body created by the City Council for a specific task. City Council subcommittees, when used, are to help the City Council do its job. Committees ordinarily will assist the City Council by preparing policy alternatives and implications for City Council deliberation. City Council subcommittees will normally not have direct dealings with staff operations. City Council subcommittees may not speak or act for the City Council. Subcommittees will be used sparingly and ordinarily in an ad hoc capacity. This policy applies to any group that is formed by City Council action, whether or not it is called a subcommittee. Unless otherwise stated, a subcommittee ceases to exist as soon as its task is complete. The City Council may assign, and specify the role of, one or two councilmembers to the task force (if more, it becomes a defacto City Council meeting). Unless otherwise specified, councilmembers have all the rights, and only the rights, of ordinary citizens with respect to task forces and other ad hoc bodies.

Note that both appointed advisory bodies and ad hoc committees are usually subject to the open meetings laws commonly known as the Brown Act.

City Council relationship with advisory bodies

The City Council has determined that councilmembers should not lobby commissioners for particular votes. However, councilmembers may attend meetings as residents and request that commissioners consider certain issues during their deliberations or in unusual instances as councilmembers to reflect the views of the City Council as a body.

Councilmembers choosing to attend commission or committee meetings should be sensitive to the fact that they are not participating members of the body. Councilmembers have the rights, and only the rights, of ordinary citizens with respect to commissions – including the right to write to and speak to the commission during public comment periods.

Role of commission liaisons

Councilmembers are assigned to serve in a liaison capacity with one or more city commissions. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, councilmembers may elect to attend commission meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission chair on a regular basis.

Councilmembers should be sensitive to the fact that they are not participating members of the commission, but are there rather to create a linkage between the City Council and commission. In interacting with commissions, councilmembers are to reflect the views of

the City Council as a body. Being a Commission liaison bestows no special right with respect to Commission business.

Typically, assignments to commission liaison positions are made at the beginning of a City Council term in December. The Mayor will ask councilmembers which liaison assignments they desire and will submit recommendations to the full Council regarding the various committees, boards, and commissions which councilmembers will represent as a liaison. In the rare instance where more than one councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Council Meetings

General procedures

By resolution, the City Council has adopted a modified version of Roberts Rules of Order.

Presiding officer: The Mayor is the presiding officer and acts as chair at City Council meetings. In the absence or incapacity of the Mayor, the Mayor Pro Tempore serves as presiding officer.

Seating arrangement of the City Council: The Mayor Pro Tempore is seated immediately next to the Mayor. The Mayor, with the approval of individual councilmembers, shall establish the seating arrangement for regular City Council meetings.

Quorum: Three-fifths of the councilmembers constitute a quorum for the transaction of business.

Meeting schedule

The City Council approves and follows an annual calendar that reflects its priorities and coincides with the budgeting process, beginning at the start of the calendar year. A Capital Improvement Plan is reviewed in February for the following fiscal year, in order to reflect the commitment of resources required. Other City Council priorities are overlaid on the calendar as time permits.

Regular meetings are usually held in the City Council Chambers, 701 Laurel St., on Tuesdays at 7 p.m., with study sessions and closed sessions generally being convened earlier, as needed, or at the end of the meeting at the conclusion of public business.

On occasion, the City Council meeting will be held in alternative locations such as the Senior Center. No City Council meeting will typically be held in the event that a regular meeting of the City Council falls on a legal holiday or the day after a holiday. Other meetings throughout the year may be canceled as well. Councilmembers should inform the City Manager's assistant as soon as possible if they intend to be out of town on a set meeting date. In recognition of the personal and professional obligations which may conflict with attending City Council meetings, Councilmembers are not compelled to participate in routine Council meetings remotely as it can present a hardship due to technological limitations, noticing compliance and time zone differences.

Special meetings

Special meetings may be called by the Mayor or by three members of the City Council. Written notice must be given to the City Council and to the media 24 hours before a special meeting. No business other than that officially noticed may be discussed.

Public Comment: At all regular and special meetings, public comments must be permitted before or during consideration of any agenda item. Public comment is appropriate on any matter within the jurisdiction of the City Council.

Meeting notices and minutes: Notice requirements of the Brown Act are complied with for all meetings; action minutes of the meeting are taken by the City Clerk or designee and made available for public inspection.

Agenda development

The City Council adopts a yearly meeting calendar identifying meeting dates and cancellations to aid councilmembers and staff with planning and scheduling. A medium-range “tentative” City Council calendar that reflects an estimate of when various items will be scheduled over the next few weeks is available on the City’s website. A copy of the draft agenda is transmitted to the Mayor for review on the Monday one-week before the meeting. Staff is required to submit reports for a Tuesday City Council meeting to the City Clerk by noon on the Thursday of the week preceding the meeting. All agenda materials are available Thursday evening before the Tuesday City Council meeting. Website posting includes a tentative City Council calendar that shows City Council meeting dates and planned agenda items 3-5 weeks in advance.

Given this agenda development schedule, it is usually extremely difficult when councilmembers request at a Tuesday meeting that a report be prepared for consideration the following meeting. For this reason, it will usually require at least one week for the preparation of a report requested by the City Council. Complex reports will require more time to prepare, and an estimated time of completion can be provided to the City Council. The ability to schedule new agenda items depends on the nature of the item itself, other agenda subjects that are already scheduled and the amount of time available.

Placing items on the agenda

City Council: A councilmember may request an item be considered on a future agenda and, upon agreement of a majority of Council, staff will prepare a staff report if formal Council action is required. Councilmembers may make this request verbally during a meeting or may submit written requests. Normally, the process involves two steps: initial consideration of the request by the full City Council at the soonest possible regularly scheduled meeting; and, if a majority agrees, the matter is then scheduled for further consideration on an upcoming meeting agenda.

Members of the public: A member of the public may request that an item be placed on a future agenda during public comment or through other communication with councilmembers. Upon approval of a majority of the City Council, the item will be agenda item and a staff report may be prepared. The City Manager will inform the City Council of the potential impact the request will have on established priorities or staff workload and seek approval by the City Council before authorizing the work or scheduling the item as appropriate.

