



SPECIAL AND REGULAR MEETING AGENDA

Date: 10/10/2023
Time: Special City Council Meeting 5:00 p.m.
Regular City Council Meeting 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
- 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:

- Cable television subscriber in Menlo Park, East Palo Alto, Atherton and Palo Alto:
Channel 26
- City Council Chambers

Subject to Change: The format of this meeting may be altered or the meeting may be cancelled. You may check on the status of the meeting by visiting the city website menlopark.gov. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.gov/agendas)

Special Session

- A. Call To Order**
- B. Roll Call**
- C. Report from Closed Session**
- D. Agenda Review**
- E. Closed Session**
- E1. Conference with legal counsel – anticipated litigation
(Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)

Significant exposure to litigation: Two cases
Not a California Environmental Quality Act (CEQA) project.

- E2. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with unrepresented management

City Manager Justin I.C. Murphy, Legal Counsel Charles Sakai
Not a CEQA project.

- E3. Public employee performance evaluation
Government Code §54957
Title: City Manager
Not a CEQA project.

- E4. Public employee performance evaluation
Government Code §54957
Title: City Attorney
Not a CEQA project.

Regular Session

F. Call To Order

G. Report from Closed Session

H. 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.

I. Presentations and Proclamations

- I1. Proclamation: Latino Heritage Month ([Attachment](#))
Not a CEQA project.
- I2. Proclamation: National Domestic Violence Awareness Month ([Attachment](#))
Not a CEQA project.
- I3. Proclamation: Cybersecurity Awareness Month ([Attachment](#))
Not a CEQA project.
- I4. Presentation: San Francisquito Creek Joint Powers Authority update ([Presentation](#))
Not a CEQA project.

J. Consent Calendar

- J1. Accept the City Council meeting minutes for September 12, 2023 ([Attachment](#))
Not a CEQA project.
- J2. Approve advisory body annual work plan for the Parks and Recreation Commission
([Staff Report #23-224-CC](#))
Not a CEQA project.
- J3. Adopt a resolution to uphold an appeal of Complete Streets Commission Resolution No. 2022-4 authorizing the installation of no parking zones adjacent to the 660 Roble Ave. driveway
([Staff Report #23-225-CC](#))
Not a CEQA project.
- J4. Authorize the city manager to execute an amendment to the services agreement with the City of Redwood City for the annual maintenance of the Atherton Channel ([Staff Report #23-226-CC](#))
Not a CEQA project.
- J5. Receive and file the annual inflation protection adjustment of \$0.50 per hour for an approved local minimum wage effective Jan. 1, 2024, of \$16.70 per hour ([Staff Report #23-227-CC](#))
Not a CEQA project.
- J6. Authorize the city manager to execute an amendment to the professional software subscription services agreement with Accela, Inc. for continued access to the Civic Platform land management system in an amount not to exceed \$1,496,598 over a period of five years
([Staff Report #23-231-CC](#))
Not a CEQA project.
- J7. Approve the resolution to authorize the city manager to execute all documents necessary to complete the acquisition of 975 Florence Ln., Unit 8, Menlo Park, CA 94025 and approve the appropriation of below market rate housing funds not to exceed \$408,949 to purchase and retain the property in the below market rate housing program ([Staff Report #23-233-CC](#))
Not a CEQA project.

K. Regular Business

- K1. Review and authorize staff to submit the revised Housing Element for the 2023 to 2031 planning period to the California Department of Housing and Community Development
([Staff Report #23-228-CC](#))
Not a CEQA project.
- K2. Consider and adopt a resolution for a closure of a portion of Ryans Lane between Crane Street and Escondido Lane for outdoor dining opportunities ([Staff Report #23-230-CC](#)) ([Presentation](#))
Determine this action is categorically exempt under CEQA Guidelines §15301 for existing facilities.

L. Study Session

- L1. Provide direction to staff on expending state award of \$2.25 million for communitywide electrification project ([Staff Report #23-234-CC](#)) ([Presentation](#))
Not a CEQA project.

M. Informational Items

- M1. City Council agenda topics: October – Nov. 7, 2023 ([Staff Report #23-232-CC](#))
Not a CEQA project.
- M2. Transmittal of city attorney billing ([Staff Report #23-229-CC](#))
Not a CEQA project.

N. City Manager Report's

O. City Councilmember Reports

P. 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. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

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: 10/05/2023)

Recognizing October as Latino Heritage Month

WHEREAS, Governor Gavin Newsom has issued a proclamation recognizing Latino Heritage Month in the State of California; and

WHEREAS, during Latino Heritage Month, we honor and celebrate the immeasurable contributions and unique stories of Latinos, California's largest ethnic group; and

WHEREAS, Californians know that our strength and prosperity lie in our state's diversity, including the 15.6 million Latino Californians with roots that can be traced across the Americas, indigenous communities of Latin America and Africa, and beyond; and

WHEREAS, generations of Latinos throughout history have helped build our state and local community as we know it, standing against inequalities and injustices and shaping the social, political and economic landscapes of the state of California; and

WHEREAS, we recognize that Latino communities have always been and will always be deeply rooted in California's history, identity, and success, contributing to local vibrancy and growth every day as teachers and business owners, scientists and soldiers, farmworkers and first responders, artists and activists, colleagues, neighbors, and friends; and

WHEREAS, we also recognize the persistent disparities and disproportionate challenges that Latino communities face, and support the statewide expansion of access to health coverage, and the advancement of major investments in educational equity and affordable housing among other targeted investments and efforts; and

WHEREAS, this month and every month let us honor and celebrate the rich history, culture, tradition, and innumerable contributions Latinos make to our society and community;

NOW THEREFORE, BE IT RESOLVED that I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby proclaim October 2023, as Latino Heritage Month.

Jen Wolosin, Mayor
October 10, 2023

Recognizing October as National Domestic Violence Awareness Month

WHEREAS, domestic violence touches all communities, affecting tens of millions of people of all genders, sexual orientations, ages, racial, ethnic, cultural, social, religious, and economic groups in the United States and here in California; and

WHEREAS, 1 in 4 women and 1 in 7 men will experience severe abuse at the hands of an intimate partner during their lifetime, and over 15.5 million children are exposed to domestic violence every year, figures which indicate that every single person in our country, state, and city knows someone who has been impacted by this public health crisis; and

WHEREAS, marginalized groups, including undocumented individuals, transgender individuals, and people living with disabilities have increased vulnerability to domestic violence; and

WHEREAS, domestic violence and intimate partner violence can have life-long consequences emotionally, mentally, socially, spiritually and physically; and

WHEREAS, although progress has been made toward preventing and ending domestic violence and providing support to survivors and their families, important work remains to be done; and

WHEREAS, domestic violence programs in California provide essential, lifesaving services for survivors, their children, and communities; and

WHEREAS, there is a need to provide education, awareness and understanding of domestic violence and its causes; and

WHEREAS, all communities deserve access to culturally responsive prevention programs and initiatives to improve overall community health and safety by challenging the societal norms that perpetuate violence; and

WHEREAS, every October, Domestic Violence Awareness Month, first observed in 1987, provides the opportunity to learn to recognize signs of domestic violence, promote awareness, develop skills that allow us to support survivors of domestic violence, and honor those who have lost their lives to domestic violence;

NOW, THEREFORE LET IT BE RESOLVED, that I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council, hereby recognize and acknowledge October 2023 as National Domestic Violence Awareness Month.

Jen Wolosin, Mayor
October 10, 2023

Recognizing October as Cybersecurity Awareness Month

WHEREAS, the City of Menlo Park recognizes that it plays a vital role in identifying, protecting its residents from, and responding to cybersecurity threats that may have significant impact to our individual and collective safety and privacy; and

WHEREAS, critical infrastructure (i.e., financial services, educational institutions, energy, telecommunications, transportation, utilities, health care, and emergency response systems) is increasingly reliant on the support of information systems and technology; and

WHEREAS, cybersecurity education and awareness are crucial for everyone, including large corporations, small businesses, financial institutions, schools, government agencies, non-profit organizations, the home user, and anyone who connects to the internet, be it with a computer, mobile phone, or other internet-connected device; and

WHEREAS, monitoring your accounts, being conscientious of what you share online, keeping computer software up to date, creating unique passwords and changing them regularly, installing antivirus programs and firewalls, and using mobile devices and other internet-connected devices safely, are ways people and organizations can protect themselves from phishing, viruses, ransomware, other types of malware, financial loss, and loss of sensitive data; and

WHEREAS, maintaining the security of cyberspace is a shared responsibility in which each of us has a critical role to play, and awareness of essential cyber hygiene will improve the security of the City of Menlo Park's information, infrastructure, and economy; and

WHEREAS, the Federal Government of the United States of America, the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ([cisa.gov](https://www.cisa.gov)), the Multi-State Information Sharing and Analysis Center ([cisecurity.org/ms-isac](https://www.cisecurity.org/ms-isac)), the National Association of State Chief Information Officers ([nascio.org](https://www.nascio.org)), and the National Cyber Security Alliance ([staysafeonline.org](https://www.staysafeonline.org)) recognize October as Cybersecurity Awareness Month; and that in recognition of this, the twentieth year of Cybersecurity Awareness Month, all are encouraged to reduce online risks by visiting these websites, using the resources and learning about cybersecurity so they can put that knowledge into practice in their homes, schools, workplaces, and businesses;

NOW, THEREFORE, BE IT RESOLVED that I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby designate October 2023 as Cybersecurity Awareness Month.

Jen Wolosin, Mayor
October 10, 2023

San Francisquito Creek JPA Reach 2 Project and SAFER Bay Project Updates

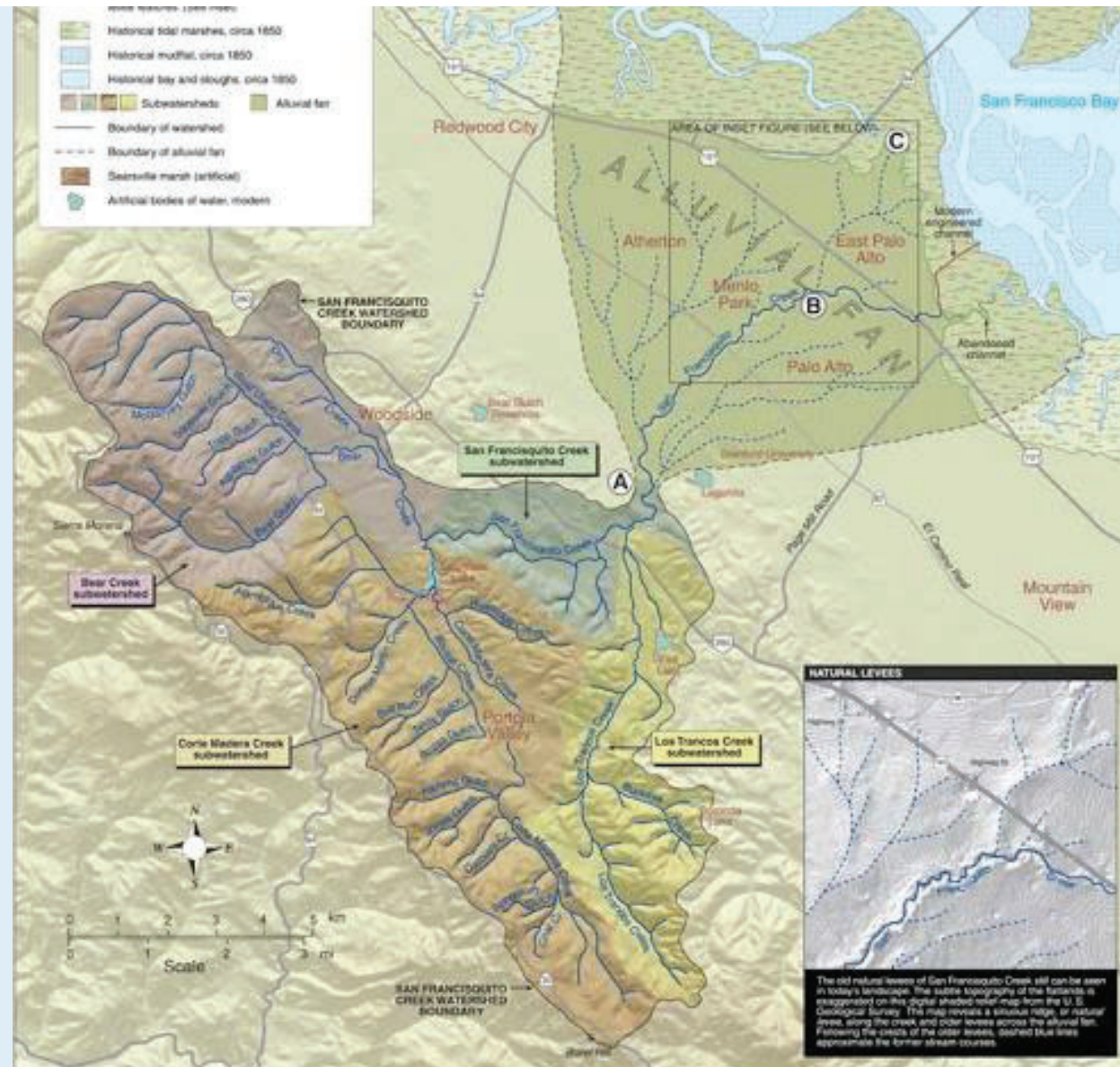
The SFCJPA – Made up of 5 gov't entities

Why we exist – To reduce flood risks

What we do – Plan, find \$ for, and build stuff

We Live in a Watershed

- ~ 45 square miles
- Supports diverse habitats and species
- Many tributaries in the SC Mountains
- A large alluvial fan across the valley floor
- We live on the ancestral homeland of the Ohlone peoples





FEMA 100 Year Flood Plain

Reach 1 or Downstream Project

Broke ground in 2016 – Completed in 2019

1 ½ Miles of widened channel, new floodwalls and levees, expanded trail

Over 9000 cfs capacity – planned for 100yr storm, plus 3 ½ feet of sea level rise, plus freeboard

Marsh restoration between the levees and beyond Friendship Bridge

Protects East Palo Alto and eastern Palo Alto directly. Protects Menlo Park and Palo Alto indirectly.



Photo credit: Santa Clara Valley Water District, 2019

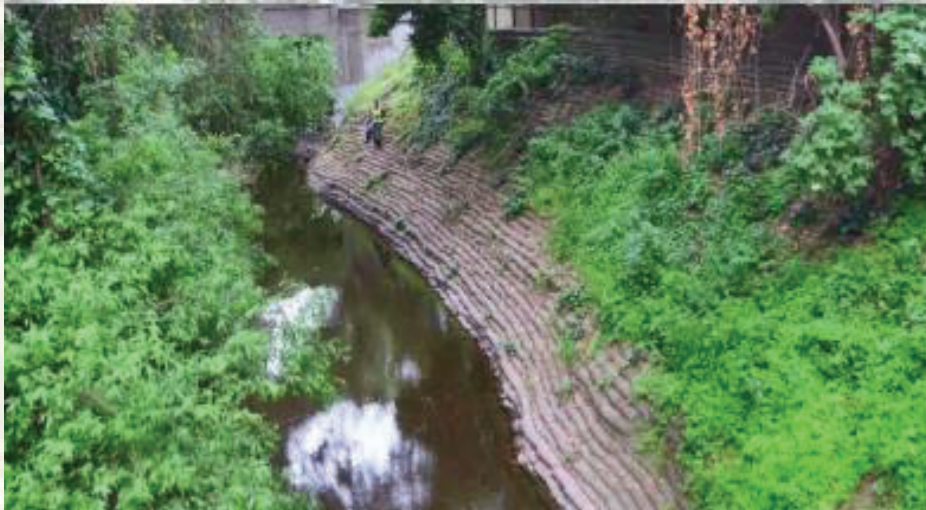


Reach 2 Project follows Reach 1 and has four components

1. Newell Road Bridge replacement – Palo Alto leading
2. Channel Widening – USACE CAP205 Project with Valley Water support
3. Top-of-Bank – SFCJPA and Valley Water leading
4. Pope-Chaucer Bridge replacement – SFCJPA and Valley Water leading

Schedule and Next Steps

- Replacement of the Newell Road Bridge is planned for summer 2024
- Channel Widening and Top-of-Bank work is planned for summer 2025
- Replacement of the Pope-Chaucer Bridge is planned for summer 2026*





Lessons from the New Year's Eve storm

Hydraulic Model vs. Observed Creek Behavior

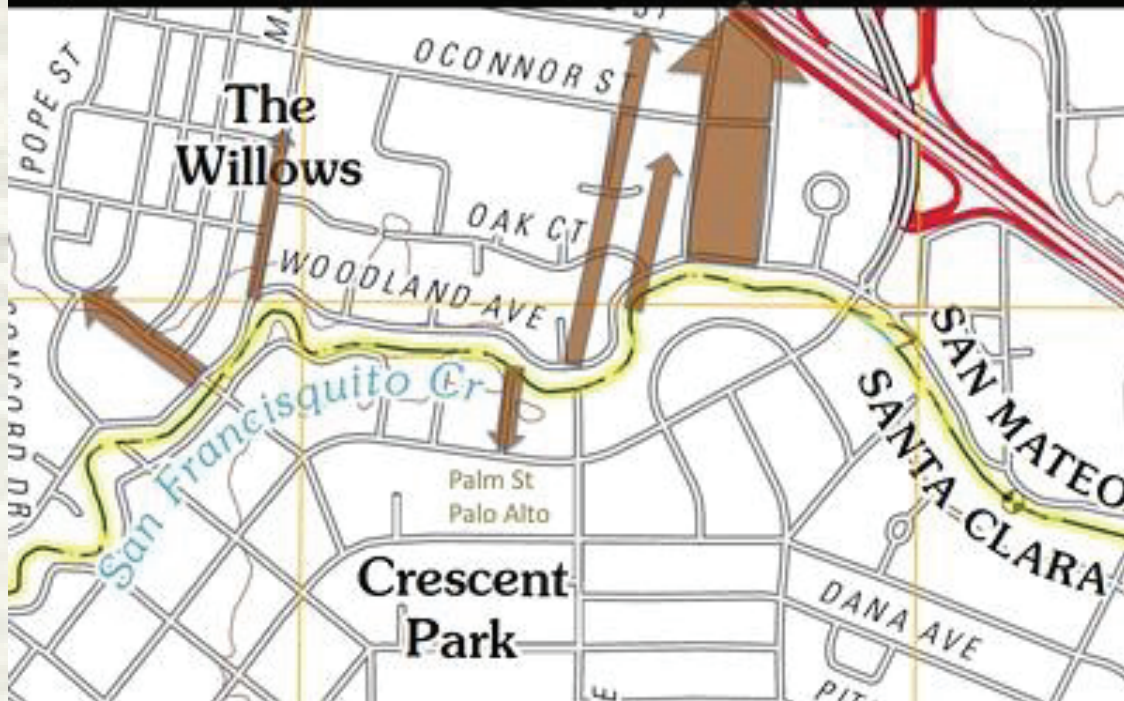
- Actual flood breakout locations were different than predicted in the hydraulic model used for designs

Changes in creek behavior require validating our model and our project designs

- A LiDAR survey of parts of the creek channel has been done and data is being reviewed
- Schaaf & Wheeler have been retained to do an independent evaluation of the model

Citizen Observation of Creek Breakout Locations

2022 Observed Overtopping Woodland Ave, San Mateo County
Minor flows at Pope St, Menalto Ave, Oat Ct & Emma Ct, Menlo Park
Major flow between Euclid Ave and Manhattan Ave, East Palo Alto



The New Year's Storm resulted in break outs and flooding.

This is a diagram of locations and relative amounts of creek flooding observed by a Menlo Park resident, Jim Wiley.

This is not an official record and does not reflect flooding details on the Palo Alto side.