Emergency and Non-Agenda items: Emergency and non-agenda items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other

severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. More likely, after the agenda is posted an item arises that the City Council would like to act on. Non-agendized items may be added to the agenda only if the City Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of the City Council are present, the findings require a unanimous vote of those present.

Notification and advertising

The City attempts to well publicize matters of significant neighborhood or community public interest that appear on a City Council agenda, as well as all matters where advertising is required by law. Advertisements and notifications are intended to inform all interested individuals.

Order of Business

The City Council established the order of business for meetings through the adoption of a policy on meeting procedures. Technically, the order of the agenda is as follows: roll call; special business; proclamations; council, committee and staff reports; public comment #1; appointments to boards/commissions/committees; consent calendar; public hearings; regular business; written communications; information items; adjournment. The following section describes the various types of meeting components.

- 1. Closed Sessions** (closed to the public): The ability of the City Council to conduct sessions not open to the public is restricted by state law to ensure open proceedings. Certain defined circumstances exist wherein a city council may meet without the public in attendance. Such circumstances include:

Real Property: The purchase, sale, exchange or lease of real property with the City's negotiator; the real property and the person(s) with whom the City may negotiate must be announced in open session before the closed session (Cal Govt Code 54956.8).

Litigation: Pending or a significant exposure to litigation or the decision to initiate litigation; the litigation title must be identified in open session before the closed session unless the City Council states that to do so would jeopardize its ability to conclude existing settlement negotiations or effectuate service of process.

Compensation: Salaries and benefits of employees; City Council meets in closed session to review its position and instruct designated representatives (Cal Govt Code §54957.6).

Personnel: A closed session is held to discuss the appointment, employment, evaluation of performance, or dismissal of a public employee, or to hear a complaint against the employee unless the employee requests a public hearing (Cal Govt Code §54957.6).

It is critical to stress that there shall be no disclosure of closed session confidential information. Councilmembers, employees of the City, or anyone else present shall

not disclose to any person, including affected/opposing parties, the press or anyone else, the content or substance of any discussion which takes place in a closed session without City Council direction and concurrence. Whenever possible, written reports received for closed session items will be turned in at the end of the meeting.

Typically, closed sessions will be scheduled before the public portions of the meeting or at the end of the meeting after public business has been concluded. This is done so public portions of the meeting are not interrupted by closed sessions. In addition, such sessions may require the attendance of special legal counsel and consultants. In an attempt to manage the costs of these professionals, it is beneficial to conduct closed sessions at a time certain. On occasion, during the course of a regular meeting, an issue arises that requires the City Council to adjourn to a closed session on the advice of the City Attorney.

2. **Study Session:** From time to time, the City Council will hold study sessions. These meetings are normally scheduled before the regular session. The purpose of study sessions is to give the City Council a less formal and more interactive forum to discuss issues in advance of any official action to be taken. Staff often presents policy alternatives and is more directly engaged in the dialogue. Meetings are open to the public and are broadcast and videotaped when held in the City Council Chambers and at the direction of the City Council. While general direction may be given to staff or the proponent behind the topic of discussion, no formal action by the City Council is taken in a study session.
3. **Public Comment:** The City Council receives general public comment about issues not on the agenda. Comments on agenda items should not be heard until the appropriate item is called. Individuals desiring to speak are to address the City Council from the speaker podium after giving their name and place of residence. Speaker cards may be required and should be filled out, including the speaker's actual jurisdiction of residence, and given to the City Clerk before Public Comment.

Comments should focus on a specific matter within the City Council's jurisdiction. Members of the public are encouraged to present written comments, preferably in advance of the meeting, as a way to fully communicate their thoughts on agenda or non-agenda items. When written materials are presented, they should be submitted to the City Clerk for distribution and record keeping ahead of time. Comments are typically limited to three minutes per speaker so that all have an opportunity to address the City Council.

Videos, PowerPoint presentations or similar display requests may accompany in-person testimony but are subject to the same speaking time limits. Prior notice and coordination with the City Clerk is strongly encouraged and the Mayor reserves the privilege to limit such requests as necessary for the effective conduct of the meeting. Speakers are to address their comments to the City Council from the podium.

Public comment on regular business items normally follows staff's presentation of the staff report, clarifying questions from councilmembers and applicant comments as necessary and appropriate. Typically, applicants or appellants are limited to a maximum of 10 minutes. The City Council will then hear public comment.

4. **Commission Reports:** Commission reports provide an opportunity for designated members of appointed boards to address the City Council on matters of importance or to update the City Council and community on studies that are underway.
5. **Consent Calendar:** Those items on the City Council agenda that are considered to be of a routine and noncontroversial nature by the City Manager are placed on the "Consent Calendar." These items shall be approved, adopted, accepted, etc., by one motion of the City Council. Typical consent calendar items include the final reading and adoption of ordinances, various resolutions approving agreements, awards of contracts, minor budgetary adjustments, meeting minutes, status reports, and reports of routine city operations.

Councilmembers may request that any item listed under "Consent Calendar" be removed from the Consent Calendar, and the City Council will then take action separately on this item. A member of the public may request that an item listed under "Consent Calendar" be removed and City Council action taken separately on the item; the City Council must concur with such a request. Items that are removed ("pulled") by councilmembers for discussion will typically be heard after other Consent Calendar items are approved unless the majority of the City Council chooses an earlier or later time.

Councilmembers are encouraged to contact the City Manager's office before Noon on the day of a City Council meeting day to provide notification of items to be removed from the Consent Calendar. This practice allows the City Manager to notify staff that may need to be present to respond to removed items. Equally important, it also allows the Manager to inform staff who do not need to be present at the meeting. Unless contacted in advance of the meeting with sufficient time, the presumption is that staff will not be present.