Over-arching Reach 2 Project Objectives

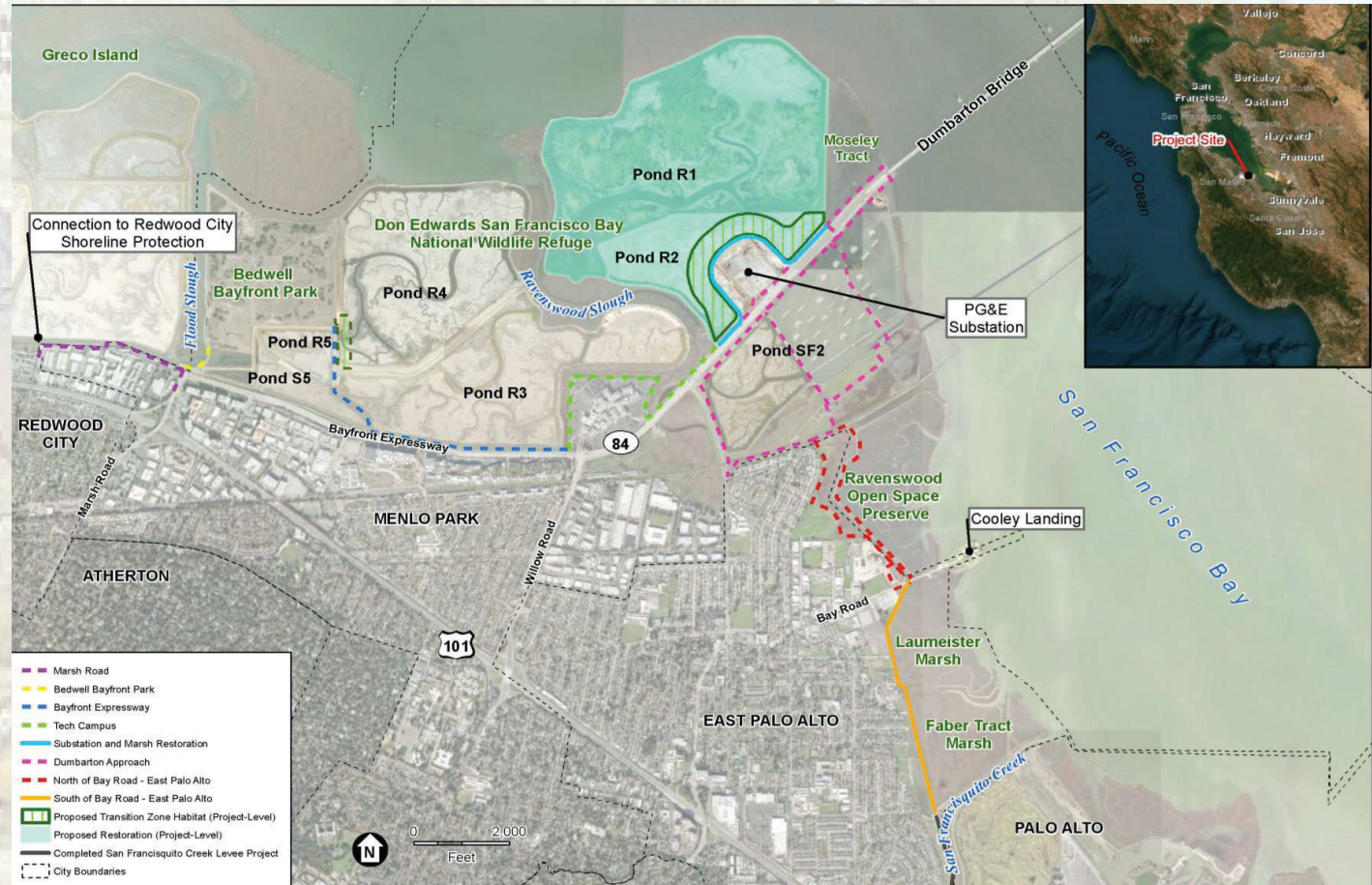
- Contain storm flow “of record” (the “flood of '98”)
- **No transfer of risk**
- Design a project that regulatory agencies will permit
- New insights from our hydraulic analysis may change some project details



Photo credit: P. Burt, 31 Dec. 2022. Upstream face of Pope-Chaucer bridge

SAFER Bay Project Update

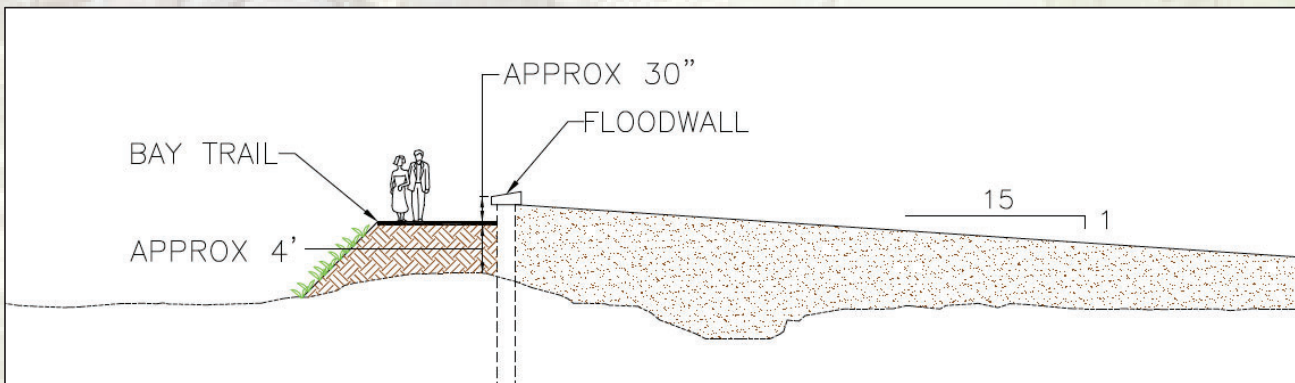
Strategy to
Advance
Flood protection,
Ecosystems, and
Recreation along
San Francisco
Bay



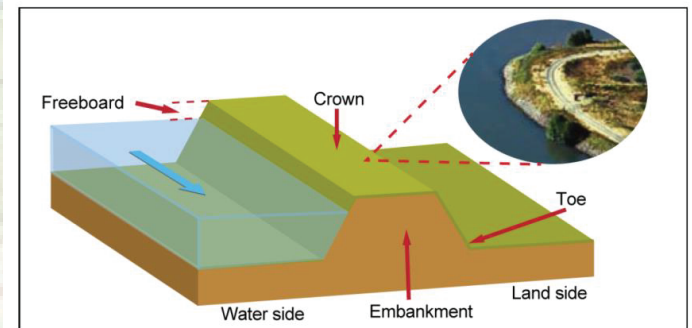
SAFER Bay Project Schedule

- March 2023 – December 2024
 - Evaluations to support EIR existing conditions
 - 10% to 30% flood protection design (all reaches)
 - Proposed mitigation approach
- May 2025
 - Public Draft Project Description
- November 2023- May 2024
 - 30% flood protection/restoration design (project-specific reaches)
- October 2025
 - Draft EIR released

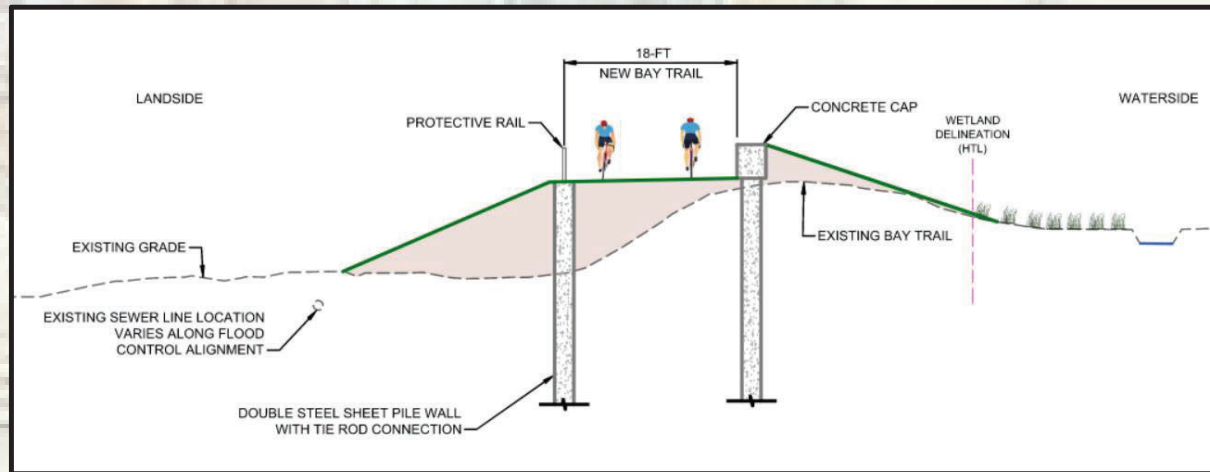
Conceptual Flood Protection Features



Earthen levee



Sources (left to right): California Department of Water Resources and U.S. Army Corps of Engineers.



The background is a topographic map of the San Francisco Bay Area. It shows the bay, surrounding hills, and major roads. Several project areas are highlighted with colored boxes and labels: a pink box for 'Reach 2' in the north, a yellow box for 'Newell Road Bridge' in the center, and a purple box for 'SAFER Bay' in the south. A small inset map in the bottom right corner shows the entire bay area.

Project Information Links

Reach 2 project information can be found on the SFCJPA's website at:
<https://www.sfcjpa.org/reach-2-upstream-project>

Information about Palo Alto's Newell Road Bridge project can be found on the City's website at: <https://www.cityofpaloalto.org/newell>

SAFER Bay project information can be found on the SFCJPA website at: <https://www.sfcjpa.org/safer-bay-project>

Questions and Discussion





REGULAR MEETING MINUTES – DRAFT

Date: 9/12/2023
Time: 6:00 p.m.
Locations: Teleconference and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Regular Session

A. Call To Order

Mayor Wolosin called the meeting to order at 6:05 p.m.

B. Roll Call

Present: Combs (remote – AB 2449 Just Cause), Doerr (remote – Brown Act and entered the meeting at 7:04 p.m.), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Justin I. C. Murphy, Assistant City Manager Stephen Stolte, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

C. Report from Closed Session

No reportable actions.

D. Agenda Review

The City Council reordered the agenda taking I. Consent Calendar and J1. Public Hearing before H. Study Session.

E. Public Comment

- Jenny Michel spoke in support of Senate Bill 58 (SB 58).
- Bill Kirsch spoke in support of the Ravenswood Avenue project, removal of street parking on Menlo Avenue after El Camino Real and the installation of bike routes.
- Doug Wise spoke on concerns related to safety issue of electric bicycles (e-bikes).
- Menlo Park Legends baseball program representative David Klein spoke on concerns and provided solutions about a downed tree at Nealon Park, which damaged a fence in March.

P. Closed Session – public comment

- P1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME)

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special

Counsel Charles Sakai

- P2. Conference with real property negotiators pursuant to Government Code §54956.8
Property location: 975 Florence Ln., Unit 8, Menlo Park, CA
City negotiators: Justin I.C. Murphy, Nira Doherty, Deanna Chow
Negotiating parties: Paul Goswamy (Owner)
Under negotiation: Price, terms of payment, property negotiations
- Kristen Leep with donated time from Judy Leep spoke on the 975 Florence Ln., Unit 8, purchasing process and requested assistance.
- P3. Conference with legal counsel – existing litigation
Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: Tobias Kunze and Liliana Kunze Briseno v. City of Menlo Park (Case No. 3-CIV-00590)
- P4. Conference with legal counsel – anticipated litigation
(Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)
Significant exposure to litigation: One case

F. Presentations and Proclamations

- F1. Proclamation: National Preparedness Month (Attachment)
- Jenny Michel spoke on economic disparity, climate breakdown and disproportional impacts from disasters.
- Mayor Wolosin read the proclamation (Attachment).
- Lynne Bramlett with MPC Ready accepted the proclamation.
- F2. Proclamation: National Service Dog Month (Attachment)
- Mayor Wolosin read the proclamation (Attachment).
- Samara Crasilneck and Dana Kavy accepted the proclamation.
- F3. Presentation: San Mateo County Mosquito and Vector Control District annual update (Attachment)
- San Mateo County Mosquito and Vector Control District’s Public Health Education and Outreach Officer Rachel Curtis-Robles made the presentation (Attachment).

G. Advisory Body Vacancies and Appointments

- G1. Consider applicant and make an appointment to fill a vacancy on the Finance and Audit Commission (Staff Report #23-198-CC)
- Assistant to the City Manager/ City Clerk Judi A. Herren introduced the item.

- The City Council made an appointment to fill a vacancy on the Finance and Audit Commission:
- Susan Prohaska – term expiring April 30, 2024

I. Consent Calendar

- I1. Accept the City Council meeting minutes for August 15, 22, and 29, 2023 (Attachment)
- I2. Award a construction contract to One Workplace for the Menlo Park Community Campus furniture project (Staff Report #23-199-CC)

ACTION: Motion and second (Nash/ Taylor), to approve the consent calendar, passed 4-0 (Doerr absent).

J. Public Hearing

- J1. Adopt a resolution to abandon a storm drain easement at 1585 Bay Laurel Dr. (Staff Report #23-200-CC)

Senior Civil Engineer Rambod Hakhamaneshi made the presentation (Attachment).

Mayor Wolosin opened the public hearing.

Mayor Wolosin closed the public hearing.

ACTION: Motion and second (Nash/ Wolosin), to adopt a resolution ordering the vacation and abandonment of a storm drain easement lying within 1585 Bay Laurel Dr., passed 4-0 (Doerr absent).

H. Study Session

- H1. Provide direction on restarting the Neighborhood Traffic Management Program (Staff Report #23-201-CC)

Assistant Public Works Director Hugh Louch made the presentation (Attachment).

- Bill Kirsch spoke in support of designing streets to produce lowered speeds instead of waiting until there is speeding and implementing traffic calming.
- Katie Behroozi spoke in support of streamlining the Neighborhood Traffic Management Program (NTMP) to make it easier to add traffic calming measures to neighborhood streets.
- Adina Levin spoke in support of staff proposed changes to the NTMP, in support of using City repaving projects to make proactive street safety improvements, and focusing City safety investments in areas with the greatest safety challenges.
- Daniel Hom spoke in support streamlining the NTMP program and improving safety on Willow Road, especially for people crossing the road.
- Pam D. Jones requested a reassessment of Hamilton Avenue stop signs and an evaluation of e-bike speeds and continued education for bicyclists.

The City Council received clarification on citywide traffic calming measures, citywide speed limit, previously requested or implemented NTMP projects, sensitive populations, NTMP focus and

prioritization of streets.

The City Council discussed separating parking restrictions from the NTMP, rubber speed humps, traffic volume and population density correlation (e.g., Chilco Street), prioritizing school zones, reassessing Hamilton Avenue stop signs, e-bike safety concerns, thresholds for most dangerous streets including sensitive populations (schools, seniors, new residential, etc.) and Options 1 and 2 presented by staff.

The City Council directed staff to return with an update on the Vision Zero Action Plan, followed by refinement of the NTMP process/flow chart, development of criteria and prioritization of sensitive populations, and focusing the program on speed reductions and safety requests. Staff will also identify how the NTMP program changes would impact resource allocation for transportation requests and projects.

K. Regular Business

- K1. Authorize the city manager to execute an agreement with Team Sheeper, Inc., to operate Burgess Pool and the future Menlo Park Community Campus aquatics center (Staff Report #23-206-CC)

Library and Community Services Director Sean Reinhart and Library and Community Services Supervisor Tricia Mullan made the presentation (Attachment).

Tim Sheeper made a presentation.

- Robert Peck spoke in support of amending the agreement to allow SOLO Aquatics (SOLO) space at the pools and increasing termination notice from five to 30 days.
- John Martin spoke in support of including SOLO in the agreement.
- Drew Nelson spoke in support of including SOLO in the agreement.
- Kathryn Brottem spoke in support of including SOLO in the agreement.
- EJ Shakiby spoke in support of including SOLO in the agreement.
- Siobhan Pickett spoke in support of including SOLO in the agreement.
- Sahil Pesai spoke in support of including SOLO in the agreement.
- Kathryn Saxton spoke in support of including SOLO in the agreement.
- Fang Paulson spoke in support of including SOLO in the agreement.
- Leanne Breckenridge spoke in support of including SOLO in the agreement.
- Sadbera Raj spoke in support of including SOLO in the agreement.
- Jessica Gronski spoke in support of including SOLO in the agreement.
- Tarun Patel spoke in support of including SOLO in the agreement.
- Adrian Kunze Briseno spoke in support of including SOLO in the agreement.
- Matthew Pistorino spoke in support of including SOLO in the agreement.
- Kathryn Todd spoke in support of including SOLO in the agreement.
- Ryan Williams spoke in support of including SOLO in the agreement.
- Tom McRae spoke in support of including SOLO in the agreement.
- Katherine Afanasiev spoke in support of including SOLO in the agreement.
- Marlene Santoyo read a comment into the record regarding the proposed fees.
- Tobias Kunze Briseno spoke in support of including SOLO in the agreement and increasing the termination notice from five to 30 days.
- Eric Kuhnen spoke in support of including SOLO in the agreement.

- Olga Afanasiev spoke in support of including SOLO in the agreement and increasing the termination notice from five to 30 days.

The City Council took a recess at 9:32 p.m.

The City Council reconvened at 9:41 p.m.

The City Council received clarification on the absence of a SOLO exhibit in the agreement, inclusion of a clause for city to approve the use and termination of subcontractors, emergency preparedness and training, user fees, termination notice, timeline and potential 30-day extension, request for proposal (RFP) original requests and liquidated damages.

The City Council discussed the subcommittee's process and goals, including a SOLO exhibit in the agreement, additional engagement with SOLO, Palo Alto's agreement with Team Sheeper Inc. (Sheeper), mutual indemnification, acknowledging highest priority program as water safety, compliments and complaints process, procedure, and accessibility and comparable/similar services at both pools.

The Subcommittee received clarification on specifications in the agreement and requested changes (Attachment):

- Remove "City must make changes to the facility that operator requests, and those must be removed after the contract ends, and the city must pay for those." from agreement.
- "Duty" is on the pool deck, watching the pool.
- Update initial term three years and extended term one year.
- Requiring Livescans for all employees and non-employees who work with or have contact with minors, at operator's expense.
- Remove "aquatics" from "Annual gross revenues include any and all of Operator's income related to aquatics programs and operations that take place in whole or in part at Premises."
- Remove waiver of revenue share in year one, but remove the \$20,000 minimum.
- Language update to Section 15. Liquidated damages (k-1.20).
- Updates to Ex F related to checks, cleans, repairs, and replaces items for "Pool" and on deck" to Operator opposed to City.
- Janitorial services at Burgess provided by Operator.
- All reports to be quarterly.

ACTION: By acclamation, the City Council extended the meeting past 11 p.m.

The City Council directed staff to include mutual indemnification, adding city reserves the right to request a meet and confer with the city and Operator for any schedule change before implementation, compliments and complaints should be sent/received to/from Operator and city, to include a SOLO exhibit in the agreement consistent with the exhibit in past agreements, Operator to provide residency information in report outs, and for annual gross revenues to include any and all Operator's income related to aquatics programs and operations that take place in whole or in part at premises.

ACTION: Motion and second (Wolosin/ Combs), to authorize the city manager to execute an aquatics operator agreement (Agreement) with Team Sheeper, Inc., at Burgess Pool and the future Menlo Park Community Campus (MPCC) aquatics center, subject to the revisions and direct staff to finalize the

agreement, 3-2 (Nash and Taylor dissented).

- K2. Adopt a resolution to authorize left-turn restrictions from Oak Grove Avenue onto Garwood Way and Merrill Street (Staff Report #23-203-CC)

Assistant Public Works Director Hugh Louch introduced the item.

The City Council received clarification on safety and access concerns.

ACTION: Motion and second (Nash/ Wolosin), to adopt a resolution to authorize left-turn restrictions from Oak Grove Avenue to Merrill Street and Garwood Way to address safety concerns, passed unanimously.

- K3. Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit (Staff Report #23-197-CC)

Administrative Services Director Britany Mello introduced the item.

ACTION: Motion and second (Taylor/ Nash), to receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit (SEIU), passed unanimously.

L. Informational Items

- L1. City Council agenda topics: September – October 2023 (Staff Report #23-207-CC)
- L2. Transmittal of city attorney billing (Staff Report #23-202-CC)
- L3. Police department quarterly update – Q2 April 2023 – June 2023 (Staff Report #23-208-CC)

The City Council received clarification on number and types of stops and violations.

- L4. Update on City's Housing Element Update project status and next steps (Staff Report #23-204-CC)

Discussed call with California Department of Housing and Community Development (HCD) and City and timeline.

- L5. City Council fiscal year 2023-24 priorities work plan (Staff Report #23-205-CC)

M. City Council Initiated Items

- M1. Direction on former Sunset magazine campus (Staff Report #23-209-CC)

City Councilmember Combs withdrew this request.

M2. Direction on the USGS campus on Middlefield Road (Staff Report #23-210-CC)

City Councilmember Combs withdrew this request.

N. City Manager Report's

City Manager Justin Murphy reported out on public works open house.

O. City Councilmember Reports

City Councilmember Nash reported out on a multi-jurisdictional meeting that discussed the Stanford Community plan.

P. Closed Session

- P1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME)

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special Counsel Charles Sakai

- P2. Conference with real property negotiators pursuant to Government Code §54956.8

Property location: 975 Florence Ln., Unit 8, Menlo Park, CA

City negotiators: Justin I.C. Murphy, Nira Doherty, Deanna Chow

Negotiating parties: Paul Goswamy (Owner)

Under negotiation: Price, terms of payment, property negotiations

- P3. Conference with legal counsel – existing litigation

Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: Tobias Kunze and Liliana Kunze Briseno v. City of Menlo Park (Case No. 3-CIV-00590)

- P4. Conference with legal counsel – anticipated litigation

(Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)

Significant exposure to litigation: One case

Q. Adjournment

Mayor Wolosin adjourned to the closed session at 12:11 a.m.

Mayor Wolosin adjourned the meeting at 12:50 a.m.

Assistant to the City Manager/ City Clerk Judi A. Herren



STAFF REPORT

City Council

Meeting Date: 10/10/2023

Staff Report Number: 23-224-CC

Consent Calendar: Approve advisory body annual work plan for the Parks and Recreation Commission

Recommendation

Staff recommends that the City Council approve the annual work plan for the Parks and Recreation Commission (PRC) (Attachment A).

Policy Issues

City Council Policy #CC-23-004 (Attachment B) defines the policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees. Each commission is required to develop an annual work plan in support of the City Council work plan and seek City Council approval no later than Sept. 30 of each year per the policy. All commission work plans are subject to City Council approval or modification.

Background

The PRC is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. The City Council last approved the PRC work plan Sept. 20, 2022.

Analysis

The PRC's draft work plan includes seven goals. The PRC approved the attached work plan Sept. 27. The Menlo Park Community Campus (MPCC) project continues to be a top priority of the PRC. The PRC continues to provide a forum for public information about park and recreation issues and encourage and facilitate robust public comment and participation. New work plan goals include a review of updates to the Library and Community Services departmental strategic plan, annual review of the department's proposed budget, and to advise on maintenance and upgrades to recreational facilities.