6. **Public Hearing:** In the case of public hearings, once the City Council has voted to close the hearing, no member of the public shall be permitted to address the City Council or the staff from the audience, except at the discretion of the presiding officer (Mayor).
7. **Regular Business Items:** Regular items are shown on the agenda and are normally taken in the order listed.
8. **Informational Items:** Informational items may contain a status update, background report or a preview of a larger item coming before the City Council at a future meeting.
9. **Councilmember Reports:** Provides councilmembers an opportunity to introduce matters not currently before the City Council, including brief announcements, to pose questions of staff and make requests for items to be placed on the agenda at a future meeting. Examples of appropriate communications would be information of general interest received from outside agencies, comments or inquiries received from the public, requests to agenda future items, or announcements of interest to the public.

State law provides that the City Council can take action only on such matters that have been noticed at least three days (72 hours) in advance of the regular meeting,

or 24 hours in the case of a special meeting, unless special circumstances are found to exist (as mentioned above). Formal action or approval on non-agendized items is not allowed, and such items should be placed on the agenda of the next available regular meeting.

10. Written Communications: The City Council has established a practice of placing written communication between councilmembers requesting items to be agendized and select letters sent by agencies to councilmembers on the meeting agenda so that this correspondence receives wide distribution. If letters or emails from the public are received on the day of or just before a meeting, copies will be placed at the councilmembers' positions on the dais.

Discussion Rules

To assist the City Council in the orderly discussion of items, rules are followed which represent accepted practices for the management of City Council meetings.

- 1. Obtaining the floor:** A councilmember or staff shall first address the Mayor and gain recognition. Comments and questions should be directed through the chair and limited to the issue before the City Council. Cross-exchange between councilmembers and public should be avoided.
- 2. Questions to staff:** A councilmember shall, after recognition by the Mayor, address questions to the City Manager, City Attorney, department head or designated staff member. Councilmembers with questions on an agenda item should preferably contact staff before the meeting in order to allow staff time to research a response for the meeting.
- 3. Interruptions:**
 - a. Once recognized, a councilmember is considered to have the floor, and another councilmember may not interrupt the speaker except to make a point of order or point of personal privilege. In such a circumstance, the councilmember holding the floor shall cease speaking until the point of order or privilege is resolved.
 - b. Upon being recognized by the Mayor, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the Mayor.
- 4. Discussion:** A councilmember should not speak more than once on a particular subject until every other councilmember has had the opportunity to speak. Councilmembers are encouraged to discuss items during the decision-making process and may ask staff to respond when appropriate. The Mayor normally allows other members to speak first, then will give his/her views and summarize.
- 5. Tabling procedure:** Tabling an item immediately stops discussion and causes a vote to postpone a matter indefinitely or to a time and date certain. A motion to "continue" an agenda item has the same effect, but is generally used when a scheduling problem arises or when insufficient time is available to address the matter thoroughly.
- 6. Right of protest:** A councilmember is not required to state reasons for a dissenting vote.

- 7. Calling for the question:** The purpose of calling for the question is to disallow further debate and put an issue to an immediate vote. A councilmember may move to “call for the question” on an item which is being considered. The motion requires a second, is not debatable and must pass by a four-fifths vote. If the motion carries, the item is no longer debatable and the City Council must vote on it.
- 8. Conducting business at a late hour.** According to City Council policy, all regular meetings of the City Council are to end by midnight unless there is a two-thirds, three-fourths, or four-fifths (based on the number of Councilmembers present) vote taken by 11:00 p.m. to extend the meeting. The motion to extend is to include the title of the items to be considered after 11:00 p.m. and a new ending time for the meeting. The City Clerk will alert the City Council at or before 11:00 p.m. New items of business will not be discussed after 11:00 p.m. unless the motion to consider such item(s) was passed

Voting procedures

When present, all councilmembers are to vote (affirmative, dissenting, abstention). Failure of a seated councilmember to express a vote constitutes an affirmative vote.

No ordinance, resolution or motion shall be passed or become effective without an affirmative vote by the majority with a quorum present.

A conflict of interest shall be declared whenever appropriate and in compliance with state law. The affected councilmember will step down from the dais and leave the City Council Chambers.

Councilmembers may declare general consensus at the discretion of the presiding officer, if there are no negative votes or objections.

Tie vote: A tie vote is equivalent to a motion that has failed. The presiding officer may publicly explain the effect of the tie vote for the audience or may direct a member of the staff to do so.

Motions: There are a number of types of motions, each of which must meet certain requirements before a vote can be taken. A reference guide to motions is provided in chart form in Appendix A of this manual.

Reconsideration: Reconsideration of an item shall be allowed in accordance with the following City Council guideline: A councilmember of the prevailing majority when the previous vote was taken must make a motion for reconsideration. The City Council has determined that any motion for reconsideration should be made at the meeting immediately following that at which the action was taken. No motion for reconsideration will be entertained after this time unless the City Council determines significant new information has arisen which warrants such action.

Other guidelines

Other guidelines have been developed to ensure that meetings of the City Council are conducted in a civil and professional manner. Councilmembers and staff shall:

1. Work to preserve appropriate order and decorum during all meetings.
2. Discourage side conversations, disruptions, interruptions or delaying efforts.

3. Inform the Mayor before departing from a meeting.
4. Limit disruptive behavior. The Mayor will call persons demonstrating rude, boisterous, or profane behavior to order. If such conduct continues, the Mayor may call a recess, request the removal of such person(s) from the City Council Chambers, adjourn the meeting, or take such other appropriate action. The City Council has a policy to discourage applause, booing or other similar behaviors from the public during meetings.
5. Recognize that only the City Council, staff, advisory body chairs or designated representatives, and those authorized by the presiding officer shall be permitted to sit at the City Council or staff tables.
6. Limit breaks of the City Council to 5-10 minutes. The City Council has authorized the Mayor to resume the meeting if a quorum exists and other members have not returned from the break within the announced time period.
7. Impose time limits on speakers. While the City Council encourages and embraces the need for and right of public participation, it acknowledges that public comments must, at times, be limited. Therefore, the City Council authorizes the Mayor, as presiding officer, to poll the audience for an indication of the number of people wishing to speak, and to impose time limits per speaker. Typically, speakers are limited to three minutes but a shorter time limit may be established as deemed necessary. When a member of the public is to speak on behalf of others in attendance, a maximum time limit of nine minutes is usually imposed or as otherwise allowed in the discretion of the presiding officer. After the time limit, the City Council may ask questions of the speaker for clarification, if needed. Each speaker will be thanked for his or her participation.

Values of respect: The City Council has also recognized the importance of approaching the public's business in an environment of personal respect and courtesy, which places emphasis on the consideration of policy and avoids personalization of comments. Some guidelines utilized by the City Council include:

1. Discussion should focus on policy matters
2. Personal criticism of members is inappropriate
3. Proper decorum should be displayed as other members express their views
4. Treat members of the public equally, applying rules in a fair and consistent manner
5. Members of the public are advised to treat all public speakers with due respect and to refrain from verbal expressions in support of or opposition to (such as clapping or booing) any public speakers' comments.

Enforcement of order: The Police Chief or his designee acts as the Sergeant-At-Arms. Any councilmember may request the presiding officer to enforce the rules of protocol. Upon motion and majority vote, the presiding officer shall be required to do so.

Open meeting laws ("The Brown Act")

Operations and procedures of the City and City Council incorporate requirements of the state's open meeting law (commonly referred to as the Brown Act). Because this law is such an important part of local government operations, some specific requirements of the law are highlighted below.

Applicability and penalties: The entire city organization conducts its business in compliance with the Ralph M. Brown Act, State Government Code §54950 et seq. The intent of the Act is to ensure that deliberation and actions of local public agencies are conducted in open and at public meetings.

A. Applicability: The Act applies to the City Council and all commissions, boards and City Council-appointed subcommittees (except if comprised entirely of two councilmembers) and task forces that advise the City Council. Staff cannot promote actions that would violate the Act.

B. Meetings: All meetings shall be open and public. A City Council meeting takes place whenever a quorum (3 or more members) is present and information about the business of the body is received; discussions qualify as a meeting. Social functions (e.g., receptions, dinners) do not fall under the Act unless city business is discussed.

Serial meetings take place when any member of City Council contacts more than one other member of the City Council or any city staff member contacts more than two councilmembers for the purpose of deliberating or acting upon an item pending before the City Council. This restriction does not apply to the public or media who may contact all councilmembers. Correspondence that merely takes a position on an issue is acceptable. Note that the Brown Act applies to City councilmembers immediately after their election and before their swearing-in ceremony.

C. Agendas: Agendas for regular meetings must be posted 72 hours in advance of the meeting and must meet various requirements.

D. Actions: No action can be taken on any item not appearing on the posted agenda.

Exceptions:

1. An emergency exists (determined by a majority of the City Council).
2. The need to take action arose subsequent to the agenda being posted and there is a need for immediate action (determined by a two-thirds vote of the City Council; or if less than two-thirds are present, by unanimous vote).
3. The item was continued to another meeting that was scheduled and posted within five days of the original agenda.

E. Public input: The public, by law, has an opportunity to address the Council on any item of interest to the public that is within the jurisdiction of the Council, at the time the matter is heard. The Mayor has the right to establish a time limit on speakers and the total time allocated for a particular issue. Three minutes per speaker has been standard, but in unusual cases either shorter or longer periods may be established by the Mayor or the City Council.

F. Public disruptions: A portion or all of the public may be removed if willful disruption makes conducting the meeting "unfeasible"; the press may remain unless they participate in the disruption.

G. Correspondence: All writings distributed for discussion or consideration at a public meeting are public records.

H. Special meetings: Special meetings may be called by the Mayor or a majority of the City Council with strict notification requirements for delivery to the media and the City Council 24 hours before the time of the meeting.

I. Emergency meetings: Emergency meetings may be called without notification due to the disruption or threatened disruption of public facilities. Only work stoppages or crippling disasters that impair the public health and/or safety qualify for emergency meetings.

J. Other provisions: The Brown Act provides many other restrictions and requirements; this chapter is intended merely as a City Council summary and overview, and nothing in this Chapter supersedes the provisions of the Brown Act. Please check with the City Attorney and/or the City Clerk for more information.

City Council Communications

Overview

Perhaps the most fundamental role of a councilmember is communication—communication with the public to assess community opinions and needs—communication with staff to provide policy direction and to gain an understanding of the implications of various policy alternatives. Because the City Council performs as a body (that is, acting based on the will of the majority as opposed to individuals), it is important that general guidelines be understood when speaking as a councilmember. Equally important, when members are expressing personal views and not those of the City Council, the public should be so advised.

Councilmember correspondence

Members of the City Council may occasionally be called upon to write letters to citizens, businesses or other public agencies. Typically, the Mayor will be charged with transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Correspondence sent on behalf of the City Council is placed on official City letterhead and is signed by the Mayor or City Manager. Individual members of the City Council may prepare letters to constituents in response to inquiries or to provide requested information. Individualized councilmember letterhead can be made available for this purpose, and staff can assist in the preparation of such correspondence. Councilmembers are required to provide copies of any correspondence on City letterhead to every councilmember and the City Manager.

On occasion, members may wish to transmit correspondence on an issue upon which the City Council has yet to take a position or about an issue for which the City Council has no position. In these circumstances, members should use their personalized letterhead and clearly indicate within letters that they are not speaking for the City Council as a whole, but for themselves as one member of the City Council.

After the City Council has taken a position on an issue, official correspondence should reflect this position. While members who may disagree with a position are free to prepare correspondence on such issues as private citizens, City letterhead, official City Council title, and staff support should not be utilized in order to avoid confusion. In addition, City letterhead and staff support cannot be utilized for personal or political purposes.

councilmembers may be asked to prepare letters of recommendation for students and others seeking appointment. It is appropriate for individual councilmembers to utilize City letterhead and their City Council titles for such letters. No review by the full City Council is required, however, copies will be kept on file.