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. PRC work plan
- B. City Council Policy #CC-23-004

Report prepared by:

Judi A. Herren, Assistant to the City Manager/ City Clerk

Report reviewed by:

Nick Szegda, Assistant Library and Community Services Director

Tricia Mullan, Library and Community Services Supervisor

Parks and Recreation Commission work plan

Library and Community Services Department

800 Alma Street, Menlo Park CA 94025

Proposed October 10, 2023



Work plan goals

1. As an advisory body to the City Council and a forum for public information about park and recreation issues, encourage and facilitate robust public comment and participation at Commission meetings.
 - Foster a public meeting environment that is inclusive of all members of the diverse Menlo Park community.
 - Focus on resident input and grow relationships with residents throughout the City of Menlo Park.
2. Support and advise the development and launch of the Menlo Park Community Campus (MPCC), including but not limited to topics such as recreational programming, service integration, and policies within the shared space environment in the new facility, as directed by City Council.
 - Review programs and services with a focus on the provision of high-quality programs and services for all Menlo Park residents.
 - Ensure that the programs and services offered at the MPCC contribute to satisfying the needs of the neighborhood it serves, and be integrated into a system that is accessible to residents of all ages and abilities throughout the City.
3. Facilitate the goals laid out in the 2019 Parks and Recreation Facility Master Plan (PRFMP).
 - Review emerging recreational trends for possible inclusion in future PRFMP addendums.
4. Advise on the maintenance and upgrade of recreational facilities. Advise on the modification of existing programs and facilities to meet community needs. When reviewing Library and Community Services projects, prioritize accessibility, safety, and sustainability.
 - Review upgrades and modifications made to Willow Oaks Park.
 - Review upgrades and modifications made to Burgess Park play structures.
5. Periodically receive staff presentations and reports about major service areas and programs. Maintain a 12-month schedule of planned Commission agenda items; update and post for public review monthly.
6. Review and advise on updates to the department strategic plan and advise on any strategic plan updates made after the opening of the MPCC.
7. Annually review departmental budget proposal before presentation to City Council, focusing on any potential impacts to recreation facilities and services. Review and advise on potential synergies with or support from other City departments.

Work plan history

Action	Date	Notes
Work plan recommended to PRC	September 27, 2023	Commission approved
Click or tap here to enter text.	Click or tap to enter a date.	Click or tap here to enter text.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004
 Adopted June 27, 2023
 Resolution No. 6840



Purpose
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
Authority
Upon its original adoption, this policy replaced the document known as “Organization of Advisory Commissions of the City of Menlo Park.”
Background
<p>The City of Menlo Park currently has seven active Commissions. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Commission, Housing Commission, Library Commission, Parks and Recreation Commission, and Planning Commission. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution No. 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Six of the seven commissions listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code §65100 et seq., §65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-21-0022), and a Travel, Meal, and Lodging Policy (CC-19-002), which are also applicable to all advisory bodies.</p>
Policies and Procedures
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> • Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study. • Upon its own initiative, the commission/committee shall identify and raise issues to the City Council’s attention and from time to time explore pertinent matters and make recommendations to the City Council. • At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council. • Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council’s adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code §65100 et seq., §65300-65401). • Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City’s duly elected representatives, the City Council. • Additional or other staff support may be provided upon a formal request to the City Council. • The staff liaison shall act as the commission/committee’s lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that their statements do not represent the position of the City Council. • Commission/Committee members will have mandatory training every two years regarding the Brown Act and

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parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.

- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. 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, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the city clerk's office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Advisory Body Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being

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provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

City Council referrals

The city clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that they are speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

Meetings and officers

1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, city manager, city attorney, city clerk and other appropriate staff, as requested.
- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if they think it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by their signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.

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3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, and Finance and Audit Commission shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month and the Finance and Audit Commission shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

The schedule of Commission meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 6:30 p.m.
- Environmental Quality Commission – Every third Wednesday at 6 p.m.
- Finance and Audit Commission – Third Thursday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month on a Monday at 7 p.m.

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that their participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

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G. Memberships

Appointments/Oaths

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the city clerk or their designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

Application and selection process

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the city clerk's office and on the City's website.
- The city clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
- Applicants are required to complete and return the application form for each commission/committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by email are accepted.
- After the deadline of receipt of applications, the city clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City Council agenda packet for their review and consideration. If there are no applications received by the deadline, the city clerk will extend the application period for an indefinite period of time until sufficient applications are received.
- Upon review of the applications received, the City Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the city clerk will provide notification to the applicants of the decision of the City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City Council shall be conducted at a City Council meeting. The city clerk will ask each City Councilmember for their nominations; the number of nominations is limited to the number of vacancies. The candidate that receives a majority of nominations will be appointed. If there is a tie, multiple rounds of voting will occur.
- Following a City Council appointment, the city clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City's Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City's Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the commission/committee chair.
- An orientation will be scheduled by the city clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

Attendance

- A compilation of attendance will be submitted to the City Council at least annually listing absences for all commissions/committee members.
- Absences, which result in attendance at less than two-thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the City Council.
- Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
- While it is expected that members be present at all meetings, the chair and staff liaison should be notified if a member knows in advance that they will be absent.
- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

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Compensation

- Members shall serve without compensation (unless specifically provided) for their services, provided, however, members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-19-002).

Conflict of interest and disclosure requirements

- A Conflict of Interest Code has been updated and adopted by the City pursuant to Government Code §87300 et seq. Copies of the conflict of interest code are filed with the city clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Complete Streets Commission, Housing Commission, and Planning Commission are required to file a Statement of Economic Interest with the city clerk to disclose personal interest in investments, real property and income. This is done within 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify themselves from making or participating in a governmental decision, or using their official position to influence a governmental decision. Questions in this regard may be directed to the city attorney.

Qualifications, compositions, number

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.
- There shall be seven (7) members on each commission/committee.

Reappointments, resignations, removals

- Incumbents seeking a reappointment are required to complete and file an application with the city clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one-year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

Term of office

- Unless specified otherwise, the term of office for all commission/committees shall be four (4) years unless a resignation or a removal has taken place.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of their term, a replacement serves out the remainder of that term.

Vacancies

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are posted by the city clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code §54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the city clerk and posted in the City Council Chambers bulletin board and on the City's website. This list is also available to the public. (Government Code §54972, Maddy Act).

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

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Adopted June 27, 2023

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Roles and Responsibilities

Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
- Continue to advocate for and advise the City Council on planning and installing pedestrian and bicycle rail crossing and safe cycling/pedestrian infrastructure.
- Continue to support City Council in ongoing initiatives to improve access to Downtown and support downtown businesses.
- Continue to support the implementation of the Safe Routes to School strategy and advocate for community engagement, program continuity and engineering implementation.
- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

Environmental Quality Commission

The Environmental Quality Commission is committed to helping the City of Menlo Park to be a leading sustainable city that inspires institutions and individuals and that is well positioned to manage present and future environmental impacts, including the grave threat of climate change. The Environmental Quality Commission is charged primarily with advising the City Council on matters involving climate change, environmental protection, and sustainability.. Specific focus areas include:

- Climate Action Plan - Advise and recommend on the implementation of the climate action plan.
- Climate Resilience and Adaptation - Ensure that our most vulnerable communities have a voice in policies and programs to protect their communities from environmental impacts.
- Urban Canopy - Leverage best practices to advise/recommend on the preservation of heritage trees, city trees and expansion of the urban canopy; and make determinations on appeals of heritage tree removal permits.
- Green and Sustainable Initiatives – Support sustainability initiatives, as needs arise, which may include city-led events, habitat protection, healthy ecology, environmental health protection, healthy air, surface water runoff quality, water conservation and waste reduction.

Finance and Audit Commission

The Finance and Audit Commission is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004

Adopted June 27, 2023

Resolution No. 6840

Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City’s libraries and library systems. Specific focus areas include:

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning’s, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

Special Advisory Bodies

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the city clerk for City Council consideration and approval.

Procedure history

Action	Date	Notes
Procedure adoption	1991	Resolution No. 3261
Procedure adoption	2001	
Procedure adoption	2011	
Procedure adoption	2013	Resolution No. 6169
Procedure adoption	2017	Resolution No. 6377
Procedure adoption	6/8/2021	Resolution No. 6631

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004

Adopted June 27, 2023

Resolution No. 6840

Procedure adoption	3/1/2022	Resolution No. 6706
Procedure adoption	3/8/2022	Resolution No. 6718
Procedure adoption	9/20/2022	Resolution No. 6776
Procedure adoption	1/10/2023	Resolution No. 6803
Procedure adoption	6/27/2023	Resolution No. 6840



STAFF REPORT

City Council

Meeting Date:

10/10/2023

Staff Report Number:

23-225-CC

Consent Calendar:

Adopt a resolution to uphold an appeal of Complete Streets Commission Resolution No. 2022-4 authorizing the installation of no parking zones adjacent to the 660 Roble Ave. driveway

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to uphold an appeal of Complete Streets Commission (CSC) Resolution No. 2022-4 authorizing installation of no parking zones adjacent to the 660 Roble Ave. driveway.

Policy Issues

Section 11.24.026 of the City's Municipal Code authorizes the CSC to designate a "No Parking Zone" (i.e., red curb) adjacent to driveways, intersections, and crosswalks under specific criteria for safety concerns.

Section 11.24.028 of the Municipal Code permits any Menlo Park resident, business owner, or property owner to appeal the CSC's decision to the City Council within 15 days.

Background

Request

Staff received resident feedback concerning inadequate line of sight for drivers turning onto Roble Avenue from the 660 Roble Ave. driveway. The residents stated that, due to parked vehicles adjacent to both sides of the driveway, drivers are forced to encroach onto Roble Avenue before they can clearly see approaching vehicles from both directions. Currently, the driveway has 3 feet of red curb to the east (right) and 10 feet of red curb to the west (left). It is located approximately 260 feet from El Camino Real to the east and 240 feet from Curtis Street to the west (Attachment B).

This segment of Roble Avenue has a prima facie speed of 25 miles per hour (mph), and has been signed as a 15 mph school zone when children are present as one of the main access roads to Lydian Academy located at the northwest corner of El Camino Real and Roble Avenue. Prima facie speed is the default speed established by the California Vehicle Code for local access roads, when a speed limit sign is not present.

Analysis

Evaluation

According to the American Association of State Highway and Transportation Officials' (AASHTO), policy on Geometric Design of Highway and Streets, 155 feet of stopping sight distance is required for 25 mph roadways or 80 feet for 15 mph roadways. Given a 15 mph school zone would only be in effect when

children are present, staff used 25 mph for purposes of the evaluation.

Based on field investigation, the line of sight falls below the minimum 155 feet when vehicles are parked adjacent to the driveway. To get a clear view of approaching vehicles, drivers exiting the driveway must encroach onto Roble Avenue before proceeding, as shown in the exhibit for Attachment A.

To achieve at least 155 feet stopping sight distance in each direction requires adding 30 feet of additional red curb to the east and 38 feet of additional red curb to the west, or approximately two parking spaces on each side.

Complete Streets Commission decision and appeal

On Sept. 14, 2022, the CSC discussed and unanimously voted to approve staff's recommendation. One member of the public spoke in opposition of the parking removal. Attachment C provides a hyperlink to the staff report.

On Sept.22, 2022, the City received an appeal to the CSC's approval from another member of the public. The appellant stated that "[t]he driveway is located on the right and the parking spaces on the left do not have any impact on line of sight." For orientation, the reference to left and right is viewed from the street, not a car existing the driveway at 660 Roble Ave.

Appeal evaluation

On March 28, the City Council heard the appeal, received comments from five members of the public, and directed staff to uphold the appeal. Attachment D provides a hyperlink to the staff report. The City Council expressed concern that the presence of a Cypress bush adjacent to the property and behind the sidewalk creates sight line issues that should be addressed before considering parking removal. Since the meeting, the Cypress bush was removed.

During the meeting, the City Council also expressed concern that removing parking in this particular instance could lead to a removal of a significant amount of parking, given the commonality of this situation, especially in and near downtown. The City Council directed staff to return with an updated approach to reviewing driveway sight line requests.

Assembly Bill 413, currently awaiting action by the Governor, would require local jurisdictions to remove parking 20 feet in advance of any marked or unmarked crosswalk (i.e., at all intersections and mid-block crosswalks), consistent with national best practice for improving the safety of pedestrian crossings. If the legislation is signed or if otherwise directed by City Council, staff would bring forward an update to the City's Municipal Code and an implementation approach to adhere to the new requirement. At the same time, staff intends to provide an update to the approach used to evaluate parking removal requests adjacent to driveways as directed by the City Council. In the interim, staff are not advancing parking removal requests for situations that are similar to the Roble Avenue request (e.g., similar speeds and traffic volumes) and continue to advance requests on higher speed and volume streets where there is a more substantial safety concern. Since the initial appeal was heard, staff have received one request that was not advanced (on University Drive) and three requests that were (on Valparaiso Avenue and Campbell Avenue). The Complete Streets Commission approved parking removals at these three locations June 14 and none were appealed.

Impact on City Resources

There is no impact on City resources for this action.

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
- B. Project map
- C. Hyperlink – Sept. 14, 2022 Complete Streets Commission Staff Report: menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/complete-streets-commission/2022-meetings/agendas/20220914-complete-streets-commission-agenda.pdf#page=37
- D. Hyperlink – March 28 City Council Staff Report: menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20230328-city-council-agenda-packet.pdf#page=115

Report prepared by:

Kevin Chen, Senior Transportation Engineer

Report reviewed by:

Hugh Louch, Assistant Public Works Director – Transportation

RESOLUTION NO. XXXX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
UPHOLDING THE APPEAL OF COMPLETE STREETS COMMISSION
RESOLUTION 2022-4 AUTHORIZING THE INSTALLATION OF NO PARKING
ZONES ADJACENT TO THE 660 ROBLE AVENUE DRIVEWAY**

WHEREAS, the City of Menlo Park received a resident request to evaluate the adequacy of sight distance for the 660 Roble Avenue driveway that is serving an eight-unit multifamily building; and,

WHEREAS, a field investigation revealed limited sight distance in both directions due to vehicles parked adjacent to the driveway; and,

WHEREAS, to achieve at least 155 feet stopping sight distance, extending the existing no parking zones adjacent to both sides of the driveway are required (i.e., 30 feet of new red curb with 3 feet of existing red curb to the east, 38 feet of new red curb with 10 feet of existing red curb to the west); and,

WHEREAS, California Vehicle Code §22507 authorizes local jurisdictions to install parking restrictions on local streets; and,

WHEREAS, Section 11.24.026 of the Menlo Park Municipal Code authorizes the Complete Streets Commission (CSC) to designate no parking zones of up to five spaces outside of the "Downtown/Station Area" in the El Camino Real/Downtown Specific Plan; and,

WHEREAS, on September 14, 2022, the CSC adopted Resolution No. 2022-4 authorizing the installation of the recommended no parking zones pursuant to the authority conferred to the City (the "CSC Action"); and,

WHEREAS, on September 22, 2022, the City received an official appeal to the CSC resolution 2022-4 per Section 11.24.028 of the Menlo Park Municipal Code (Appeal No. 20220922); and,

WHEREAS, on March 28, 2023, the City Council heard the appeal and directed staff to return with a resolution upholding the appeal and reviewing the City's approach to evaluating sight line issues at driveways on residential streets; and,

WHEREAS, the City has also worked with the property owner at 660 Roble Avenue to remove a Cypress bush that was impacting sight lines of the sidewalk; and,

WHEREAS, the City Council finds and declares that the installation of no parking zones as contemplated and approved by the CSC resolution 2022-4 is not necessary to address safety issues created by a lack of sight distance at 660 Roble Avenue; and,

WHEREAS, the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

NOW, BE IT FURTHER RESOLVED that the City Council hereby upholds Appeal No. 20220922 and reverses CSC Resolution 2022-4.

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 tenth day of October, 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 October, 2023.

Judi A. Herren, City Clerk

Roble Ave. Parking Removal



- Existing Red Curb
- Planned Parking Removal

0 75 150 Feet



STAFF REPORT

City Council Meeting Date: 10/10/2023
Staff Report Number: 23-226-CC

Consent Calendar: Authorize the city manager to execute an amendment to the services agreement with the City of Redwood City for the annual maintenance of the Atherton Channel

Recommendation

Staff recommends that the City Council authorize the city manager to execute an amendment (Attachment A) to the existing services agreement (Attachment B) with the City of Redwood City for the annual maintenance of the Atherton Channel (Channel) in the amount of \$59,182, bringing the total contract amount to \$209,182 for four annual cleanups. The breakdown of increases per year totaling \$59,182 are illustrated in Table 1 under the Impact on City Resources section of this report.

Policy Issues

This action is consistent with City policy and municipal code §12.42.14(3), which contemplates alterations to stream channels to accommodate floodwaters and reduce losses from floods. The agreement amount exceeds the city manager’s authority and requires City Council approval.

Background

The Channel (Channel) drains a six-square mile watershed covering Atherton, portions of unincorporated San Mateo County, Redwood City and Menlo Park. The eastern section of the Channel runs parallel to Haven Avenue for approximately 1,000 feet between U.S. Highway 101 and the Bayfront Canal (Canal). The Channel and Canal empty into Flood Slough through a tide gate control structure. This structure prevents San Francisco Bay water from flowing back into the Canal during high tides; it is operated and maintained by the City of Redwood City. The tide gates close automatically when tide levels in the Bay are high, which prevents the City’s storm water flow from emptying into Flood Slough.

To maintain the cross-sectional capacity of the Channel and minimize the effect of repetitive flooding events, the City has an annual maintenance program to remove debris and vegetation. The work is performed within a portion of the Channel between U.S. Highway 101 and Haven Avenue bridge (Attachment C). Cleaning operations occur annually in October before the rainy season. Before and after photos of previous years’ cleanups are included as Attachment D.

The three-year agreement entered into in September 2022 did not include an escalation factor for the hourly rates and maximum not-to-exceed amounts to perform this work each year. This amendment includes a 3% inflation factor, which will be applied annually. In addition, the original term of the agreement allowed for annual maintenance for four wet seasons, through October 2025 before the 2025-2026 wet season, although the cost of the agreement only allowed for three years of maintenance. This has been updated in this amendment.

Analysis

Since 2002, the City has entered into contracts with the City of Redwood City to perform maintenance cleaning operations for the Channel. Redwood City currently maintains the Canal and has the equipment and experience necessary to maintain the Channel. In the past, Redwood City has completed the maintenance work in a timely, safe, and efficient manner that minimizes impacts to vehicular, bicycle and pedestrian traffic along Haven Avenue.

Redwood City staff has performed the maintenance of the Channel outside of normal working hours. The labor hourly rate for the three-year agreement is \$210.60 (and increases to \$216.92, then \$223.42 the following years); this represents Redwood City’s fully burdened rate. This hourly rate has increased \$6.14 (3%) from the three-year agreement executed in 2022. Since maintenance of the Channel began in 2002, City staff has occasionally requested quotes from private contractors to ensure the City receives fair pricing. The bids received have typically been more than twice the Redwood City cost. Staff recommends amending the existing three-year agreement with Redwood City to continue performing maintenance cleaning operations on the Channel.

Impact on City Resources

This amendment will increase the existing three-year agreement by \$59,182 to a total contract value of \$209,182 for four pre-wet season cleanups. The adopted fiscal year 2023-24 budget includes sufficient funds for this amendment of \$1,500.

Table 1: Amended agreement amount		
Terms	Original agreement amount	Amended agreement amount
Year 1 (through Oct. 31, 2022)	\$50,000	\$50,000
Year 2 (Nov. 1, 2022 – Oct. 31)	\$50,000	\$51,500
Year 3 (Nov. 1 – Oct. 31, 2024)	\$50,000	\$53,045
Year 4 (Nov. 1, 2024 – Oct. 31, 2025)	N/A	\$54,637
Total	\$150,000	\$209,182

Environmental Review

The Department of Fish and Wildlife is the lead agency under California Environmental Quality Act (CEQA) and has discretionary authority over the project. In its letter dated Sept. 24, 2015 to the City, and under the 2019-2025 agreement with the City, the Department of Fish and Wildlife determined that the project is exempt from CEQA and filed a notice of exemption.

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 of Redwood City –Amendment No. 1
- B. City of Redwood City – executed 2022 agreement
- C. Area of work – Channel maintenance
- D. Before and after photos of previous years' cleanups

Report prepared by:

Paige Saber, Senior Civil Engineer - Utilities

Report reviewed by:

Tanisha Werner, Assistant Public Works Director – Engineering

**AMENDMENT NO. 1 TO AGREEMENT FOR SERVICES
CITY OF REDWOOD CITY**

This Amendment No. 1 (the "Amendment No. 1") is entered into and effective as of _____, 2023, by and between the City of Menlo Park, a municipal corporation of the State of California ("Menlo Park"), and the City of Redwood City, a charter city and municipal corporation of the State of California ("Redwood City") (collectively, the "Parties").

RECITALS

A. The Parties previously executed that certain Agreement for Services, dated as of October 14, 2022 (the "Agreement").

B. The Parties have negotiated and agreed to the terms and conditions set forth in this Amendment No. 1, including any terms and conditions of the attached Exhibit A, incorporated herein by reference.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Services provided by Redwood City on or after September 1, 2023 will be subject to the payment terms described in Exhibit A.

2. The not-to-exceed amount for the Agreement is increased by Fifty-Nine Thousand One Hundred Eighty-Two Dollars (\$59,182). Including all amendments through Amendment No. 1, the total amount payable under the Agreement will be a not-to-exceed amount of Two Hundred Nine Thousand One Hundred Eighty-Two Dollars (\$209,182).

3. All other provisions of the Agreement will remain in full force and effect.

4. The individuals executing this Amendment No. 1 each represent and warrant that they have the legal power, right and actual authority to bind their respective cities to the terms and conditions of this Amendment No. 1.

5. If all Parties agree, electronic signatures may be used in place of original signatures on this Amendment No. 1. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Parties will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Amendment No. 1 based on the use of an electronic signature. After all Parties agree to the use of electronic signatures, all Parties must sign the document electronically.

[The remainder of this page left intentionally blank]

FOR CITY OF REDWOOD CITY:

By: Melissa Stevenson Diaz, City
Manager

ATTEST:

Yessika Castro, Interim City Clerk

Date:

FOR CITY OF MENLO PARK:

By: Justin I. C. Murphy, City Manager

ATTEST:

Judi A. Herren, City Clerk

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date:

Exhibit "A"

PAYMENT TERMS

Redwood City shall provide the services on an hourly basis per the schedules delineated in the table below. Fees will be billed based on actual hours worked and equipment used per the labor and equipment rate schedules of this Amendment No. 1

Labor Rates

<i>Classification</i>	<i>Term 1 (Through October 31, 2023)</i>	<i>Term 2 (November 1, 2023 through October 31, 2024)</i>	<i>Term 3 (November 1, 2024 through October 31, 2025)</i>
Administrative Oversight	\$210.60	\$216.92	\$223.42
Lead PW Maintenance Worker	\$210.60	\$216.92	\$223.42
Equipment Operator	\$210.60	\$216.92	\$223.42
PW Maintenance Worker	\$210.60	\$216.92	\$223.42

Equipment Rates

Redwood City's equipment will be billed according to the Caltrans Equipment Rental Rates and Labor Surcharge fee schedule for the time period in which work activities are performed. Caltrans rental rates are available online at <http://www.dot.ca.gov/hq/construc/equipmnt.html>.

Anticipated equipment include:

- (1) Clamshell bucket
- (1) 10 Ton Telescopic Crane
- (1) Utility Truck
- (4) Hedge/Brush Trimmers

Maximum Not-to-Exceed Amount

<i>Term</i>	<i>Maximum Not-to-Exceed Amount</i>
1 (Through October 31, 2023)	\$51,500
2 (November 1, 2023 through October 31, 2024)	\$53,045
3 (November 1, 2024 through October 31, 2025)	\$54,637

**AGREEMENT FOR SERVICES
CITY OF REDWOOD CITY**

THIS AGREEMENT is made and entered into as of the "! "% #!## (the "Effective Date"), by and between the CITY OF MENLO PARK, a municipal corporation of the State of California ("Menlo Park"), and CITY OF REDWOOD CITY a charter city and municipal corporation of the State of California. ("Redwood City").

RECITALS

A. Menlo Park requires annual maintenance services for the Atherton Channel located in Menlo Park.

B. Redwood City has the necessary experience in providing such services.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. Subject to the terms and conditions of this Agreement, Redwood City shall provide those services described in Exhibit A, along with Exhibit A-1, the Streambed Alteration Agreement (SAA) between the State of California and Menlo Park and Exhibit A-2, the site plan, which documents are incorporated herein by reference. In summary, the scope of services includes but is not limited to vegetation and trash and debris removal from the channel and banks of the Atherton Channel located in Menlo Park.

2. Term. Unless terminated earlier pursuant to Section 17, the term of this Agreement will begin on the Effective Date and will end October 31, 2025.

3. Schedule. Redwood City will adhere to the schedule set forth in Exhibit "A", provided, that Menlo Park, in its discretion, may grant reasonable extensions.

4. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

5. Compensation. Menlo Park will pay to Redwood City a not-to-exceed amount of One Hundred Fifty Thousand Dollars (\$150,000) for the completion of all the work and services described herein, which sum will include all costs or expenses incurred by Redwood City, payable as set forth in Exhibit "A".

5.1 Contractor must submit applications for payment that contain the following:

5.1.1 A clear, detailed invoice reflecting Services for which Redwood City is billing Menlo Park;

5.1.2 A summary sheet showing hourly rates (if applicable);

5.1.3 Number of hours worked;

5.1.4 Any backup documentation reasonably necessary to substantiate the preceding items; and

5.1.5 Any changes to the anticipated work schedule.

5.2. The payment made to Redwood City pursuant to the Agreement will be the full and complete compensation to which Redwood City is entitled. Menlo Park will not make any federal or state tax withholdings on behalf of Redwood City or its officers, agents, employees, contractors, or subcontractors (collectively, "Redwood City Personnel"). Menlo Park will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Redwood City or any Redwood City Personnel.

6. Status of Redwood City. Redwood City will perform the Services as an independent contractor and not as an employee of Menlo Park. The persons used by Redwood City to provide services under this Agreement will not be considered employees of Menlo Park for any purposes.

7. Labor Code Prevailing Wage. To the extent required by law, Redwood City will comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages. When prevailing wage rules are applicable, the following provisions apply:

7.1. No less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the Services under this Agreement will be paid to all workers, laborers and mechanics employed in the execution of the Services by the Redwood City or any subcontractor doing or contracting to do any part of the Services.

7.2. The appropriate determination of the Director of the California Department of Industrial Relations will be filed with and available for inspection at Menlo Park offices.

7.3. Redwood City will post, at each job site, a copy of the prevailing rate of per diem wages.

7.4. The Redwood City will forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Redwood City.

8. Subcontracting. Redwood City will not subcontract any portion of the Services without prior written approval of the City Manager or their designee.

9. Other Contractors. Menlo Park reserves the right to employ other contractors in connection with the Services.

10. Indemnification.

Redwood City shall defend, hold harmless, and indemnify Menlo Park and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of Redwood City or its officers, employees, agents, and servants.

Menlo Park shall defend, save harmless, and indemnify Redwood City and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of Menlo Park or its officers, employees, agents and servants.

The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

In the event of concurrent negligence (or intentional/reckless acts) of Redwood City or its officers, employees, agents and servants, on the one hand, and Menlo Park or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative fault.

11. Insurance. Redwood City is a government entity which is a member of a Bay Cities Joint Power Insurance Authority (BCJPIA) Accordingly, Redwood City will meet the following insurance standards or the substantial equivalent thereof: Redwood City will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Redwood City or Redwood City's agents, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-VII".

11.1 Coverages and Limits. Redwood City, at its sole expense, will maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Redwood City's indemnification obligations under this Agreement.

11.1.1 Commercial General Liability Insurance. Redwood City will maintain occurrence based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy will be endorsed to name the Menlo Park, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the Menlo Park.

11.1.2 Business Automobile Liability Insurance. Redwood City will maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles. For on-call services agreements, the Business Automobile Liability insurance policy will be endorsed to name the Menlo Park, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the Menlo Park.

11.1.3 Workers' Compensation Insurance. Redwood City will maintain coverage as required by the California Labor Code. The Workers' Compensation policy will contain an endorsement stating that the insurer waives any right to subrogation against the Menlo Park, its officers, agents, employees and volunteers.

11.1.4 Employer's Liability Insurance. Redwood City will maintain coverage with limits not less than \$1,000,000 per each accident for bodily injury or disease.

11.2. Notice of Cancellation. This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without Redwood City providing thirty (30) days prior written notice to Menlo Park sent pursuant to the Notice provisions of this Agreement.

11.3 Providing Certificates of Insurance and Endorsements. Prior to Menlo Park's execution of this Agreement, Redwood City will provide to Menlo Park certificates of insurance and above-referenced endorsements sufficient to satisfaction of Menlo Park's Risk Manager. In no event will Redwood City commence any work or provide any Services under this Agreement until certificates of insurance and endorsements have been accepted by Menlo Park's Risk Manager. Notwithstanding the above, both Parties will have the right to self-insure against any and all perils and/or liabilities against which it would otherwise be required to insure and will also have the right to effect any such insurance by means of so called "blanket" or "umbrella" policies of insurance.

11.4 Failure to Maintain Coverage. If Redwood City fails to comply with these insurance requirements, then Menlo Park will have the option to declare Redwood City in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Redwood City is responsible for any payments made by Menlo Park to obtain or maintain insurance and Menlo Park may collect these payments from Redwood City or deduct the amount paid from any sums due Redwood City under this Agreement.

11.5 Submission of Insurance Policies. Menlo Park reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

12. Documents. If applicable, Redwood City shall deliver to Menlo Park, on request of Menlo Park’s City Manager, copies of all original papers, documents and any other materials, in electronic or any other form, prepared by Redwood City pursuant to this Agreement.

13. Maintenance of Records. Redwood City will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Redwood City will allow a representative of Menlo Park during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Redwood City will allow Menlo Park to inspect of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

14. Notices. The name of the persons who are authorized to give written notices or to receive written notice on behalf of Menlo Park and on behalf of Redwood City under this Agreement.

For Menlo Park:
City of Menlo Park
Attention: City Manager
701 Laurel Street
Menlo Park, CA 94025

For Redwood City:
City of Redwood City Public Works
Services
Attention: Wastewater Superintendent
1400 Broadway Street
Redwood City, CA 94063

Except as otherwise stated, all notices provided under this Agreement must be in writing and delivered by regular and certified mail. Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

15. General Compliance with Laws. Redwood City will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Redwood City, or in any way affect the performance of the Services by Redwood City. Redwood City will at all times observe and comply with these laws,

ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

16. Discrimination and Harassment Prohibited. Redwood City will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

17. Termination.

17.1 Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement.

17.2 If Redwood City materially fails or refuses to perform any of the provisions of this Agreement, and if Redwood City does not cure the default within fifteen (15) days of the Menlo Park providing a written notice specifying the nature of the default, Menlo Park may terminate this Agreement immediately by giving written notice to Redwood City.

17.3 If Menlo Park materially fails or refuses to perform any of the provisions of this Agreement, and if Menlo Park does not cure the default within fifteen (15) days of Redwood City providing a written notice specifying the nature of the default, Redwood City may terminate this Agreement immediately by giving written notice to City.

17.4 Within ten (10) days of termination pursuant to this Section 17 or of the natural expiration of this Agreement, Redwood City will be entitled to payment on a pro rata basis for the services performed as of the date of termination, to the extent they were performed in accordance with this Agreement.

18. Jurisdiction and Venue. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Mateo, State of California. The Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

19. Successors and Assigns. This Agreement will be binding upon the Parties and their respective successors and assigns. Redwood City may not assign this Agreement, nor any part of it, nor any monies due or to become due under it without the prior written consent of Menlo Park, which Menlo Park may not unreasonably withhold.

20. Paragraph Headings. Headings in this Agreement are for convenience only and are not part of any provision in this Agreement. No heading will be construed to change the meaning of any provision.

21. Entire Agreement; Conflicts. This Agreement, together with any other written document referred to or contemplated by it, along with any purchase order or task order

for this Agreement, embodies the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede any purchase order or task order and any other attachment or exhibit.

22. Amendments. This Agreement may only be amended, modified, waived or discharged in a writing signed by both Parties.

23. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Redwood City each represent and warrant that they have the legal power, right and actual authority to bind Redwood City to the terms and conditions of this Agreement.

24. Electronic Signatures. If all Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Parties will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After all Parties agree to the use of electronic signatures, all Parties must sign the document electronically.

(Signature Page Follows)

FOR CITY OF REDWOOD CITY:

DocuSigned by:
Melissa Stevenson Diaz
FE14A7CA3168435...
By: Melissa Stevenson Diaz, City Manager

ATTEST: DocuSigned by:
Pamela Aguilar
09AAF6D5DB0A49E...
Pamela Aguilar, City Clerk

"! " #!##

Date

FOR CITY OF MENLO PARK:

DocuSigned by:
Justin Murphy
8379C4D5DD3E486...
By: Justin T. Murphy, City Manager

ATTEST: DocuSigned by:
Judi A. Herren
39280A20D0BE491...
Judi A. Herren, City Clerk

APPROVED AS TO FORM: DocuSigned by:
Mira F. Dolerty
44FFE23C8E6B458...
Mira F. Dolerty, City Attorney

"! "# #!##

Date

EXHIBIT "A"

SCOPE OF SERVICES AND FEE

Redwood City shall perform removal of debris, trash, vegetation (in-stream and on banks) and roots as part of the annual flood control maintenance of Atherton Channel (Channel) and in accordance with the requirements of the City of Menlo Park's California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) (Exhibit A-1).

The following tasks shall be performed on an annual basis, by October 31 of each year:

- A. Remove and dispose of trash and debris embedded within the Channel using hand tools and a clamshell bucket.
- B. Tree and Vegetation Removal:
 - a. Remove living vegetation in the Channel and on the lower half of the creek banks using hand tools. Trees and other woody vegetation shall only be trimmed, not removed, to the extent necessary to allow a specific level of access and for specific types of equipment (e.g. crane, clamshell bucket) or to restore normal streamflow.
 - b. Remove vegetation and mow levee slopes and top of bank using hand tools.
 - c. Remove trees, shrubs, and emergent wetland plants from the Channel if they are below ordinary high water and are restricting the capacity of the Channel or are causing erosion.
 - d. Prune branches overhanging the Channel and impacting water flows. Branches in the lower third of any woody plant and less than three (3) inches in diameter may be trimmed.
 - e. Trim understory ground cover and vines (e.g., mugwort, blackberry, ferns) only as needed.
 - f. Cut off woody and herbaceous plants, fallen trees or trunks lodged in the bed or bank causing flow restriction at the bed or bank invert with small tools and remove with winch and cable. Root structures shall not be excavated or disturbed. No vegetation shall be removed by excavation or cutting off below the soil.
 - g. No equipment shall be operated within the drip line of trees. Protective fencing shall be placed around the drip lines to prevent compaction of the root zone. No bulldozers, backhoes, or other heavy equipment shall be used to remove trees.
- C. Remove and dispose of invasive, non-native plants using hand tools.
- D. All personnel/work crew shall receive educational training on species that may be present at the site before being allowed to work on site. The training will be conducted by a qualified biological monitor or biologist under contract with Menlo Park.
- E. Place spoils in areas where it could not enter the stream, riparian or wetland areas. To the extent possible, separate vegetation and recyclable materials.
- F. Allow wildlife to leave the project site unharmed if encountered during maintenance activities.
- G. Coordination of Work:

In order to satisfy specific conditions within the SAA, Menlo Park will utilize a biological services firm under separate contract. The general scope of work to be performed by the qualified biologists and biological monitors includes pre-construction bat surveys and reports, construction work area layout, education training, on-site biological construction monitoring and post-construction reporting. Redwood City will need to coordinate their schedule for performing the maintenance cleaning activities with the selected biological services firm to ensure conformance with all requirements in the SAA. This includes

providing adequate notice and coordination to ensure availability of the biological services firm to perform a pre-construction bat survey within 30 days of starting on-site work, to layout the work area, and to perform education training and site monitoring during all on-site maintenance cleaning activities.

Protection of Channel:

Pursuant to the SAA, the following measures shall be taken to protect the Channel:

- A. A clamshell bucket and hand tools shall be used to remove vegetation from the Channel.
- B. No equipment shall be placed or operated in the Channel.
- C. Mowing shall only occur on top of bank above ordinary high water level and shall not occur within the Channel or lower bank.
- D. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located away from the wetted areas.
- E. Any equipment or vehicles operated adjacent to the creek areas shall be checked and maintained daily to prevent leaks of materials into the water. Vehicles must be moved 150 feet away from the stream prior to refueling and lubrication.
- F. All workers shall decontaminate waders, boots and other clothing that will come in direct contact with the water to prevent the spread of aquatic diseases. The decontamination of clothing and equipment shall comply with the methods included in the SAA - Avoidance and Minimization Measures Item 2.6 (Exhibit A-1). These methods are summarized below, and one or more of these methods shall be used:
 - a. All equipment shall be dried in an upland location following last aquatic use. The minimum drying time depends on the average daytime temperatures, at least 7 days of drying time for average daytime temperatures more than 80 °F and at least 30 days of drying time for average daytime temperatures less than 80 °F.
 - b. Scalding water wash (at least 140 °F) with varying high and low pressure spray to dislodge pathogens and vegetation.
 - c. Freezing at a temperature less than 32 °F for more than 72 hours.
 - d. Soaking in a hospital-grade disinfectant solution for at least two minutes. Disinfected clothing and equipment shall be thoroughly rinsed in a water bath before entering the stream.

Repeat decontamination is required only if the equipment/clothing is removed from the site, used within a different waterbody, and returned to the project site.

Site Considerations

Staging and access for the project will be from the public right-of-way on Marsh Road and Haven Avenue, adjacent to the Channel. No equipment, with the exception of hand tools and clamshell bucket, shall be allowed within the Channel.

Due to site constraints, traffic control will be required. The City of Menlo Park shall provide traffic control devices (e.g. cones, barricades, warning signs, etc.) and other incidentals to control automobile traffic safety around the sites. The City of Menlo Park shall close the sidewalk next to the Channel and re-direct pedestrian traffic while work is in progress. Redwood City shall handle worksite safety and work equipment traffic control if it is required, which shall comply with all City of Menlo Park standards. Construction operations shall be conducted in such a manner to cause as little inconvenience to vehicle and pedestrian traffic as possible.

Redwood City shall follow all City of Menlo Park NPDES requirements and Best Management Practices (e.g. straw or fiber rolls, storm drain filters) to keep miscellaneous litter and trash out of

the Channel and storm drains during work activities. Redwood City shall keep the work area and right-of-way clean of debris from project activities. After removal of spoils, Redwood City shall leave the area in as clean a condition as it was before the work.

Disposal of materials removed from the Channel and banks shall be arranged by the City of Menlo Park.

Redwood City shall provide access to toilet facilities for its workers. There are no public facilities near the work site.

Regulatory Provisions

The City of Menlo Park will provide Redwood City personnel with site-specific trainings necessary to perform work under the SAA. The City of Menlo Park will also arrange for any monitoring services (e.g. biological monitor) as required by the SAA.

Equipment

Redwood City shall provide the necessary equipment (e.g. hand tools and a ten-ton telescopic crane truck with a clamshell bucket) for the project. The City of Menlo Park shall provide five yard dump trucks for vegetation and debris removal from job site. However, in the event of an unforeseen equipment, failure such that the annual flood control maintenance cannot be completed prior to October 31 of that year, Redwood City shall notify City of Menlo Park, and at the discretion of the City of Menlo Park, there will be three alternatives to completing the project:

- The City of Menlo Park shall cover the cost of renting replacement equipment for Redwood City's use, or
- The City of Menlo Park shall pay for all services that were provided by Redwood City, and the City of Menlo Park will assume responsibility for completing the remainder of the project through other means, or
- After Redwood City is able to assess the extent of the equipment failure and provide an estimated timeline for repair or replacement, City of Menlo Park shall seek an extension approval from California Department of Fish and Wildlife so that the project can be completed by Redwood City, given this timeline is agreeable with the needs of the City of Menlo Park.

Scheduling and Hours

The City of Menlo Park shall initiate scheduling with Redwood City each year. The City of Menlo Park shall provide Redwood City with as much advance notice as possible to arrange for personnel and equipment.

The period in which to conduct project activities shall follow the timeline specified in the SAA. The allowable working hours will be 9:00 AM to 3:00 PM on weekdays, 6:00 AM to 6:00 PM on weekends, except where otherwise specified by the City of Menlo Park. Project activities shall span between four (4) to six (6) working days each year, depending on site conditions. Working days are anticipated to be between ten (10) and twelve (12) hours in length.

2. Payment Terms

Redwood City shall provide the services outlined herein on an hourly basis not to exceed \$150,000 for the length of the agreement, or an annual amount delineated in the table below. Fees will be billed based on actual hours worked and equipment used per the labor rate schedule and equipment schedule delineated below.

Labor Rates

<i>Classification</i>	<i>Hourly Rate</i>
Administrative Oversight	\$204.46
Lead PW Maintenance Worker	\$204.46
Equipment Operator	\$204.46
PW Maintenance Worker	\$204.46

Equipment Rates

Redwood City’s equipment will be billed according to the Caltrans Equipment Rental Rates and Labor Surcharge fee schedule for the time period in which work activities are performed. Caltrans rental rates are available online at <http://www.dot.ca.gov/hq/construc/equipmnt.html>.

Anticipated equipment include:

- (1) Clamshell bucket
- (1) 10 Ton Telescopic Crane
- (1) Utility Truck
- (4) Hedge/Brush Trimmers

Maximum Annual Not-to-Exceed Amount

<i>Fiscal Year</i>	<i>Maximum Annual Not-to-Exceed Amount</i>
2022-2023	\$50,000
2023-2024	\$50,000
2024-2025	\$50,000



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Exhibit A-1

October 28, 2019

Clarence Li
City of Menlo Park Public Works Department
701 Laurel Street
Menlo Park, CA

Dear Mr. Li,

Extension of Lake or Streambed Alteration Agreement, Notification No. 1600-2013-0356-R3, Atherton Channel Flood Control Maintenance

The California Department of Fish and Wildlife (CDFW) received your request to extend Lake or Streambed Alteration Agreement (Agreement) and extension fee, for the above referenced agreement. CDFW hereby grants your request to extend the Agreement expiration from December 31, 2019 to December 31, 2024. All other conditions in the original Agreement remain in effect.

Copies of the original Agreement and this letter must be readily available at project work sites and must be presented when requested by a CDFW representative or other agency with inspection authority.

If you have any questions regarding this letter, please contact Stephanie Holstege, Environmental Scientist at (707) 210-5104, or by email at stephanie.holstege@wildlife.ca.gov.