Speaking for “the City”

Similar to written correspondence, when members are requested to speak to groups or are asked the City Council's position on an issue, the response should reflect the

position of the City Council as a whole. Of course, a councilmember may clarify their vote on a matter by stating, for example, “While I voted against “X,” the City Council voted in support of it.” When representing the City at meetings or other venues, it is important that those in attendance gain an understanding of the City Council’s position rather than that of an individual councilmember.

When dealing with members of the media, it is usually the Mayor who represents the position and interest of the City Council. When the City Manager or Department Heads are contacted, they too will refer the media first to the Mayor for comment. Similarly, when the City issues a Press Release, the Mayor is consulted in terms of any councilmember quotes or references. The City Manager decides whether staff are available to respond to media requests directly or not.

Local ballot measures

At times, measures that affect City Council policy may be placed on the ballot. There are restrictions regarding what actions a City Council or individual councilmembers may take on ballot measures. Guidelines as to what is permissible are available from the City Clerk or City Attorney upon request.

State legislation, propositions

The City has been a member of the League of California Cities for many years. In addition, the City has a representative on the City/County Association of Governments (C/CAG). Both of these groups actively track legislation at the state level. Either through the advisories received from these two organizations or as a result of City staff following key legislative bills of importance to the City, the Council is at times requested to take a position or an action on pending state legislation. Unless Council has previously acted on a similar bill in the recent past, in which the City’s position is clear, the Council has a practice of requiring analysis and discussion of bills before taking an official position. The analysis includes a summary of the legislation’s purpose and a listing of those entities both in support of and against the proposed legislation. As a framework for screening bills that are pending to determine if the City should weigh in, Appendix B serves as a Legislative Policy Guide, with the explicit understanding that the City will express itself on legislation dealing with issues that will directly effect its financial stability or effective operation, and that the City may enter into alliances with other entities to promote common goals.

Proclamations

Ceremonial proclamations are often requested of the City in recognition of an event or individual. Proclamations are not statements of policy but a manner in which the city can make special recognition of an event (e.g., Recycling Week) or individual. As part of his/her ceremonial responsibilities, the Mayor is charged with administration of proclamations. Individual councilmembers do not issue proclamations. Proclamations can be sent to the requester or presented at a City Council meeting as arranged with the requesting body and at the Mayor’s discretion.

Interactions with City Staff

Overview

City Council policy is implemented on a daily basis through staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so that policies and programs may be implemented successfully. The City of Menlo Park has a long tradition of positive relationships between councilmembers and city staff. To maintain these effective relationships it is important that roles are clearly recognized.

Council-Manager form of government

Like most California cities, Menlo Park has adopted a City Council-City Manager form of government. The Council appoints a City Manager to implement policy, enforce laws, direct the daily operations of city government, and prepare and monitor the municipal budget. The Municipal Code specifies roles and responsibilities and requires that councilmembers work through the City Manager in dealing with City staff unless simply requesting information from department heads or other staff members. The City Manager is responsible to the City Council as a body rather than to individual councilmembers.

Council-Manager relationship

The employment relationship between the City Council and the City Manager reflects the fact that the City Manager is the chief executive officer of the City. The City Manager has an employment agreement with the City Council. Regular communication between the City Council and City Manager is important in maintaining effective interpersonal relations. All dealings with the City Manager, whether in public or private, should be consistent with the authority of the City Manager in administrative and personnel matters. Councilmembers should avoid situations that can result in City staff being directed, intentionally or unintentionally, by one or more councilmembers. Further, councilmembers should avoid involving themselves in matters regarding individual City employees or related affairs.

The City Council evaluates the City Manager's performance on a regular basis to ensure that both the City Council and City Manager are in agreement about organizational performance and priority goals that are based on mutual trust and common objectives.

As in any professional relationship, it is important that the City Manager keep the City Council informed. The City Manager respects that the final responsibility for establishing the policy direction of the City is held by the City Council. The City Manager communicates with City Council in various ways. In addition to the formal City Council meetings, there are periodic briefing meetings with individual councilmembers and written memoranda and email. Communication must be undertaken in such a way that all councilmembers are treated similarly and kept equally informed. It is also important that the City Council provide ongoing feedback, information and perceptions to the City Manager including responses to written communications and surveys requesting feedback in a timely manner.

City Manager code of ethics

The City Manager is subject to a professional code of ethics that binds the City Manager to certain practices that are designed to ensure his or her actions are in support of the City's best interests. Violations of such standards can result in censure. Appendix D is a copy of the City Manager's Code of Ethics.

City Council-City Attorney relationship

The City Attorney is the legal adviser for the City Council, City Manager and departments. The general legal responsibilities of the City Attorney are to: 1) provide legal assistance necessary for formulation and implementation of legislative policies and projects; 2) represent the City's interest, as determined by the City Council, in litigation, administrative hearings, negotiations and similar proceedings; 3) prepare ordinances, resolutions, contracts and other legal documents to best reflect and implement the purposes for which they are prepared; and 4) keep the City Council and staff apprised of court rulings and legislation affecting the legal interest of the City. It is important to note that the City Attorney does not represent individual councilmembers, but the City Council as a whole.

Roles and information flow

Objectives: It is the intent of staff to ensure councilmembers have free and easy access to information from the City and to ensure that such information is communicated completely, with candor and without bias. Individual councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities without the prior knowledge and approval of the City Council as a whole. This is necessary to protect staff from undue influence and pressure from individual councilmembers, and to allow staff to execute the priorities given by management and the City Council as a whole without fear of reprisal.

City Council roles: The full City Council retains power to accept, reject, amend, influence, or otherwise guide and direct staff actions, decisions, recommendations, service levels, workloads and schedules, departmental priorities, and the performance of City business. Councilmembers who wish to influence the actions, decisions, recommendations, workloads, work schedule and priorities of staff, must receive support from a majority of the City Council to do so as a matter of City Council policy.