Sincerely,

Craig J. Weightman, Environmental Program Manager

ec: MIG, Inc.
Tay Peterson
tpeterson@migcom.com.

Department of Fish and Wildlife
Lieutenant Ober

Exhibit A-1



State of California – Department of Fish and Wildlife
REQUEST TO EXTEND LAKE OR STREAMBED ALTERATION AGREEMENT
 FISH AND GAME CODE SECTION 1602 OR 1611
 DFW 2023 EXTENSION (REV. 05/28/19) Page 1

1600-2013-0356-R3

FOR DEPARTMENT USE ONLY				
Date Received	Ab. No. (if Extension)	Agency ID	License Approval ID	Expiration Date
10-10-19	597-	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	10-28-19 - 12-31-24
Assigned to: Stephanie Holstege Lt. Ober				

REQUEST TO EXTEND LAKE OR STREAMBED ALTERATION AGREEMENT

Complete EACH field, unless otherwise indicated, and submit ALL required enclosures, attachments, and fee to the **CDFW regional office** that serves the area where the project will occur. Attach additional pages to notification, if necessary.

1. APPLICANT REQUESTING EXTENSION

If the applicant is a business, agency, or utility, please include the name of the applicant's representative, who should be an employee of the applicant.

Name	Clarence Li, Associate Civil Engineer
Business/Agency	City of Menlo Park Public Works Department
Mailing Address	701 Laurel Street
City, State, Zip	Menlo Park, California, OCT 7 2019
Phone Number	650-330-6797
Email	

2. CONTACT PERSON (Complete only if different from applicant.)

Name	Tay Peterson
Business/Agency	MIG, Inc.
Mailing Address	2635 North 1st Street, Suite 149
City, State, Zip	San Jose, California, 95134
Phone Number	650-400-5767
Email	tpeterson@migcom.com
While an applicant is legally responsible for complying with Fish and Game Code section 1602 et seq., an applicant may designate and authorize an agent (e.g., lawyer, consultant, or other individual) to act as a Designated Representative. The Designated Representative is authorized to sign the notification and any agreement on behalf of the Applicant.	
Do you authorize the Contact Person above to represent you as your Authorized Designated Representative?	
<input checked="" type="checkbox"/> Yes, I authorize.	
<input type="checkbox"/> No, I do not authorize.	

3. EXTENSION FEE

Refer to the current fee schedule to determine the appropriate fee.

<input checked="" type="checkbox"/> Extension Fee Included
<i>Note: CDFW is not required to determine whether an extension is complete or otherwise process the extension until CDFW has received the correct fee.</i>



State of California – Department of Fish and Wildlife
REQUEST TO EXTEND LAKE OR STREAMBED ALTERATION AGREEMENT
FISH AND GAME CODE SECTION 1602 OR 1611
DFW 2023 EXTENSION (REV. 05/28/19) Page 2


Exhibit A-1

4. PROJECT INFORMATION

Project Name (as identified in the Final Agreement)	Atherton Channel Flood Control Maintenance
Agreement Number	1600-2013-0356-R3
Original Expiration Date	December 31, 2019
New Expiration Date Requested	December 31, 2024
<p>A. Describe the following:</p> <ul style="list-style-type: none"> - The work that has been completed; - The work that needs to be completed; and - The amount of time needed to complete the work. <p>Please see the attached supplemental page.</p> <p style="text-align: right;"><input checked="" type="checkbox"/> Continued on additional page(s)</p>	
<p>B. Explain the reason(s) for the extension request</p> <p>Please see the attached supplemental page.</p> <p style="text-align: right;"><input checked="" type="checkbox"/> Continued on additional page(s)</p>	

5. SIGNATURE

I hereby certify that to the best of my knowledge the information in this extension request ("request") is true and correct and that I am authorized to sign this request as, or on behalf of, the applicant. I understand that if any information in this request is found to be untrue or incorrect, CDFW may suspend processing this request or suspend or revoke any draft or final Lake or Streambed Alteration Agreement issued pursuant to this request. I understand also that if any information in this request is found to be untrue or incorrect, I and/or the applicant may be subject to civil or criminal prosecution.


 Signature of Applicant or Applicant's Authorized Representative

9-23-2019
 Date

Jay Peterson
 Print Name

Note: If approved, a copy of this form must be available at the work site with the original agreement.

Exhibit A-1



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



September 24, 2015

Azalea Mitch
City of Menlo Park, Engineering Division
701 Laurel Street
Menlo Park, California 94025

Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2013-0356-R3
Atherton Channel Flood Control Maintenance

Dear Ms. Mitch:

Enclosed is the final Streambed Alteration Agreement ("Agreement") for the Atherton Channel Flood Control Maintenance project ("Project"). Before the Department may issue an Agreement, it must comply with the California Environmental Quality Act ("CEQA"). In this case, the Department, acting as a lead agency, determined your project is exempt from CEQA and filed a notice of exemption ("NOE") on September 24, 2015.

Under CEQA, filing a NOE starts a 35-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 35-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Suzanne DeLeón, Environmental Scientist at (831) 440-9433 or suzanne.deleon@wildlife.ca.gov.

Sincerely,

Craig J. Weightman
Environmental Program Manager
Bay Delta Region

cc: Lieutenant James Ober

Conserving California's Wildlife Since 1870

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
7329 SILVERADO TRAIL
NAPA, CALIFORNIA 94558
(707) 944-5500
WWW.WILDLIFE.CA.GOV



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2013-0356-R3
Atherton Creek

CITY OF MENLO PARK
ATHERTON CHANNEL FLOOD CONTROL MAINTENANCE

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Menlo Park (Permittee) as represented by Azalea Mitch.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on September 6, 2013 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement

PROJECT LOCATION

This Agreement authorizes routine maintenance in areas of Atherton Creek that fall under the jurisdiction and responsibility of the Permittee. Atherton Creek is tributary to Bayfront Canal which flows into Flood Slough and ultimately into San Francisco Bay; in Redwood City, State of California.

Project locations include:

Site 1. Atherton Creek between Highway 101 and Haven Avenue; Latitude 37°29'06.83"N, Longitude 122°10'54.50"W; adjacent to Assessor's Parcel Number (APN): 055-231-060 and including APN 055-232-110.

Ver. 02/16/2010

Exhibit A-1

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Streambed Alteration Agreement
Page 2 of 23

Site 2. Atherton Creek between Marsh Road and Rolison Road; Latitude 37°28'54.02"N, Longitude 122°11'01.07"W; adjacent to APNs: 055-251-250 and 055-251-350.

PROJECT DESCRIPTION

As part of routine maintenance activities, to maintain channel capacity and prevent flooding of adjacent commercial and industrial areas in the vicinity of Atherton Creek, the project includes removal of sediment, in-stream vegetation, vegetation on the bank, and debris and trash within the channel.

Routine maintenance activities authorized under this Agreement are limited to the following:

- *Removal of Sediment in the Stream Channel Bottom and around Bridges, Culverts, Storm Drain Outlets and Water Diversion Inlets* – Utilizing a clamshell bucket for removal of sediment in a concrete-lined portion and an earthen bottom portion of Atherton Creek to maintain channel capacity;
- *Removal of Obstructions around Structures and Facilities* – Utilizing hand tools and a clamshell bucket for removal of trash and debris embedded within the stream channel and utilizing hand tools where clamshell bucket cannot reach;
- *Vegetation Management within the Channel and Lower Stream Bank* - Utilizing hand tools for removal of living vegetation in the channel and on the lower half of the creek banks. Trees and other woody vegetation shall only be trimmed, not removed;
- *Vegetation Management on Upper Half of Bank and Top of Levee* - Utilizing hand tools for removal of vegetation and mowers for mowing levee slopes and top of bank;
- *Removal of Invasive, Non-native Plants* – Removal of invasive, non-native plants utilizing hand tools.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: saltmarsh harvest mouse, a species listed as Endangered under both the Endangered Species Act (ESA) and the California Endangered Species Act (CESA) and fully protected under FGC; saltmarsh common yellowthroat, designated as a Species of Special Concern, other migratory, foraging and nesting birds; bats; water quality; and temporary impacts to 950 linear feet of emergent vegetation.

The adverse effects the project could have on the fish or wildlife resources identified

Exhibit A-1

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Streambed Alteration Agreement
Page 3 of 23

above, without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include: increase in sediment transport; increase in turbidity during project activities; reduction in water quality during project activities; direct take of species during project activities; change in gradient and cross-section of channel and disruption to nesting birds and other wildlife.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project sites at any time to inspect routine maintenance activities performed and to verify compliance with this Agreement.
- 1.5 Additional Measures. As a result of any field inspection, CDFW may require that additional measures be applied to specific activities to protect sensitive biological resources. Such measures may be amended into this Agreement with the agreement of both parties, or if an exception to authorized activities is identified, Permittee may be asked to submit separate written notification to CDFW pursuant to Measure 1.7.

Exhibit A-1

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Streambed Alteration Agreement
Page 4 of 23

- 1.6 **Authorized Routine Maintenance Activities.** Only those activities specifically described in the Project Description shall be conducted under this Agreement.
- 1.7 **Exceptions to Authorized Activities.** Permittee shall submit separate written notification (Forms FG 2023 and FG 2024) pursuant to Section 1602 of the FGC, together with the required fee prescribed in the CDFW Streambed Alteration Agreement fee schedule, and otherwise follow the normal notification process prior to the commencement of work activities in all cases where one or more of the following conditions apply:
 - The proposed work does not meet the criteria established for routine maintenance activities in the Project Description of this Agreement;
 - The nature of the proposed work is substantially modified from the work described in the Project Description of this Agreement;
 - CDFW advises Permittee that conditions affecting fish and wildlife resources have substantially changed at a specified work site or that such resources would be adversely affected by the proposed maintenance activity; and/or
 - The proposed work would adversely impact a State of California (State) Species of Special Concern or State or federally listed rare, threatened, endangered or candidate species or its habitat.
- 1.8 **Traversing Another Property.** To the extent that any provisions of this Agreement provide for activities that require Permittee to traverse another owner's property, such provisions are agreed to with the understanding that Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.
- 1.9 **Unauthorized Take.** This Agreement does not authorize the take, including incidental take, of any State or federally listed threatened or endangered listed species, or of species that are otherwise protected under FGC. Permittee may be required, as prescribed in the California and U.S. Endangered Species Acts, to obtain take coverage for State and federally listed species prior to commencement of the project. Any unauthorized take of listed species may result in prosecution and nullification of this Agreement.

Exhibit A-1

Notification #1600-2013-0356-R3
Streambed Alteration Agreement
Page 5 of 23

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Work Location Restriction. At Site 1, to protect saltmarsh harvest mouse and other saltmarsh species, routine maintenance activities shall be limited to Atherton Creek upstream of the bridge at the intersection of 3723 South Haven and Bayfront Expressway.
- 2.2 Seasonal Work Period. To protect fish and wildlife and their habitats, work within the stream and riparian zone shall be limited to April 15 to October 31.
 - 2.2.1 Work Period Modification. If Permittee needs more time to complete project activities, work may be authorized outside of the work period and extended on a day-to-day basis by CDFW representative, Suzanne Deleon, at suzanne.deleon@wildlife.ca.gov, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-944-5500) or fax (707-944-5553). Permittee shall submit a written request for a work period variance to CDFW for approval at least five (5) calendar days prior to November 1. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period and may require additional measures to protect fish and wildlife resources as a condition for granting the variance. Any additional measures shall be made part of this Agreement.
- 2.3 Work Period in Dry Weather Only. Work within the stream and riparian zone shall be restricted to periods of no or low stream flow, low rainfall (less than ¼" per 24 hour period) and dry weather as allowed during the work period specified in Measure 2.1.
- 2.4 Weather Forecasts. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Permittee shall monitor the 72-hour forecast from the National Weather Service (NWS; <http://www.nws.noaa.gov>). When there is a forecast of more than 40% chance of rain, or at the onset

Exhibit A-1

Notification #1600-2013-0356-R3
Streambed Alteration Agreement
Page 6 of 23

of unanticipated precipitation, the Permittee shall remove all equipment and shall implement erosion and sediment control measures and all project activities shall cease.

- 2.5 No Equipment in Channel. No equipment shall be operated in a flowing stream at any time except as may be necessary to construct the dewatering system or divert water flow around the work site.
- 2.6 Decontamination of Clothing and Equipment. To prevent the spread of aquatic diseases, such as ranavirus, and invasive aquatic species, such as quagga mussel, Permittee shall decontaminate waders, boots and other clothing that will come in direct contact with the water. Decontamination of clothing and equipment shall be done through one or more of the following methods:
- Drying equipment in an upland location following last aquatic use. If average daytime temperatures exceed 80° F, drying times shall be at least 7 days. If average daytime temperatures are below 80° F, drying times shall be at least 30 days;
 - Scalding water wash (at least 140° F) with varying high and low pressure spray to dislodge pathogens, vegetation, and contaminated sediment;
 - Freezing at a temperature of less than 32° F for more than 72 hours; and/or
 - Soaking in a hospital-grade disinfectant solution for at least two minutes (or longer, based on product directions). To avoid harm to non-target species, disinfected clothing and equipment shall be thoroughly rinsed in a water bath before entering the stream.

Repeat decontamination is required only if the equipment/clothing is removed from the site, used within a different waterbody, and returned to the project site. Decontamination shall take place in an upland location, and any chemicals used during decontamination shall be prevented from entering water bodies or stormwater drains.

- 2.7 CDFW-Approved Qualified Biologist(s) and Biological Monitor(s). Permittee shall submit to CDFW for written approval, the names and resumes of all qualified biologists and biological monitors involved in conducting surveys and/or monitoring work.

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A qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the project area.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area, and be familiar with the habits and behavior of those species.

- 2.8 **Nesting Bird Survey.** If project activities are scheduled during the nesting season of raptors and migratory birds, a focused survey for active nests of such birds shall be conducted by the CDFW-approved qualified biologist within 15 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat located at project work sites and in staging and storage areas. The minimum survey radii surrounding the work area shall be the following: i) 250 feet for passerines; ii) 500 feet for other small raptors such as accipiters; iii) 1,000 feet for larger raptors such as buteos. The bird survey methodology and the results of the survey shall be submitted to CDFW prior to commencement of project activities.

Nesting seasons are typically defined as followed: i) March 15 to August 30 for smaller bird species such as passerines; ii) February 15 to September 15 for raptors.

- 2.9 **Active Nests.** If active nests are found, Permittee shall consult with CDFW and the USFWS regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the FGC. If a lapse in project-related work of 15 days or longer occurs, another focused survey shall be conducted before project work is reinitiated. If an active nest is found, Permittee shall consult with CDFW and the USFWS prior to resumption of project activities.

- 2.10 **Active Nest Buffers.** Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during project activities with the establishment of a fence barrier surrounding the nest site. The typical minimum distances of the protective buffers surrounding each identified ESA are the following: i) 1,000 feet for large raptors such as buteos; ii) 500 feet for small raptors such as accipiters; iii) 250 feet for passerines. A biological monitor or qualified biologist shall monitor the behavior of the birds

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(adults and young, when present) at the nest site to ensure that they are not disturbed by project-related activities. Nest monitoring shall continue during project-related construction work until the young have fully fledged, are no longer being fed by the parents and have left the nest site, as determined by a biological monitor.

- 2.11 **Nesting Habitat Removal or Modification.** No trees, shrubs or wetland habitat shall be disturbed that contain active bird nests until all eggs have hatched, and young have fully fledged (are no longer being fed by the adults, and have completed left the nest site). To avoid potential impact to tree or shrub-nesting birds, any trimming or pruning of trees or shrubs shall be conducted during the time period of September 16 to February 14. No habitat removal or modification shall occur within the ESA fenced nest zone even if the nest continues to be active beyond the typical nesting season for the species (refer to Measure 2.8), until the young have fully fledged and will no longer be adversely affected by the project.
- 2.12 **Bat Surveys.** The qualified biologist shall survey the bridges for bats within a minimum of 30 days prior to the beginning of Project construction work planned either on or within 50 feet of the Bridge. The biologist shall make an effort to identify the bat species and its use of the bridge (maternity, bachelor, day roosting), but shall avoid disturbing bats during surveys. The pallid bat forms maternity or bachelor colonies from spring (March to May) until October, and although the young are weaned at 6 to 8 weeks of age, they are not self-sufficient until the fall. Bats may hibernate in the same structure as the spring/summer roost or in another nearby location. Permittee or qualified biologist shall notify CDFW within 24 hours if bats are found during surveys. CDFW may submit additional written avoidance, minimization and mitigation measures if bats are found in the project area. Those additional measures shall be considered part of this Agreement.
- 2.13 **Bat Protection.** Bats shall not be disturbed by any project-related activities without specific notice to and consultation with CDFW. Project activities shall not start under the bridges, or within 50 feet of the bridges, if bats are found nesting/roosting within them. If bats are documented using the bridge or bridges, the qualified biologist shall conduct weekly surveys until the bats have left the area for the fall/winter season.
- 2.14 **Stream Diversion.** If water is present in the channel during project activities, the water shall be diverted around the work area to isolate it. To isolate the work area, water tight coffer dams shall be constructed upstream and downstream of the work area and water

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diverted through a suitably sized pipe, from upstream of the upstream coffer dam and discharged downstream of the downstream coffer dam. Cofferdams shall be constructed of a non-erodible material which does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and functional throughout the construction period. If, the coffer dams or stream diversion fail, they shall be repaired immediately. Normal flow shall be restored to the affected stream immediately upon completion of work at that location.

2.15 Water Surface Elevation. Flows to downstream reaches shall mimic natural flow patterns. Said flows shall be of sufficient quality and quantity and appropriate temperature to support fish and other aquatic life both above and below the diversion structure. During dewatering of the channel, the decrease in water surface elevation (WSE) shall be controlled such that WSE does not change at a rate that increases turbidity to the creek that could be deleterious to aquatic life and the likelihood of stranding aquatic life up- and downstream of the creek.

2.16 Check for Stranded Aquatic Life. The biological monitor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This measure does not allow for the take or disturbance of any State or federally listed species.

2.17 Designation of Work Area. Prior to project activities, a biological monitor shall clearly mark/flag or erect temporary construction fencing to designate the work area and to delineate the areas that shall be avoided. The biological monitor shall clearly mark/flag all trees within the designated work area that shall be avoided. Flagging and or temporary construction fencing shall be removed immediately after the completion of construction work.

2.18 Trimming of Vegetation. Trimming is defined herein as the removal of vegetation to the extent necessary to allow a specific level of access and for specific types of equipment (e.g. crane, clambucket) or to restore normal streamflow. There shall be no vegetation removal in excess of what is necessary to allow the level of access needed or to restore normal streamflow. Trees, shrubs and emergent wetland plants may be removed from natural channels if they are below ordinary high water (OHW) and are restricting the

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capacity of the stream channel or are causing erosion or flooding. Branches and/or limbs overhanging the channel and impacting water flows shall be properly pruned. Only those branches in the lower third of any woody plant and less than three (3) inches in diameter may be trimmed to accommodate maintenance activities. Understory ground cover and vines, such as mugwort, blackberry, and ferns, may be trimmed only as needed to accommodate maintenance activities. No bulldozers, backhoes, or other heavy equipment shall be used to remove tree branches or trees or remove sediment. No vegetation shall be removed by excavation or cutting off below the soil. All pruned material shall be removed from the area and properly disposed of.

- 2.19 Leave Wildlife Unharmed. If any wildlife is encountered during routine maintenance activities, said wildlife shall be allowed to leave the Project site unharmed.
- 2.20 Existing Access Roads. Access to the project sites shall be via existing roads and access ramps. The crane truck with bucket or any other heavy equipment shall be positioned on the existing paved road located outside the top-of-bank.
- 2.21 Dripline Protection. No equipment shall be operated within the dripline of trees. Protective fencing shall be placed around the driplines of those trees to prevent compaction of the root zone.
- 2.22 Spoils. Spoil shall not be placed where it could enter the stream, riparian or wetland areas. Spoil shall not be placed over riparian or wetland vegetation except as specifically noticed to and accepted by CDFW.
- 2.23 Education Session before Commencement of Work. The biological monitor or qualified biologist shall conduct an education session on species that may be present at the project work site. The training shall consist of basic identification of the species, their basic habits, how they may be encountered in the work area, and procedures to follow when they are encountered. Any personnel joining the work crew later shall receive the same training before beginning work. The penalties for noncompliance of conditions in this Agreement shall be relayed to all project personnel.
- 2.24 Stop Work Authority. The biological monitor or qualified biologist shall have the responsibility and authority of stopping the project if any crews or personnel are not complying with the provisions outlined in this Agreement.

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- 2.25 Change of Conditions. If, in the opinion of CDFW, conditions arise, or change, in such a manner as to be considered deleterious to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken.
- 2.26 Limitations on Sediment Removal. Annual sediment removal at the two sites shall be the following:
- Site 1. Haven Avenue to Bayshore. In 2015, 2017 and 2019, Permittee shall be authorized to remove up to 600 cubic yards (cy) of sediment as one continuous activity within the 1,000 linear-foot (lf) reach. Removal equipment shall be staged on the existing road located outside top-of-bank.
 - Site 2. Concrete-lined channel between Marsh Road and Rolison Road. In 2015, 2017 and 2019 Permittee shall be authorized to remove 200 cy of sediment as one continuous activity; limited to 750 lf.
- 2.27 Limitations on Sediment Removal around Bridges, Culverts, Storm Drains and Water Diversion Inlets. Annual sediment removal by hand tools around these structures shall not exceed 50 cy per site.
- 2.28 Limitations on Bank Stabilization/Bank Repair. This Agreement does not authorize placement of bank or channel fill, such as imported soils, riprap, etc.
- 2.29 Limitations on Vegetation Removal. The disturbance or removal of vegetation shall not exceed the minimum necessary to prevent potential flooding. Precautions shall be taken to avoid other damage to vegetation by work crew or equipment. Woody and herbaceous plants, fallen trees, or trunks or limbs lodged in the bed or bank causing flow restriction shall be cut off at the bed or bank invert with small tools and removed with winch and cable or other equipment operated from top of bank. Root structures are not to be excavated or disturbed.
- 2.29.1 Mowing. Mowing shall only occur on top of bank above Ordinary High Water and shall not occur within the stream channel or lower bank.
- 2.29.2 Limitation of Vegetation Removal in the Earthen Channel. Hand tools shall be used to weed or trim vegetation to clear the earthen channel.
- 2.29.3 Embedded Objects. Objects embedded/anchored in the

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bank, such as tree stumps, shall not be removed during periods of heavy flow if removal would result in release of sediment into the channel. However, protruding objects that could capture additional debris and result in obstruction of the channel (e.g. the branches and trunk of a downed tree) may be trimmed. If an embedded object must be removed to prevent a debris jam, Best Management Practices (BMPs) (See Measure 2.33) shall be used to prevent release of sediment into the channel, and the bank shall be reseeded, re-vegetated, mulched and/or covered with erosion-control fabric following removal.

- 2.29.4 **No Tree Removal.** No trees over 4 inches diameter at breast height (DBH) shall be removed. Exceptions require the prior written approval of a CDFW representative. Any trees removed shall be replaced according to Measure 2.42 and exposed/ disturbed areas shall be re-vegetated as described in Measure 2.34.
- 2.30 **Disposal of Invasive Plant Material.** Invasive plant material removed during work activities shall be bagged and appropriately incinerated or disposed of in a landfill or permitted composting facility.
- 2.31 **Removal of Native Material.** Except as explicitly described in this Agreement, the removal of native soils, rock, gravel, vegetation, and vegetative debris from the stream bed or stream banks is prohibited.
- 2.32 **Removal of Trash and Debris.** Permittee shall remove all raw construction materials and wastes from work sites following the completion of maintenance activities. Food-contaminated wastes generated during work shall be removed on a daily basis to avoid attracting predators to work sites. All temporary fences, barriers, and/or flagging shall be completely removed from work sites and properly disposed of upon completion of maintenance activities. Permittee or its contractors shall not dump any litter or construction debris within the riparian/stream zone.
- 2.33 **Erosion Control Best Management Practices (BMPs).** All exposed soils within the work area shall be stabilized immediately following the completion of earthmoving activities to prevent erosion into the stream channel. Erosion control BMPs, such as silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used. Erosion control fabrics shall be constructed of biodegradable materials, such as coir or jute, unless otherwise authorized by CDFW. Erosion control BMPs shall be monitored during and after each storm event for effectiveness.

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Modifications, repairs and improvements to erosion control BMPs shall be made as needed to protect water quality. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

- 2.34 **Treat exposed areas.** All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the project activities shall be restored by seeding with a blend of native erosion control propagules (seeds, cuttings and/or divisions) of locally-collected native plants. Local native grass species include meadow barley (*Hordeum brachyantherum* ssp. *californicum*), blue wildrye (*Elymus glaucus*), California brome (*Bromus carinatus*), creeping wildrye (*Elymus triticoides*), California oatgrass (*Danthonia californica*) and California melic (*Melica californica*). Locally native wildflower and/or shrub seeds may also be included in the seed mix. Re-vegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 must be covered with broadcast straw, jute netting, or similar erosion control blanket.
- 2.35 **Erosion Control Methods.** Other disturbed areas around the creek shall be revegetated with propagules (seeds, cuttings, divisions) of locally-collected native plants. If locally collected native plants are not available, sterile or short-lived revegetation plants shall be used (e.g. cereal barley, Regreen). Disturbed areas shall be protected with correctly installed erosion control measures (e.g. jute, certified weed free straw, coconut fiber, or coir logs). Materials containing monofilament or plastic or similar material containing netting shall not be used within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material.
- 2.36 **Prohibited Plant Species.** Permittee shall not plant, seed, or otherwise introduce invasive plant species. Prohibited exotic plant species include those categorized as "High" and "Moderate" in the California Invasive Plant Council's Inventory Database, which is accessible at: <http://www.cal-ipc.org/pafi/>.
- 2.37 **Staging and Storage Areas.** Building materials and/or construction equipment shall not be stockpiled or stored where they could be washed into the water or where they will cover aquatic or riparian vegetation.
- 2.38 **Equipment over Drip-pans.** Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located away from the wetted areas. Stationary equipment such as motors,

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pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip-pans.

2.39 Maintenance of Vehicles. Any equipment or vehicles driven and/or operated adjacent to the creek areas shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life, wildlife or riparian habitat. Vehicles must be moved away 150 feet from the stream prior to refueling and lubrication.

2.40 Hazardous Materials. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into state waters or its tributaries shall be contained in water tight containers or removed from the project site.

2.41 Debris and Waste Disposal. Permittee/ contractor shall not dump any litter or construction debris within the project area. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.

2.42 Tree Replacement. If trees need to be removed for routine maintenance activities and removal is approved by CDFW, trees shall be replaced at the following ratios (replacement trees to removed trees):

- Oaks – 6:1 ratio
- For native trees other than oaks - 3:1 ratio
- Non-native trees – 2:1 ratio.

Replacement trees shall consist of 5-gallon saplings, stakes, or other suitable nursery stock and shall be native species adapted to the lighting, soil and hydrological conditions at the replanting site. If replanting within the work area is infeasible due to slope steepness or other physical constraints, replacement trees may be planted at an alternate location along the stream corridor. Trees shall be replaced by December 31 of the year impacts occur in a location that is not subject to future maintenance or construction work. Permittee shall contact CDFW a minimum of 30 days prior to replanting work for review and written approval of the replanting site.

2.43 Re-vegetation Survivorship and Monitoring. To ensure a successful re-vegetation effort, all plants shall be monitored and maintained as necessary for eight (8) years. The following success criteria shall apply:

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- All plantings shall have a minimum of 80% survival at the end of 8 years.
- Vegetation cover shall consist of no more than 10% non-native species.
- If the survival and/or cover requirements are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Re-vegetation monitoring shall be conducted annually for a period of eight (8) years to determine whether these goals have been met. If the survival and/or cover requirements are not projected to meet these goals, based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice(s) that would to achieve these requirements.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 **Notification of Proposed Activities.** Permittee shall provide CDFW written notification of proposed routine maintenance activities to be performed in the upcoming year by March 15 each year. Notification reports shall describe the project location, general topography, hydrological features, vegetative cover within 50 feet of the work area, length and width of impact area, cubic yards of sediment to be removed and a detailed description of proposed modifications to the banks and/or channel. Reports shall be submitted to CDFW regardless of whether work is proposed.

CDFW shall append annual notification reports of proposed maintenance activities to this Agreement. For streamlined tracking, Permittee shall label annual notification reports according to the following convention: Exhibit C-[year] (e.g. Exhibit C-2015, Exhibit C-2016).

- 3.2 **Annual Reports for Completed Projects.** On an annual basis, Permittee shall provide CDFW written notification of maintenance projects completed. Annual reports shall include the project identification (site name and location), a brief project description, and the appropriate fee from the current CDFW Streambed Alteration

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Agreement Fee Schedule for work completed under this Agreement based upon the number of projects completed in the reporting period. The annual report is due on December 15 of each year. A report shall be submitted to CDFW regardless of whether work was completed. CDFW may terminate this Agreement if reports and fees are not submitted by this deadline.

- 3.3 Bird and Bat Survey Methods and Results. Permittee shall submit the bird and bat survey methodology and results to CDFW prior to commencement of project activities. Refer to Notification Number 1600-2013-0356-R3 when submitting the report to CDFW.
- 3.4 List of Nonnative Species. Permittee shall submit to CDFW within two weeks of project completion, a list of location and species of any non-native invasive species found in the project area.
- 3.5 Notification to the California Natural Diversity Database (CNDDDB). If any listed, rare, or special status species are detected during project surveys or on or around the project site during project activities, the Permittee shall submit CNDDDB Field Survey Forms to CDFW in the manner described at the CNDDDB website (http://www.CDFW.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp) within 14 working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Azalea Mitch
City of Menlo Park, Engineering Division
701 Laurel Street
Menlo Park, California 94025
Phone (650) 330-6742
Fax (650) 327-5497
aamitch@menlopark.org

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To CDFW:

California Department of Fish and Wildlife
Bay Delta Region
7329 Silverado Trail
Napa, California 94558
Attn: Lake and Streambed Alteration Program – Suzanne DeLeón
Notification #1600-2013-0356-R3
Fax (707) 944-5553
Suzanne.DeLeon@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

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OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

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EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective after January 1, 2014 and CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on **December 31, 2019** unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a) (2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

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CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF MENLO PARK



Azalea Mitch
Permittee

9/14/15

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Craig J. Weightman
Environmental Program Manager

9/24/15

Date

Prepared by: Suzanne DeLeón
Environmental Scientist

Date Sent: December 13, 2013; September 11, 2015

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**EXHIBIT A
DEFINITION OF TERMS**
As used herein and for purposes of the Agreement

Debris: non-living vegetative or woody matter, trash, concrete rubble, etc. This definition does not include living vegetation.

Emergency project: is defined in the State Fish and Game Code, section 1600.

Heavy equipment: any equipment used that is larger than a pick-up truck.

Natural channel: a stream or watercourse that has not been modified by human acts such as lining the channel with cement, or creating an artificial channel for drainage or flood control. A natural channel may have in it erosion control structures, culverts or other minor modifications.

Project: a routine maintenance activity performed by Permittee during a given year. Each annual activity at one location shall be construed as one project for fee purposes. A project does not include minor debris removal by hand such as a shopping cart or a bag of garbage.

Special-status species: any species identified as a candidate or sensitive species in local or regional plans, policies or regulations, or listed by CDFW or the U.S. Fish and Wildlife Service. Plants on Lists 1A, 1B, or 2, published by the California Native Plant Society, are also considered special-status species for the purposes of this Agreement.

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Authorized Activities:

A. Vegetation Management:

- A.1. **Woody and Herbaceous Vegetation.** Parts of woody and herbaceous plants, fallen trees, or trunks and limbs lodged in the bed or bank of the creek may be removed if such vegetation is causing streamflow restriction. Woody vegetation may be removed with a winch and cable. The main body of any heavy equipment used shall be operated from the top of bank. Root structures shall not be disturbed and the debris shall be disposed of at a location where it cannot re-enter State waters.
- A.2. **Removal of Native Trees and Shrubs.** Trees and shrubs (dead, dying or live) that are less than four (4) inches diameter at breast height (dbh) may be removed if these trees are located below the Ordinary High Water Mark of the Channel, and are restricting flow capacity and causing erosion or flooding.
- A.3. **Removal of Non-native Trees and Shrubs.** Non-native shrubs such as giant reed (*Arundo donax*), Scotch broom (*Genista monspessulana*), French broom (*Cytisus scoparius*) and pampas grass (*Cortaderia selloana*) may be removed in order to maintain channel capacity and improve native riparian habitat. Non-native trees such as *Eucalyptus* spp. and tree-of-heaven (*Ailanthus altissima*) that are less than four (4) inches dbh may also be removed. The root mass of any tree or shrub removed shall be left in place to maintain bank stability.
- A.4. **Habitat Enhancement.** Channel habitat may be enhanced with activities such as planting of native trees and shrubs that are appropriate to the local area and maintenance of the enhancement plantings.

B. Debris and Sediment Removal

- B.1. **Removal Quantities.** A one-time removal of a large quantity of sediment and debris, as stated below, at each site in the channel and around the bridges and culverts. After this one time removal, annual removal of small amounts of debris and sediment from within the channel and around bridges and culverts according to the following limits:
 - B.1.1. **Site 1. Haven Avenue to Bayshore.** Permittee shall be authorized to remove up to 600 cubic yards (cy) of sediment as one continuous activity within the 1000 linear-foot (lf) reach in years 2015, 2017 and 2019.
 - B.1.2. **Site 2. Concrete-lined channel between Marsh Road and Rolison Road.** Permittee shall be authorized to remove up to 200 cy of sediment as one continuous activity; limited to 750 lf of the creek channel.

Exhibit A-1

Notification #1600-2013-0356-R3
Streambed Alteration Agreement
Page 23 of 23

B.2. Sensitive Fisheries. Notwithstanding the foregoing, no routine maintenance shall be conducted in watercourses having sensitive fisheries without prior consultation with CDFW, at which time CDFW shall evaluate the project and add any additional conditions that it might see fit for the preservation of the resource.

This RMA shall be amended as a list of sensitive areas is developed.

C. Temporary Water Diversions

C.1. Temporary water diversions associated with other related maintenance activities using structures such as cofferdams not exceeding 3 feet in height or sumps, with or without pumps, provided that all water is discharged into a silt control structure before release and provided that the channel is restored to its original configuration after work is completed.

D. Exempt Activities

The following routine maintenance activities are not subject to the provisions of the RMA and are not subject to the provisions of Section 1600 of the FGC if performed within the parameters stated below.

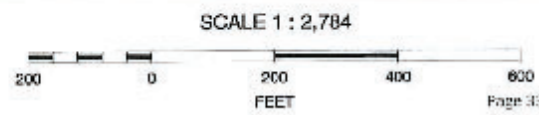
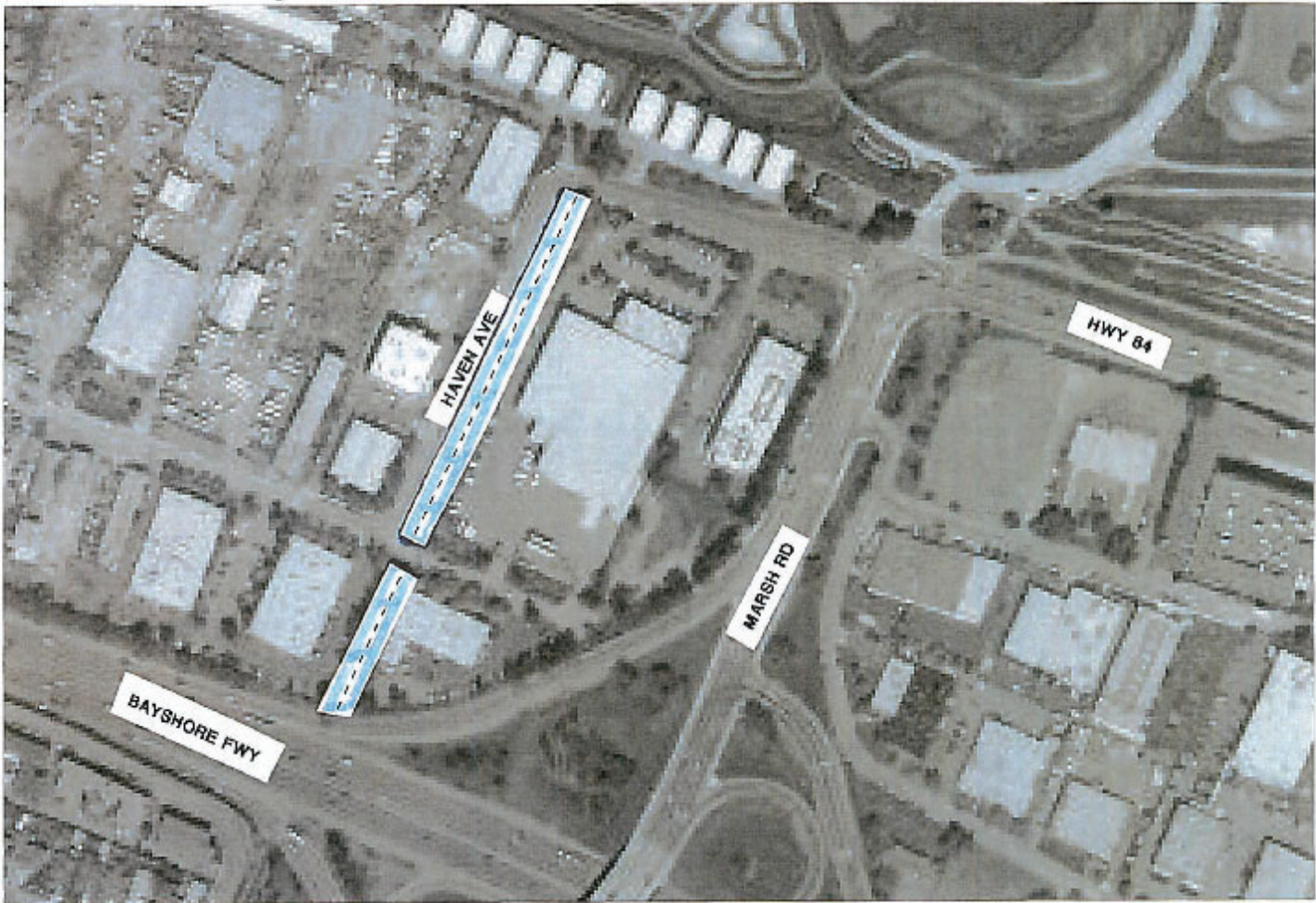
- a. Trash and debris removal by hand, not including silt removal (baby diapers, shopping carts, car bodies, metal, wood, plastic, etc).
- b. Removal of fallen trees from the flow line of the channel that would cause flooding or serious erosion of the banks.

Note: Materials embedded in the bottom of the channel are subject to the provisions of Section 1600.

City of Menlo Park: Atherton Channel

Exhibit A-2

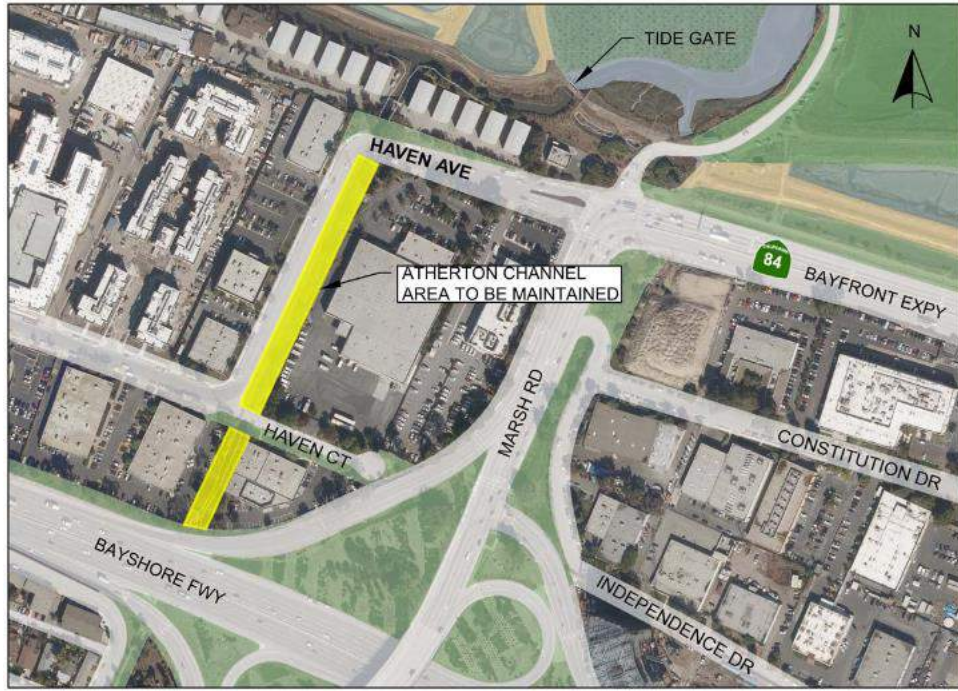
Attachment C 1, B, and C



ATHERTON CHANNEL
AREA TO BE MAINTAINED



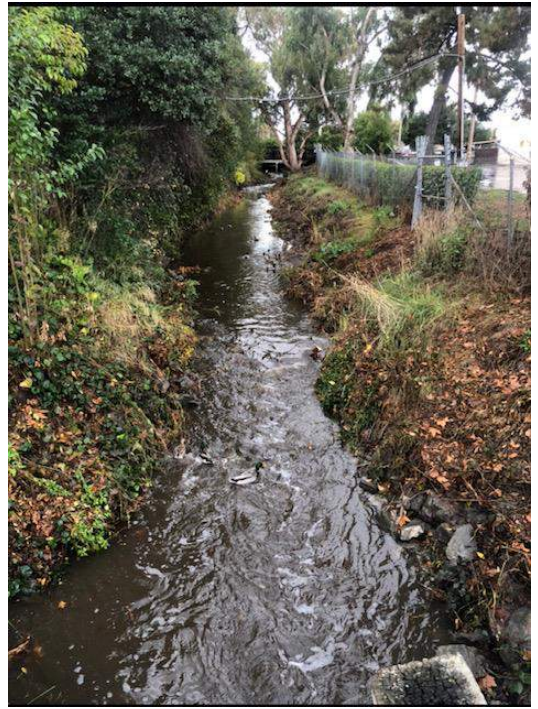
Area of Work: Atherton Channel Maintenance



Pre-Cleanup Photos



Post-Cleanup Photos





STAFF REPORT

City Council

Meeting Date:

10/10/2023

Staff Report Number:

23-227-CC

Consent Calendar:

Receive and file the annual inflation protection adjustment of \$0.50 per hour for an approved local minimum wage effective Jan. 1, 2024, of \$16.70 per hour

Recommendation

Receive and file the automatic annual inflation protection adjustment to the approved local minimum wage effective Jan. 1, 2024. City Council retains the option of suspending the automatic increase by directing City staff to return with applicable action required by Menlo Park Municipal Code Chapter 5.76 (Attachment A). Effective Jan. 1, 2024, approved local minimum wage in Menlo Park will increase by \$0.50 per hour, from \$16.20 to \$16.70 per hour. The local minimum wage ordinance contains no mandate to increase wages for employees with hourly wages at or higher than the approved local minimum wage.