Should a councilmember become dissatisfied about a department, he/she should always talk it over with the City Manager. Concerns about a department head must be taken to the City Manager only.

Access to information: Individual councilmembers as well as the City Council as a whole shall receive the full cooperation and candor of staff in being provided with any requested information. The City Manager or appropriate staff will inform council when a critical or unusual event occurs about which the public would be concerned.

To assist the City Manager in his ability to monitor the flow of information, requests for information are best tracked if submitted in writing, either in memorandum form or through email. And to ensure proper responsiveness, councilmembers are asked to "cc" both the department head and the City Manager on all correspondence with staff.

There are limited restrictions when information cannot be provided. Draft documents (e.g., staff reports in progress, administrative draft EIRs) under review are not available for release until complete and after review by city management. In addition, there are legal restrictions on the City's ability to release certain personnel information even to councilmembers. Certain aspects of Police Department affairs (access to restricted or confidential information related to crimes) may not be available to councilmembers.

Councilmembers have a responsibility in this information flow as well. It is critical that they make use of staff reports and commission minutes. Councilmembers should come to meetings well prepared – having read staff reports and attachments, and requesting in advance any necessary and available information from staff. Councilmembers with questions on an agenda item should preferably contact staff before the meeting in order to allow staff members time to research a response for the meeting.

Staff roles: The City Council recognizes the primary functions of staff as serving the community, executing City Council policy and actions and in keeping the City Council informed. Staff is obligated to take guidance and direction only from the City Council as a whole or from the appropriate management supervisors through the City Manager. Staff is directed to report to the City Manager any attempts by individual councilmembers to unduly direct or otherwise pressure them into making, changing or otherwise influencing recommendations.

City staff will make every effort to respond in a timely and professional manner to all requests made by individual councilmembers for information or assistance; provided that, in the judgment of the City Manager, the request is not of a magnitude, either in terms of workload or policy, which would require that it would be more appropriately assigned to staff through the direction of the full City Council. Requests from an individual councilmember determined by the City Manager to take one hour or more of staff time to complete, may be included on the formal City Council agenda for full City Council discussion.

Information distribution

In cases where a staff response to an individual councilmember request involves written materials that may be of interest to other councilmembers, the City Manager will provide copies of the material to all other councilmembers. In making this judgment, the City Manager will consider whether the information is significant, new, otherwise not available to the City Council or of interest to the City Council.

Magnitude of information requests

Any information, service-related request, or revised policy position perceived as necessary by individual councilmembers, and that cannot be fulfilled based on the above guidelines, should be submitted by the individual councilmember in writing to the City Council as a whole. When raised at a City Council meeting, the full City Council can decide whether and when to agendaize the request for further consideration. The City Manager will seek necessary clarification as to whether the City Council desires staff research or a report prepared; and, if so, the relative priority that should be given to such a request in light of other priorities and potential workload impacts.

Staff relationship with advisory bodies

Staff support and assistance is typically provided to commissions and task forces. However, advisory bodies do not have authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and ultimately the City Manager and the City Council. The members of the commission/ board/committee are responsible for the functions of the advisory body, and the chairperson is responsible for committee compliance with City policies and practices as outlined in the Commission Handbook.

Staff support often includes preparation of an agenda and its posting in compliance with the Brown Act. Staff may also prepare reports providing background on the issue, alternatives, a recommendation and appropriate backup materials, if necessary. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues. The assigned staff person may take minutes as needed. Staff members are to assist the advisory body chair to ensure appropriate compliance with state and local laws and regulations.

It is important that advisory bodies wishing to communicate recommendations to the City Council do so through approved City Council agenda procedures. In addition, if a commission wishes to correspond with an outside agency, that correspondence will be prepared by staff for review by the City Manager and approval by the City Council. Individuals who would like staff to perform research or for the commission to review a particular issue must gain the approval for such a request from the full City Council before any work is planned or done. Each Commission establishes a 2-year work plan that is in line with the City Council's goals, which guides the commissions' activities and projects.

Restrictions on political involvement by staff

Local governments are non-partisan entities. Professional staff, as reflected within the principles of the Council-Manager form of government, formulates recommendations in compliance with City Council policy and for the good of the community and is not influenced by political factors. For this reason, it is very important to understand the restrictions of staff in any level of political involvement through campaigns, fundraisers or other means.

By working for the City, staff members do not surrender rights to be involved in local elections. Indeed, laws are in place to preserve those rights. However, there are limitations to such involvement. Different restrictions apply to management and to general employees.

General employees have no restrictions while off the job. No participation in campaigns or other activities may take place while on the job. No City resources may be used by staff in support of any campaign. Even while off the job, no employee may participate in campaign or other activities in a City uniform. For example, posing for a promotional photograph for a candidate for local office while in uniform is inappropriate. The support of the City Council in these matters is requested. A councilmember asking staff to sign petitions or similar items can similarly create an awkward situation.

For management staff, the City Manager strongly discourages any involvement in a local campaign even while on personal time. Such involvement could erode the tenet that staff is to provide an equal level of service to all councilmembers. The City Manager specifically prohibits any political involvement in local campaigns by department heads.

Support provided to City Council

Staff support

General administrative support to councilmembers is provided through the City Manager's Office. Administrative services including scheduling of appointments and receipt of telephone messages are available as needed. Sensitivity to the workload of support staff members in the City Manager's Office is appreciated. Should requested tasks require significant time commitments, prior consultation with the City Manager is requested.

Office equipment/technology

To enhance councilmembers' ability to communicate with staff and the public, the City Council office is equipped with a computer and telephones with voicemail. The City Council can also receive and send email and faxes.

Councilmembers may be connected from their home to the City's computer network. Information Technology staff will provide initial assistance in setting up necessary software and hardware. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Each councilmember is provided the use of a tablet device. When individual councilmembers have completed their term of office, any technology must be returned to the City.