Policy Issues

Menlo Park Municipal Code (MPMC) §5.76.030, paragraphs (b) and (c), provide an automatic annual inflation adjustment to the approved local minimum wage and an allowance for the City Council to suspend the adjustment. The MPMC stipulates that the annual inflation adjustment is calculated using the August to August increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, CWURS49BSA0) for San Francisco – Oakland – Hayward as reported by the Bureau of Labor Statistics, not to exceed 3%.

Background

On Sept. 24, 2019, the City Council adopted Ordinance No. 1058, codified as MPMC Chapter 5.76, establishing a local minimum wage of \$15.00 for each hour worked within the geographic boundaries of the city of Menlo Park effective Jan. 1, 2020.

- Jan. 1, 2021, local minimum wage increased by increased by 1.6% CPI-W to \$15.25 change
- Jan. 1, 2022, local minimum wage increased by 3% maximum (CPI-W change 4.9%) to \$15.75
- Jan. 1 local minimum wage increased by 3% maximum (CPI-W change 6.0%) to \$16.20

Analysis

City Council's findings and determinations when adopting the local minimum wage ordinance included the following:

- The Bay Area in general, and Menlo Park in particular, are becoming increasingly expensive places to live and work.
- Payment of a minimum wage advances the interests of the City as a whole by creating jobs that keep workers and their families out of poverty.
- A minimum wage will enable a worker to meet basic needs and avoid economic hardship.

- The local minimum wage ordinance (Ordinance No. 1058) is intended to improve the quality of services provided in the City to the public by reducing high turnover, absenteeism and instability in the workplace.

The CPI-W increase was 3.3% from August 2022 to August 2023, capped at 3% per the minimum wage ordinance and rounded to the nearest five cents. Effective Jan. 1, 2024, the approved local minimum wage will automatically increase by the maximum allowed inflation adjustment of 3% or \$0.50 per hour. The increase results in approximately \$86.67 per month, or \$1,040 annually, for a full-time worker who is paid at the currently-approved local minimum wage of \$16.20 per hour.

The local minimum wage ordinance does not mandate wage increases for employees making at or more than the approved local minimum wage. For example, an employee whose hourly wage is \$16.70 or more Dec. 31 will see no mandated increase in their hourly wage Jan. 1, 2024. An employee whose hourly wage is less than \$16.70 Dec. 31 will receive an increase to \$16.70 per hour effective Jan. 1, 2024.

City Council may direct City staff to return with a resolution to suspend the Jan. 1 adjustment for up to one year upon adoption of the following finding: “local or other economic conditions justify temporarily suspending the inflation adjustment.”

City staff will be bringing a modified salary schedule for City Council consideration prior to Jan. 1, 2024, that will include amendments to any existing salary ranges that start below the minimum wage. Additionally, City staff is commencing negotiations with the Service Employees International Union Local 521, Temporary Employees Unit, which may result in wage adjustments and other amendments aimed to increase recruitment and retention.

Impact on City Resources

Annual notification to businesses is included in the City’s fiscal year 2023-24 budget. City-employed individuals are paid in accordance with the City Council adopted salary schedule, but not less than the approved local minimum wage. Currently, two temporary City employees whose hourly wage is less than \$16.70 will receive an increase effective Jan. 1, 2024.

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. MPMC Chapter 5.76 – Local Minimum Wage

Report prepared by:
Rani Singh, Interim Budget and Finance Manager

Staff Report #: 23-227-CC

Report reviewed by:
Brittany Mello, Administrative Services Director

Chapter 5.76 LOCAL MINIMUM WAGE

Sections:

5.76.010 Purpose.

5.76.020 Definitions.

5.76.030 Minimum wage.

5.76.040 Exemptions.

5.76.050 Waiver through collective bargaining.

5.76.060 Notice, posting and payroll records.

5.76.070 Retaliation prohibited.

5.76.080 Implementation.

5.76.090 Enforcement.

5.76.100 Relationship to other requirements.

5.76.010 Purpose.

This ordinance codified in this chapter shall be known as the "Minimum Wage Ordinance." (Ord. 1058 § 2 (part), 2019).

5.76.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings set forth in this section, except where the context clearly indicates a different meaning:

(a) "City" shall mean city of Menlo Park or any agency designated by the city of Menlo Park to perform various investigative, enforcement and informal resolution functions pursuant to this chapter.

(b) "Employee" shall mean any person who:

- (1) In a calendar week performs at least two (2) hours of work for an employer as defined below;
- and

(2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

(c) "Employer" shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who is either subject to the city's business license requirements, conducts business in Menlo Park or maintains a business facility in the city.

(d) "Minimum wage" shall have the meaning set forth in Section 5.76.030. (Ord. 1058 § 2 (part), 2019).

5.76.030 Minimum wage.

(a) Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the city of Menlo Park.

(b) Effective January 1, 2020, the minimum wage shall be an hourly rate of fifteen dollars (\$15.00). To prevent inflation from eroding its value, beginning on January 1, 2021, and each first day of January thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed three percent (3%). The prior year's increase in the cost of living shall be measured by the percentage increase, if any, as of August of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for San Francisco – Oakland – Hayward, or its successor index, as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents (\$0.05). If there is no net increase in the cost of living, the minimum wage shall remain unchanged for that year. The adjusted minimum wage shall be announced by the first day of October of each year, or as soon as practicable thereafter if the Consumer Price Index for August has not yet been published, and shall become effective as the new minimum wage on the first day of January of each year.

(c) The city council may, by resolution and upon a majority vote of the city council, temporarily suspend the inflation adjustment in the upcoming calendar year for a period of no more than one (1) calendar year. At the end of the suspension period, the minimum wage shall be automatically adjusted by the change in Consumer Price Index in accordance with subsection (b) of this section and without further notice or action by the city council.

In a resolution granting a temporary suspension of the annual inflation adjustment, the city council shall make the following finding: local or other economic conditions justify temporarily suspending the inflation adjustment.

Nothing herein shall prohibit the city council from adopting consecutive temporary suspension periods, as provided herein.

(d) A violation for unlawfully failing to pay the minimum wage shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. (Ord. 1058 § 2 (part), 2019).

5.76.040 Exemptions.

(a) State, federal and county agencies, including school districts, shall not be required to pay minimum wage when the work performed is related to their governmental function. However, for work that is not related to their governmental function, including, but not limited to: booster or gift shops, non-K-12 cafeterias, on-site concessions and similar operations, minimum wage shall be required to be paid. Minimum wage shall also be required to be paid by lessees or renters of facilities or space from an exempt organization.

(b) Any organization claiming "auxiliary organization" status under California Education Code Section 89901 or Section 72670(c) shall not be required to pay minimum wage. The organization, upon request of the city, shall provide documentary proof of its auxiliary organization status.

(c) Any learner who has no previous or related experience in the occupation for which they are hired as identified in California Labor Code Section 1192. This exemption shall only apply to the first one hundred sixty (160) hours of employment as specified in California Labor Code Section 1192. (Ord. 1058 § 2 (part), 2019).

5.76.050 Waiver through collective bargaining.

To the extent required by federal law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. (Ord. 1058 § 2 (part), 2019).

5.76.060 Notice, posting and payroll records.

(a) By the first day of December of each year, the city shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate for the upcoming year, which shall take effect on the first day of January of each year. In conjunction with this bulletin, the city shall, by the first day of December of each year, publish and make available to employers a notice suitable for posting by employers in the workplace informing employees of the current minimum wage rate and of their rights under this chapter. Such notice shall be in English and other languages as provided in any regulations promulgated under Section 5.76.080(a).

(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice published each year by the city informing employees of the current minimum wage rate and of their rights under this chapter. Every employer shall post such notices in any language spoken by at least five percent (5%) of the employees at the workplace or job site. Every employer shall also provide each employee at the time of hire with the employer's name, address and telephone number in writing.

(c) Employers shall retain payroll records pertaining to employees for a period of four (4) years, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where an employer does not maintain or retain adequate records documenting wages paid or does not allow the city reasonable access to such records, the employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. (Ord. 1058 § 2 (part), 2019).

5.76.070 Retaliation prohibited.

(a) It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter; and the right to inform any person of his or her potential rights under this chapter and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this chapter.

(b) Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights. (Ord. 1058 § 2 (part), 2019).

5.76.080 Implementation.

(a) Guidelines. The city manager or designee shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring employer compliance with this chapter and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this chapter.

(b) Reporting Violations. An employee or any other person may report to the city in writing any suspected violation of this chapter. The city shall encourage reporting pursuant to this subsection by

keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation; provided, however, that with the authorization of such person, the city may disclose his or her name and identifying information as necessary to enforce this chapter or other employee protection laws. In order to further encourage reporting by employees, if the city notifies an employer that the city is investigating a complaint, the city shall require the employer to post or otherwise notify its employees that the city is conducting an investigation, using a form provided by the city.

(c) Investigation. The city or its designated agent shall be responsible for investigating any possible violations of this chapter by an employer or other person. The city or its designated agent shall have the authority to inspect workplaces, interview persons and request the city attorney to subpoena books, papers, records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. The city shall make every effort to resolve complaints informally, in a timely manner. (Ord. 1058 § 2 (part), 2019).

5.76.090 Enforcement.

(a) Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. In addition to all other civil remedies, the city may enforce this chapter pursuant to Title 1. To secure compliance, the city may use the following enforcement measures:

- (1) The city may issue an administrative citation with a daily fine for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.
- (2) The city may issue an administrative compliance order.
- (3) The city may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

(b) Any person aggrieved by a violation of this chapter, any entity a member of which is aggrieved by a violation of this chapter or any other person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee or person whose rights under this chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief; provided, however, that any person or entity enforcing this chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to employees, and reasonable attorneys' fees and costs.

- (c) This section shall not be construed to limit an employee's right to bring legal action for a violation of any other laws concerning wages, hours or other standards or rights, nor shall exhaustion of remedies under this chapter be a prerequisite to the assertion of any right.
- (d) Except where prohibited by state or federal law, city agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the employer until such time as the violation is remedied.
- (e) Relief. The remedies for violation of this chapter include, but are not limited to:
- (1) Reinstatement, and the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this code or state law.
 - (2) Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
 - (3) Reimbursement of the city's administrative costs of enforcement and reasonable attorney's fees.
- (f) Posted Notice. If a repeated violation of this chapter has been finally determined, the city may require the employer to post public notice of the employer's failure to comply in a form determined by the city. (Ord. 1058 § 2 (part), 2019).

5.76.100 Relationship to other requirements.

This chapter provides for payment of a local minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections. (Ord. 1058 § 2 (part), 2019).



STAFF REPORT

City Council Meeting Date: 10/10/2023
Staff Report Number: 23-231-CC

Consent Calendar: **Authorize the city manager to execute an amendment to the professional software subscription services agreement with Accela, Inc. for continued access to the Civic Platform land management system in an amount not to exceed \$1,496,598 over a period of five years**

Recommendation

Staff recommends that the City Council approve a resolution authorizing the city manager to execute a five-year renewal agreement (Attachment A), to be paid annually, with Accela, Inc. for the Civic Platform, which includes the Citizen Access, Inspection scheduling applications and Enhanced Reporting database systems mainly in use by the community development and public works departments. The cost for the first year is \$270,846.42, with each subsequent year increasing by 5%. The total cost of the five-year agreement is \$1,496,597.44.

Policy Issues

This commitment exceeds the city manager's signing authority and requires City Council approval.

Background

The current contract with Accela, Inc., was approved by the City Council June 19, 2018 (Attachment B), for the implementation and initial five-year term for upgrading the City's land management system. The term is set to expire Nov. 15.

The Accela Civic Platform is the land management system that the City of Menlo Park uses for the day-to-day business operations of community development and public works. The system is used for processing various types of permits, including, but not limited to building permits, entitlement permits and heritage tree removal permits. It also facilitates the management and scheduling of building inspections and collection of associated fees.

The Accela Civic Platform also enables field inspection personnel to promptly share inspection outcomes from the field, thereby enhancing communication for both applicants and internal staff. The system provides applicants, residents, contractors, and other members of the public with the ability to submit permit applications online and access permit status updates around the clock, seven days a week, irrespective of the City's regular business hours. Menlo Park's Accela Civic Platform deployment includes integrations for consolidated electronic document review (EDR) and a newly-launched DocuSign electronic signature solution.

Analysis

The City of Menlo Park subscribes to the Accela Civic Platform system, which is hosted by Accela and delivered over the internet. This Software-as-a-Service (SaaS) system provides all of the core functions required by the community development and public works departments to issue, track, report and accept payments for building, planning, heritage tree, truck route, special event, film, water connection and encroachment permits among others.

Accela serves as the City's online permitting system, catering to both the general public and various City Departments for permit and inspection tracking, fee management, reporting and other essential functions. There has been an increase in user satisfaction with the improvements of the Accela online platform relative to the City's previous system and other alternatives, from both the public and staff. The City has also made substantial investments in software enhancements and comprehensive training across all Accela modules.

Staff negotiated a five-year agreement to guarantee a fixed annual cost increase of 5% over the term of the contract (Attachment A). The City is charged a subscription license fee per internal staff user, which provides staff with access to the online system. In addition, the vendor provides software updates and technical support, and securely hosts the software in a Microsoft Azure datacenter.

If the City were to pursue an alternative land management system rather than renewing the agreement with the Accela Civic Platform, this would require a multi-year planning process. This process would include, assessing the City's needs, restructuring workflows, conducting the solicitation itself, preparing for data migration, executing a transition plan to ensure uninterrupted services, configuring the new software, and training staff on the new system.

Impact on City Resources

Costs for Civic Platform are already included in the fiscal year 2023-24 budget. Annual costs will be incorporated into future operating budgets. Permit fees collected significantly offset licensing costs.

Table 1: Cost Over 5 Year term	
Item	Net Total
Year 1	\$270,846.42
Year 2	\$284,388.74
Year 3	\$298,608.18
Year 4	\$313,538.59
Year 5	\$329,215.51
Total	\$1,496,597.44

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. First amendment to agreement No. 2769 with Accela, Inc.
- B. Hyperlinks – June, 19, 2018, Staff Report # 18-139-CC: menlopark.org/DocumentCenter/View/17847/I3--New-Land-Management-Information-System-Staff-Report

Report prepared by:

Whitney Loy, Enterprise Application Administrator
Thomas Rogers, Principal Planner

Report reviewed by:

Sandy Pimentel, Information Technology Manager
Brittany Mello, Administrative Services Director

AGREEMENT AMENDMENT

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



Amendment #: 2769.1

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND ACCELA, INC.

THIS FIRST AMENDMENT is made and entered into this _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and ACCELA, INC., hereinafter referred to as "FIRST PARTY."

1. Section 1. SCOPE OF WORK of Agreement No. 2769, ("Agreement"), Section 1. SCOPE OF WORK [amendment to section] is hereby amended to read as follows:

"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 and A-1," Scope of Services."

2. Section 4. COMPENSATION OF PAYMENT of Agreement No. 2769, ("Agreement"), Section 4. COMPENSATION AND PAYMENT [amendment to section] is hereby amended to read as follows:

"A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$1,496,597.44 described in Exhibit "A and A-1," 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."

3. Section 24. TERM OF AGREEMENT of Agreement No. 2769, ("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 November 6, 2018 through November 15, 2028 unless extended, amended, or terminated in writing by City."

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2769 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



ACCELA SUBSCRIPTION SERVICES AGREEMENT

This Accela Subscription Services Agreement (this "**Agreement**") is entered into as of the date of the applicable Order, as defined below, that incorporates these terms (the "**Effective Date**") by and between Accela, Inc. and the entity identified in such Order ("**Customer**").

1. DEFINITIONS.

1.1 "**Accela System**" means the information technology infrastructure used by or on behalf of Accela in performing the Subscriptions Services, including all computers, software (including but not limited to Accela Software), hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Accela or its third party suppliers.

1.2 "**Aggregate Data**" means data and information related to Customer's use of the Subscription Services, including anonymized analysis of all data processed in the Subscription Services, that is used by Accela in an aggregate and anonymized manner, including compiling statistical and performance information related to the provision and operation of the Services.

1.3 "**Authorized User**" means one named employee, contractor or agent of Customer (each identified by a unique email address) for whom Customer has purchased a subscription to the Subscription Services and who is authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

1.4 "**Consulting Services**" means packaged or time and materials consulting, review, training or other services (but excluding Subscription and Support Services) delivered by Accela to Customer pursuant an Order. The current Consulting Services Policy is available at www.accela.com/terms/.

1.5 "**Customer Data**" means the content, materials, and data that Customer, Authorized Users, and External Users enter into the Subscription Services. Customer Data does not include any component of the Subscription Services, material provided by or on behalf of Accela, or Aggregate Data.

1.6 "**Documentation**" means the then-current technical and functional user documentation in any form made generally available by Accela for the Subscription Services.

1.7 "**External Users**" means third party users of the Subscription Services that access the public-facing interfaces of the Subscription Services to submit queries and requests to facilitate communications between such third party and Customer.

1.8 "**Intellectual Property Rights**" means any patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights, in all cases whether or not registered or registrable and recognized in any country or jurisdiction in the world.

1.9 "**Order**" means an Accela order form or other mutually acceptable document fully executed between Customer and Accela that incorporates this Agreement.

1.10 "**Service Availability Policy**" means the Service Availability and Security Policy located at www.accela.com/terms/.

1.11 "**Subscription Services**" means the civic administration services, comprised of the Accela System, Software, and Support Services, to which Customer may license access to in accordance with the terms herein.

1.12 "**Software**" means any licensed software (including client software for Authorized Users' devices) and Documentation that Accela uses or makes available as part of the Subscription Services.



1.13 “**Support Services**” means those technical and help services provided by Accela in accordance with the Software Support Services Policies (SaaS) located at www.accela.com/terms/.

1.14 “**Subscription Period**” means the duration of Customer’s authorized use of the Subscription Services as designated in the Order.

2. USAGE AND ACCESS RIGHTS.

2.1 Right to Access. Subject to the terms and conditions of this Agreement, Accela hereby grants to Customer a limited, non-exclusive, non-transferable right and license during the Subscription Period, to permit: (i) Authorized Users to access and use the internal and administrative interfaces of the Subscription Services in accordance with the Documentation to support Customer’s internal business purposes and (ii) its External Users the ability to access and use the publicly available interfaces to submit requests and information to Customer. Each instance of the Subscription Service shall be provisioned with the amount of storage set forth in the Order and additional storage may be purchased at the then-current rates.

2.2 Support Services & Service Availability. During the Subscription Period, Accela shall provide to Customer the Support Services specified in the Order and shall make all commercially reasonable efforts to attain the service levels specified in the applicable policies. The remedies set forth in the Support Services and Service Availability Policy are the sole and exclusive remedies for any breach of the service levels. Customer grants Accela a royalty-free, worldwide, transferable, sub- licensable, irrevocable, perpetual license to use or incorporate into its software or services any suggestions or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Services.

2.3 Purchasing Consulting Services. Customer may purchase Consulting Services from Accela by executing an Order for such services. All prices are exclusive of travel and expenses, which will be invoiced at actual cost, without markup, and will comply with the Consulting Services Policy located at www.accela.com/terms/ or as otherwise agreed in the applicable Order. If applicable, one Consulting Services day shall be equal to eight (8) hours.

2.4 Restrictions on Use. Customer shall not, and shall not permit others to: (i) use or access the Subscription Services in any manner except as expressly permitted by the Agreement, including but not limited to, in a manner that circumvents contractual usage restrictions set forth in this Agreement; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the Subscription Services available for access by third parties except as otherwise expressly provided herein; (iii) use the Subscription Service in a way that: (a) violates or infringes upon the rights of a third party; or (b) stores or transmits libelous, tortious, or otherwise unlawful material or malicious code or viruses; (iv) create derivative works, reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services (except to and only to the extent such rights are proscribed by law); (v) interfere with or disrupt the security, integrity, operation, or performance of the Subscription Services; (vi) access, use, or provide access or use to the Subscription Services or Documentation for the purposes of competitive analysis or the development, provision, or use of a competing software, SaaS or product or any other purpose that is to Accela’s detriment or commercial disadvantage; (vii) provide access to the Subscription Services to competitors of Accela; (viii) access or use components of the Subscription Service not licensed by Customer; (ix) use or allow the use of the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3, Compliance with Laws); (x) remove, delete, alter or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Subscription Services; or (xi) access or use the Subscription Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Subscription Services could lead to personal injury or severe physical or property damage.



2.5 Ownership. Accela retains all Intellectual Property Rights, including all rights, title and license to the Subscription Service, Software, Accela System, Support Services, Consulting Services, and Aggregate Data, any related work product of the foregoing and all derivative works thereof by whomever produced; provided however, that to the extent such materials are delivered to Customer as part of the Subscription Services, Consulting Services or Support Services then Customer shall receive a limited license consistent with the terms of Section 2 to use such materials during the Subscription Period.