These technologies facilitate efficient communication by councilmembers. However, their use also raises important legal issues to which councilmembers must pay special attention. First, the Brown Act prohibits elected officials from using "technological devices" to develop a concurrence by a majority regarding an action to be taken by the legislative body. "Technological devices" under the Brown Act include phones, faxes, computer email, public access cable TV and video. Councilmembers should not use email, faxes or phones for communicating with other councilmembers in order to develop a majority position on any particular issue that may come before the full City Council. Particular caution is advised when using or responding to email received via the "CCIN" feature on the City's website and email directory. Correspondence sent using CCIN automatically goes to all five councilmembers, certain staff and to the local newspapers.

Second, be aware that most emails sent by councilmembers probably are public records under the Public Records Act. Even though it does not create paper, sending email is more similar to mailing a letter than placing a telephone call. The information in the email is stored on the computer network until deleted, and may continue to exist on the network's backup systems even after being deleted. As a result, emails can become records of the City maintained in the course of business, and thus available for public disclosure under the Public Records Act.

Finally, the City's email system is intended for the conduct of official business, and not for political reasons. See CHAPTER 8 for a detailed discussion on the prohibition against using City property and funds for personal or political purposes.

Meeting rooms

An office is available adjacent to the City Manager's Office for shared use by councilmembers. Councilmembers can also reserve larger meeting space for use by contacting the City Manager's Office staff.

Mail and deliveries

Councilmembers receive a large volume of mail and other materials from the public, private interests and staff. The City Manager's Office staff maintains a mailbox for each councilmember. Meeting agenda materials are available for pick up Thursday evenings and are posted on the City's website. Councilmembers are encouraged to return unwanted binders, reports and documents to staff.

Financial Matters

City Council compensation

State law and the Municipal Code provide for modest compensation to councilmembers. State law limits an increase in City Council salaries to 5 percent per year, effective only following the next election after adoption. Currently, councilmembers receive a stipend of \$640 per month. Councilmembers are also eligible for participation in group insurance benefits including retirement, medical, dental, vision, and life insurance plans available at the level provided to management employees.

Expenditure allowance

The annual city budget includes limited funding for members to undertake official City business. Eligible expenses include travel for attendance at conferences or educational seminars, and the purchase of publications and annual subscriptions. Travel expense reimbursement for meals does not allow reimbursement for alcohol. Donations to organizations are not eligible nor are meals for individuals other than councilmembers. Available funds are disbursed on a first come first served basis, with the Mayor and City Manager monitoring expenses during the year. City Council Policy #CC-91-0002 pertains to travel and meeting expenses.

Expenditure guidelines

It is important to note that any expense must be related to City affairs. Public property and funds may not be used for any private or personal purpose. Courts have ruled that this prohibition includes personal political purposes. For example, reimbursement could not be allowed to pay for meals at a meeting designed to discuss political or campaign strategies. It is also inappropriate for City funds to pay for a meal or other expenses of a private citizen.

City budgetary practices and accounting controls apply to expenditures within the City Council budget. Reimbursement requests should be made through the City Manager's Office monthly with receipts. Expenditure records are public information. Questions arising as to the proper application or interpretation of the adopted policy will result in the City Manager conferring with the Mayor.

Conflicts and Liability

Conflict of interest

State laws are in place to prevent an action by a councilmember that would or may constitute a conflict of interest. The purpose of such laws and regulations is to ensure that all actions are taken in the public interest. At any time a councilmember believes a potential for conflict of interest exists, he/she is encouraged to consult with the City Attorney or private legal counsel for advice. Staff may also request an opinion from the City Attorney regarding a councilmember's potential conflict. Laws that regulate conflicts are very complicated. Violations may result in significant penalties including criminal prosecution.

There are two primary laws that govern conflicts of interest for public officials in California - the Political Reform Act and Government Code §1090. In general terms, the Political Reform Act prohibits a public official from having a financial interest in a decision before the official; §1090 prohibits a public official from having an interest in government contracts.

The Political Reform Act prohibits public officials from making, participating in, or in any way attempting to use their official position to influence a governmental decision in which they know, or have reason to know that they have a financial interest. Therefore, if a public official has a conflict of interest, the official must disqualify himself or herself from acting on or participating in the decision before the City. Once a year councilmembers and certain staff are required to file statements of economic interests.

Government Code §1090 is similar to the Political Reform Act, but applies only to City contracts in which a public official has a financial interest. The financial interests covered by §1090 are different from those in the Political Reform Act. A councilmember having an interest in a contract may preclude the City from entering into the contract at all. In addition, the penalties for violating §1090 are severe. If a councilmember believes that he or she may have any financial interest in a contract that will be before the City Council, the councilmember should immediately seek advice from the City Attorney or the councilmember's personal attorney.

There are a number of other restrictions placed on City Council actions that are highlighted in the League of California Cities' Guide. Such restrictions include prohibitions on secrecy and discrimination as well as assurance that all city funds are spent for public purposes. Violations of these restrictions may result in personal liability for individual councilmembers.

City Attorney advice

The City Attorney has an affirmative duty to protect the City and City Council from conflicts of interest wherever possible. It is critical to note that while the City Attorney can render advice on the interpretation of State laws and regulations on conflict matters, such advice is solely an interpretation of the law. The only authority that can provide

binding interpretations on such matters is the State Fair Political Practices Commission (FPPC). Individual councilmembers or the full City Council may also solicit opinions on such matters directly from the FPPC; however, such opinions often take time to develop and may not readily respond to urgent matters. It is important to note that the City Attorney does not represent individual councilmembers, but the City Council as a whole.

Conflict of interest forms

Annual disclosure statements are required of all councilmembers, designated commissioners and senior staff which indicate potential conflicts of interest including sources of income, ownership of property and receipt of loans and gifts. Councilmembers and the City Manager often serve on the governing board of other agencies as a result of their positions. These agencies also require submittal of disclosure forms. These forms require information including income, loans, receipt of gifts, and interest in real property among other items.

Liability

The City is a large institution offering a variety of services and may occasionally find itself subject to legal actions through lawsuits. For example, those involved in automobile accidents sometimes choose to take actions against a City since the accident occurred on a City roadway. The City must always approach its responsibilities in a manner that reduces risk to all involved; however, with such a wide variety of high-profile services all risk cannot be eliminated. The City belongs to an agency with other governments to manage insurance and risk activities.

It is important to note that violations of certain laws and regulations by individual councilmembers may result in that councilmember being personally liable for damages that would not be covered by the City's insurance. Examples may include discrimination, harassment or fraud.

Additional Training and Resource Materials

League of California Cities

The League is an association of virtually all cities in California. It provides many services including the production of educational conferences for local officials, publication of various newsletters and the monthly magazine *Western City*. The League has lobbyists on staff to represent the interest of cities before the state Legislature and federal government and supports committees having local officials as members that are organized to address issues as they arise. The City of Menlo Park participates in League activities through the Peninsula Division.

The League of California Cities produces a number of publications on substantive issues in city and local government. These publications are available for purchase from the League.

Local Government Commission

The Commission is a California-based organization that focuses largely on planning and resource conservation issues. It conducts workshops, offers periodic seminars and publishes newsletters.

International City/County Management Association (ICMA)

ICMA is a professional association of local government chief executives/city managers. The association has an extensive list of publications to assist local officials.

Institute for Local Government (ILG)

The Institute for Local Government also produces publications. For ILG publications please go to www.ca-ilg.org/publications.

APPENDIX A – Reference Guide to Motions

Type of Motion	Second Required	Debatable	Amendable	Priority Over Pending Motion	Reconsider	Interrupt Speaker
Adjourn	Y	n/a	n/a	Y	n/a	n/a
Amend or Substitute ¹	Y	Y	Y	Y	Y	n/a
Appeal	Y	Y	n/a	n/a	Y	Y
Call the Question ⁷	Y	n/a	n/a	Y	n/a	n/a
Take Up New Business Past 12 pm ⁸	Y	Y	n/a	Y	n/a	n/a
Limit Debate	Y	n/a	Y	Y Except “table”	Y	n/a
Main Motion	Y	Y	Y	n/a	Y	n/a
Nominations	n/a	Y	n/a	n/a	n/a	n/a
Personal Privilege or Point or Order	n/a	n/a	n/a	Y	Y	Y
Postpone to Time Certain	Y	Y	Y	Y	Y	n/a
Previous Question	Y	n/a	n/a	Y	Y	n/a
Recess or Adjourn to Time Certain	Y	Y	Y	n/a	n/a	n/a
Reconsider	Y ²	Y ³	n/a	n/a	n/a	⁴
Table or Take From Table	Y	n/a	n/a	Y ⁵	n/a	n/a
Take up Out of Order	Y	n/a	n/a	n/a	n/a	n/a
Withdraw a Motion ⁶	n/a	n/a	n/a	Y	Y	Y

“Y” indicates that this action can be taken, is necessary, is required, is permitted or is applicable

“n/a” indicates that this action cannot be taken, is unnecessary or is inapplicable

- 1 Limit of three substitute motions.
- 2 May only be made by a person who voted on prevailing side; not applicable to “table” motions. Must be made within two meetings of original action.
- 3 If prior motion was debatable.
- 4 Except for request for later action.
- 5 Highest subsidiary motion – takes precedence over all motions except adjourn and privilege.
- 6 Must be voted unless there is no objection.
- 7 Requires 4/5 vote.
- 8 Requires ¾ vote taken by 11:00 p.m. to extend beyond midnight.

LEGISLATIVE POLICY GUIDE

The City Council of Menlo Park believes:

- In conducting the business of government with openness, respect, and civility, and including the involvement of all stakeholders in establishing goals and in solving problems.
- The vitality of cities is dependent upon their fiscal stability and local autonomy, and that local self-governance is the cornerstone of democracy.

Therefore:

- The City supports legislation that reflects the need to conduct the public's business in public.
- The City opposes legislation that mandates costly and unnecessary procedures.
- The City supports the use of the general plan as a guide to meeting community planning needs, and opposes mandatory review or approval by another level of government and legislation that restricts the land use authority of cities.
- The City emphasizes efficiency and effectiveness to achieve the best possible use of city resources and believes the state should implement fiscal and legislative reforms in order to allow local government to adequately finance its service responsibilities, with accountability to the taxpayers for its programs.
- The City supports additional funding for local transportation and other critical unmet infrastructure needs and enhanced autonomy for local transportation decision-making.
- The City supports strategic alliances with counties, schools, other cities and local agencies, nonprofit and civic organizations and business and professional associations.

September 2005

City Council Policies

- CC 86 Naming and/or Changing the Name of Facilities
- CC 90-001 Tenant/Landlord & Dispute Resolution Service
- CC 91-0001 Board and Commission Attendance Policy
- CC 91-0002 Travel, Meeting, Conference, Training and Meal Expenses
- CC 91-0003 City Council Meeting Procedures
- CC 92-0001 Commuter Check Program
- CC 92-0002 Transportation Allowance Program
- CC 92-004 Award Authority for Purchases and Professional Services
- CC 93-001 Selection of Mayor
- CC 95-001 Anti-Harassment and Non-Discrimination Policy
- CC 01-0004 Commission/Committees Policies and Procedures and Roles and Responsibilities
- CC 02-0003 Veteran's Preference Policy



ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in October 2019. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2019.

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1. We believe professional management is essential to efficient and democratic local government by elected officials.

Tenet 2. Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include

refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

Tenet 4. Serve the best interests of the people.

GUIDELINES

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenet 5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

GUIDELINE

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

Tenet 6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

GUIDELINES

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

Tenet 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

GUIDELINES

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Tenet 9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

Tenet 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member’s responsibilities as set forth in the charter or enabling legislation.

Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member’s decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members’ personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term “Gift” includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member’s official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member’s official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.