2.6 Customer's Responsibilities. Customer will: (i) be responsible for meeting Accela's applicable minimum system requirements for use of the Subscription Services set forth in the Documentation; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other activity (whether or not authorized by Customer) occurring under Customer's account; (iii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data; (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services and Customer Data under its account, and notify Accela promptly of any such unauthorized access or use, and; (v) use the Subscription Services only in accordance with the applicable Documentation, laws and government regulations.

3. PAYMENT TERMS.

3.1 Purchases Directly from Accela. Except as otherwise set forth in an Order, Subscription fees shall be invoiced annually in advance and such fees shall be due and payable on the first day of the Subscription and on each anniversary thereafter for each renewal, if any. All other invoices shall be due and payable net thirty (30) from the date of the applicable invoice. All amounts payable to Accela under this Agreement shall be paid by Customer in full without any setoff, deduction, debit, or withholding for any reason. Any late payments shall be subject to an additional charge of the lesser of 1.5% per month or the maximum permitted by law. All Subscription Services fees are exclusive of any taxes, levies, duties, withholding or similar governmental assessments of any nature (collectively, "**Taxes**"). If any such Taxes are owed or payable for such transactions, they shall be paid separately by Customer without set-off to the fees due Accela.

3.2 Purchases from Authorized Resellers. In the event that Customer has purchased any products or services through a reseller, subject to these terms, any separate payment arrangements and terms shall be exclusively through such reseller and Accela is not a party to such transactions. Accela's sole obligations are set forth herein and Customer acknowledges that its rights hereunder may be terminated for non-payment to such third party.

4. CONFIDENTIALITY. As used herein, "**Confidential Information**" means all confidential information disclosed by a one party to this Agreement to the other party of this Agreement whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party prior to its disclosure without breach of any obligation owed to the disclosing party; (iii) is received without restriction from a third party without breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party. Each party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information except as permitted herein, and will limit access to Confidential Information to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound to protect such Confidential Information consistent with this Agreement. The receiving party may disclose Confidential Information if it is compelled by law to do so, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's request and cost, to contest, limit, or protect the disclosure.

5. CUSTOMER DATA.



5.1 Ownership. Customer reserves all its rights, title, and interest in and to the Customer Data. No rights are granted to Accela hereunder with respect to the Customer Data, except as otherwise set forth explicitly in Section 5.

5.2 Usage. Customer shall be responsible for Customer Data as entered in to, applied or used in the Subscription Services. Customer acknowledges that Accela generally does not have access to and cannot retrieve lost Customer Data. Customer grants to Accela the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Accela: (i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.4 (Restrictions on Use) if Accela has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement. Accela may utilize the information concerning Customer's use of the Subscription Services (excluding any use of Customer's Confidential Information) to improve Subscription Services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services.

5.3 Use of Aggregate Data. Customer agrees that Accela may collect, use and disclose Aggregate Data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics, marketing and other business purposes. All Aggregate Data collected, used and disclosed will be in aggregate form only and will not identify Customer, its Authorized Users or any third parties utilizing the Subscription Services.

6. **WARRANTIES AND DISCLAIMERS.**

6.1 Subscription Services Warranty. During the Subscription Period, Accela warrants that Subscription Services shall perform materially in accordance with the applicable Documentation. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to: (a) repair the Subscription Services in question; (b) replace the Subscription Services in question with those of substantially similar functionality; or (c), after making all commercially reasonable attempts to do the foregoing, terminate the applicable Subscription Services and refund all unused, prepaid fees paid by Customer for such non-compliant Subscription Services.

6.2 Consulting Services Warranty. For ninety (90) days from the applicable delivery, Accela warrants that Consulting Services shall be performed in a professional and workmanlike manner. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to (a) re-perform the Consulting Services in a compliant manner; or, after making all commercially reasonable attempts to do the foregoing, (b) refund the fees paid for the non-compliant Consulting Services.

6.3 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SECURITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.4 Cannabis-Related Activities. If Customer purchases any Subscription Services for use with any cannabis-related activities, the following additional disclaimers shall apply: Accela is considered a software service provider to its customers and not a cannabis related business or agent thereof. In addition to the foregoing, Accela only retains Subscription Services fees of this Agreement from its Customer for general software services, a state or local government agency, and does not retain these fees from any type of External Users. It is the sole responsibility of the Customer to offer state law compliant services, which may be coordinated and facilitated through the use of the Subscription Services. Accela makes no representations, promises, or warranties with respect to the legality, suitability, or otherwise regarding any third party provider, including partners, and have no responsibility or liability with respect to services provided to Customer by such third parties.

7. **INDEMNIFICATION**. Accela will defend (or at Accela's option, settle) any third party claim, suit or action brought against Customer to the extent that it is based upon a claim that the Subscription Services, as furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs,



damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer, provided that Customer provides: (a) Accela notice of such claim as soon practical and in no event later than would reasonably permit Accela to respond to such claim, (b) reasonable cooperation to Accela, at Accela's expense, in the defense and/or settlement of such claim and (c) Accela the sole and exclusive control of the defense, litigation and settlement of such claim. In the event that Accela reasonably believes, in its sole discretion, that such claim may prevail or that the usage of the Subscription Services may be joined, Accela may seek to: (a) modify the Subscription Services such that it will be non-infringing (provided such modification does not materially reduce the functionality or performance of Customer's installed instance); (b) replace the Subscription Services with a service that is non-infringing and provides substantially similar functionality and performance; or, if the first two options are not commercially practicable, (c) terminate the remainder of the Subscription Period and refund any, pre-paid, unused fees received by Accela. Accela will have no liability under this Section 7 to the extent any claims arise from (i) any combination of the Subscription Services with products, services, methods of a third party; (ii) a modification of the Subscription Services that were either implemented by anyone other than Accela or implemented by Accela in accordance with Customer specifications; (iii) any use of the Subscription Services in a manner that violates this Agreement or the instructions given to Customer by Accela; (iv) a version of the Subscription Services other than the current, fully patched version, provided such updated version would have avoided the infringement; or (v) Customer's breach of this Agreement. THIS SECTION 7 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THIS AGREEMENT.

8. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING OUT OF EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY OR CUSTOMER'S BREACH OF SECTION 2, NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. EXCEPT FOR LIABILITY ARISING OUT OF CUSTOMER'S BREACH OF SECTION 2 OR EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9. SECURITY. Accela has implemented commercially viable and reasonable information security processes, policies and technology safeguards to protect the confidentiality and integrity of Customer Data, personal data protect against reasonably anticipated threats. Customer acknowledges that, notwithstanding security features of the Subscription Services, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi- governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 6, Accela will have no liability for any such security breach. Customer further acknowledges that the Subscription Services is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Services in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.

10. THIRD PARTY SERVICES. Customer may choose to obtain a product or service from a third party that is not directly produced by Accela as a component of the Subscription Services ("**Third Party Services**") and this may include third party products resold by Accela. Accela assumes no responsibility for, and specifically disclaims any liability, warranty or obligation with respect to, any Third Party Service or the performance of the Subscription



Services (including Accela's service level commitment) when the Subscription Services are used in combination with or integrated with Third Party Services.

11. TERM AND TERMINATION.

11.1 Agreement Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until the expiration of any Subscription Periods set forth in an applicable Order governed by the Agreement.

11.2 Subscription Periods & Renewals. Subscription Periods begin as specified in the applicable Order and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein. Except as otherwise specified in the applicable Order, (a) all Subscription Services will automatically renew for additional Subscription Periods equal to the expiring Subscription Period, unless either party gives the other at least sixty (60) days' notice of non-renewal before the end of the relevant Subscription Period and (b), Orders may only be cancelled or terminated early in accordance with Section 11.3. Subscription Services renewals may be subject to an annual increase, for which Accela shall provide Customer notice prior to the renewal of the Subscription Period. In the event of any non-renewal or other termination, Customer's right to use the Subscription Services will terminate at the end of the relevant Subscription Period.

11.3 Termination or Suspension for Cause. A party may terminate this Agreement and Subscription Services license granted hereunder for cause upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. Either party may terminate immediately if the other party files for bankruptcy or becomes insolvent. Accela may, at its sole option, suspend Customer's or any Authorized User's access to the Subscription Services, or any portion thereof, immediately if Accela: (i) suspects that any person other than Customer or an Authorized User is using or attempting to use Customer Data; (ii) suspects that Customer or an Authorized User is using the Subscription Services in a way that violates this Agreement and could expose Accela or any other entity to harm or legal liability; (iii) is or reasonably believes it is required to do so by law or court order or; (iv) Customer's payment obligations are more than ninety (90) days past due, provided that Accela has provided at least thirty (30) days' notice of such suspension for delinquent payment. Should Customer terminate this Agreement for cause, Accela will refund a pro-rata portion of unused, pre-paid fees.

11.4 Effect of Termination. If this Agreement expires or is terminated for any reason: (i) within thirty (30) calendar days following the end of Customer's final Subscription Period, upon Customer's request Accela provided Customer Data and associated documents in a database dump file; provided that Customer pays (a) all costs of and associated with such copying, as calculated at Accela's then-current time-and-materials rates, and (b) any and all unpaid amounts due to Accela; (ii) licenses and use rights granted to Customer with respect to Subscription Services and intellectual property will immediately terminate; and (iii) Accela's obligation to provide any further services to Customer under this Agreement will immediately terminate, except as mutually agreed between the parties. If the Subscription Services are nearing expiration date or are otherwise terminated, Accela will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Accela. Accela's current Data Storage Policy can be accessed www.accela.com/terms/.

11.5 Survival. Sections 2.5 (Ownership and Proprietary Rights), 4 (Confidentiality), 6.3 (Disclaimer), 8 (Limitation of Liability), 11.4 (Effect of Termination), 11.5 (Surviving Provisions), and 12 (General Provisions) will survive any termination or expiration of this Agreement.

12. GENERAL.

12.1 Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery; (ii) three days after sending registered, return receipt requested, post or; (iii) one day after sending by commercial overnight carrier. Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Subscription Services.



12.2 Governing Law and Jurisdiction. This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action related to the subject matter of this Agreement will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

12.3 Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Further, in connection with the services performed under this Agreement and Customer's use of the Subscription Services, the parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes and regulations.

12.4 Assignment. Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of Accela, which shall not be unreasonably withheld. Any attempted assignment or transfer, without such consent, will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.5 Publicity. Notwithstanding anything to the contrary, each party will have the right to publicly announce the existence of the business relationship between parties without disclosing the specific terms of the Agreement.

12.6 Miscellaneous. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect. Accela will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Accela. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties. This Agreement, including any attachments hereto as mutually agreed upon by the parties, constitute the entire agreement between the parties concerning its subject matter and it supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary, no additional or conflicting terms or conditions stated in any of Customer's purchase order documentation or otherwise will be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

In WITNESS WHERE OF, the parties have indicated their acceptance of the terms of this Agreement by their signatures below

ACCELA, INC.

CUSTOMER: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Proposed by: Caitlin Carter
 Contact Phone: (925) 359 - 3411
 Contact Email: ccarter@accela.com
 Quote ID: Q-30003
 Valid Through: 10/30/2023
 Currency: USD

2633 Camino Ramon, Suite 500
 San Ramon, CA, 94583

Renewal Order Form

Address Information

Bill To:

City of Menlo Park
 701 Laurel St.
 Menlo Park, California 94025
 United States

Ship To:

City of Menlo Park
 701 Laurel St.
 Menlo Park, California 94025
 United States

Billing Name: Sandy Pimentel
 Billing Phone: 650-330-6658
 Billing Email: sbpimentel@menlopark.gov

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Accela Civic Platform Silver - Subscription User	Year 1	11/16/2023	11/15/2024	12	\$2,795.11	85	\$237,584.58
Accela Citizen Access Subscription Population - Under 50K	Year 1	11/16/2023	11/15/2024	12	\$0.00	1	\$0.00
Enhanced Reporting Database (ERD)	Year 1	11/16/2023	11/15/2024	12	\$33,261.84	1	\$33,261.84
TOTAL:							\$270,846.42

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Accela Civic Platform Silver - Subscription User	Year 2	11/16/2024	11/15/2025	12	\$2,934.87	85	\$249,463.81
Accela Citizen Access Subscription Population - Under 50K	Year 2	11/16/2024	11/15/2025	12	\$0.00	1	\$0.00
Enhanced Reporting Database (ERD)	Year 2	11/16/2024	11/15/2025	12	\$34,924.93	1	\$34,924.93
TOTAL:							\$284,388.74

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Accela Civic Platform Silver - Subscription User	Year 3	11/16/2025	11/15/2026	12	\$3,081.61	85	\$261,937.00
Accela Citizen Access Subscription Population - Under 50K	Year 3	11/16/2025	11/15/2026	12	\$0.00	1	\$0.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Enhanced Reporting Database (ERD)	Year 3	11/16/2025	11/15/2026	12	\$36,671.18	1	\$36,671.18
TOTAL:							\$298,608.18

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Accela Civic Platform Silver - Subscription User	Year 4	11/16/2026	11/15/2027	12	\$3,235.69	85	\$275,033.85
Accela Citizen Access Subscription Population - Under 50K	Year 4	11/16/2026	11/15/2027	12	\$0.00	1	\$0.00
Enhanced Reporting Database (ERD)	Year 4	11/16/2026	11/15/2027	12	\$38,504.74	1	\$38,504.74
TOTAL:							\$313,538.59

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Accela Civic Platform Silver - Subscription User	Year 5	11/16/2027	11/15/2028	12	\$3,397.48	85	\$288,785.54
Accela Citizen Access Subscription Population - Under 50K	Year 5	11/16/2027	11/15/2028	12	\$0.00	1	\$0.00
Enhanced Reporting Database (ERD)	Year 5	11/16/2027	11/15/2028	12	\$40,429.97	1	\$40,429.97
TOTAL:							\$329,215.51

Pricing Summary

Period	Net Total
Year 1	\$ 270,846.42
Year 2	\$ 284,388.74
Year 3	\$ 298,608.18
Year 4	\$ 313,538.59
Year 5	\$ 329,215.51
Total	\$ 1,496,597.44

Renewal Terms/Information:

General Information	
Governing Agreement(s)	This Order Form, including any OnPrem Licenses, Maintenance and Support, and Subscription Services will be governed by the applicable Subscription Services and ERD terms and conditions at https://www.accela.com/terms/

Order Terms	
Order Start Date	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> • Software Licenses & Subscriptions start on the date of delivery by Accela; • Hosting and Support start on Accela's delivery of the software hosted and/or supported;.
Order Duration	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> • Subscriptions continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). Thereafter Subscriptions automatically renew annually as calculated from Order Start Date of Customer's first Subscription purchase. • Any Software Licenses or Hardware are one-time, non-refundable purchases. • Hosting and Support continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). • Professional Services continue for the duration as outlined in the applicable Statement of Work, Exhibit or the Governing Agreement, as applicable.
Special Order Terms	This Order Form replaces all previous order forms for the terms listed above and will govern the Software, Maintenance, and/or Services items listed on this Order Form. <ul style="list-style-type: none"> • In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction. • For Software Licenses, Accela may terminate this Order Form in the event the Software is phased out across Accela's customer base. In such event, Accela will provide Customer sufficient advance notice and the parties will mutually agree to a migration plan for converting Customer to another Accela generally-available offering with comparable functionality.

Payment Terms	
Currency	USD
Invoice Date	Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total above will be issued on the Order Start Date.
Payment Due Date	Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable net 30 days .
Service Charge	Pricing is based upon payment by ACH or check. Payment by credit card (including Purchase Cards) for product and services in this Order Form will be subject to a service charge of 3%. There is no service charge for ACH or check payment.

Special Payment Terms	None unless otherwise specified in this location.
Purchase Order	If Customer requires PO number on invoices, it must be provided below and Customer must provide a copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.
	PO#

Signatures	
Accela, Inc.	Customer
Signature:	Signature:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

PROFESSIONAL SOFTWARE SUBSCRIPTION SERVICES AGREEMENT

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



Agreement #: 002769

AGREEMENT FOR PROFESSIONAL SOFTWARE SUBSCRIPTION SERVICES BETWEEN THE CITY OF MENLO PARK AND ACCELA, INC.

THIS AGREEMENT made and entered into at Menlo Park, California, this 22 day of August, 2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and ACCELA, INC., hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional software subscription services for CITY in connection with that certain project called: Land Management System Replacement

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

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

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.

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.

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 \$475,668.30 as described in Exhibit "A," Scope of Services. This compensation shall be based on the rates described in Exhibit "A." All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY.
- B. In consideration for FIRST PARTY's complete performance of Subscribed Services, City shall pay FIRST PARTY for all materials provided and services rendered by FIRST PARTY at the rate per hour for labor and cost per unit for materials as outlined in Exhibit A.
- C. 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.
- 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, such consent will not be unreasonably withheld, 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.

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:

Sandy Pimentel
IT Division
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6657
SBPimentel@menlopark.org

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

Attn: Legal Department
Accela, Inc.
2633 Camino Ramon #500
San Ramon, CA 94583
925-659-3200

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

Refer to Exhibit C.

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

FIRST PARTY 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

Refer to Exhibit C.

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. The City may terminate this Agreement upon thirty days prior written notice only in the event that the City was not appropriated funds pursuant to this Agreement. In such case, the City will not be entitled to a refund of any fees paid under this Agreement.
- B. Either party may terminate this Agreement if either Party materially breaches any terms and conditions of this Agreement after receiving a written notice describing the circumstances of the material breach, and the Party fails to correct the breach within thirty (30) calendar days. Upon any termination for cause by City, FIRST PARTY will refund any prepaid subscription fees covering the remainder of the subscription term after the effective date of termination.
- 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.
- 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 reasonable request and at least (30) days' notice to FIRST PARTY 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 and failure to cure any such deviation within a reasonable timeframe, shall constitute an uncured 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

FIRST PARTY shall maintain all required records for two 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 November 16, 2018 through November 15, 2023 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

8/16/19
Date

BRAD LEAHY
Printed name

VP REVENUE OPERATIONS
Title

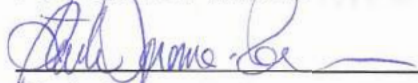
94-2767678
Tax ID#

APPROVED AS TO FORM:


William L. McClure, City Attorney

8/21/19
Date

FOR CITY OF MENLO PARK:


Starla Jerome-Robinson, City Manager

8/22/19
Date

ATTEST:


Judi A. Herren, City Clerk

8/22/19
Date

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

FIRST PARTY agrees to provide services for CITY's Administrative Services Department – Information Technology Division. 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:

Except as specified in this Agreement, FIRST PARTY shall furnish all technical and professional services for hosted subscriptions services, (collectively referred to as "Subscribed Services" as defined in Exhibit C) to satisfactorily complete the work required by CITY at his/her own risk and expense. Subscribed Services to be provided to CITY are more fully described in Exhibit C. All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

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

FIRST PARTY will bill City on an annual basis for Subscribed Services provided by FIRST PARTY, subject to the Order Form attached hereto and made part hereof as Exhibit G. Payments shall be made in advance on an annual basis for the invoiced 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, 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.

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit C for any additional services other than the Subscribed Services when set forth in a separate Scope of Work and signed by the Parties. 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 C.

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 C and/or Exhibit G for Subscribed Services.

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.

EXHIBIT “C” – Service Agreement

- C1.0** As used herein, “Accela” refers to Accela, Inc. and “Customer” refers to the subscribing customer designated on the attached Order. Accela and Customer are collectively designated as the “Parties”.
- C2.0** These Subscription Terms and Conditions (“Terms”) are effective upon execution of the Order by Customer and are for the exclusive benefit of the Parties. Nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.
- C3.0** Customer’s subscription term commenced on November 16, 2018.
- C4.0** Subscription terms are twelve (12) calendar months in duration. At the end of Customer’s subscription term or, if a multi-term subscription is indicated on the Order, the last of Customer’s subscription terms, Customer’s may renew subscription as set forth in the Agreement. The per-unit pricing during said additional term will be the same as the prior term’s annual fees unless Accela notifies Customer otherwise not less than sixty (60) calendar days prior to the end of said prior term and Customer agrees to the change in pricing in writing. Any price increase will be effective at the start of the renewal term, subject to Customer’s budget appropriations and approvals. No such price increase will exceed five percent (5%) of the prior term’s annual pricing. Notwithstanding the foregoing, the prices for the Term through 11/15/2023 are fixed and not subject to such increase.
- C5.0** In exchange for its use of the Subscribed Services, Customer will pay to Accela the amounts indicated in the Order. Said amounts are based on services purchased and not actual usage; payment obligations are non-cancelable and fees paid are non-refundable, except as otherwise specifically-provided herein. Unless otherwise stated, such fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (“Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Accela has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless Accela is provided with a valid tax exemption certificate authorized by the appropriate taxing authority. Accela is solely responsible for taxes assessable against it based on its income, property, and employees.
- C6.0** The Subscribed Services are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Subscribed Services and grants to Customer a limited, nonexclusive, nontransferable right to use the Subscribed Services, subject to the following terms and conditions: a) The Subscribed Services are provided for use only by Customer employees and to the extent of their duties for Customer, Customer’s agents, contractors and officials; b) Customer may not make any form of derivative work from the Subscribed Services, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques provided to Customer by Accela; c) Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices; d) Customer may use the Subscribed Services only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, lend, or share any of its rights hereunder; e) Customer is responsible for all activities conducted using its user credentials and for its users’ compliance with the provisions of these Terms; and f) All rights not expressly granted to Customer are retained by Accela. Accela will make the Subscribed Services available to Customer pursuant to these Terms during a subscription term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Accela regarding future functionality or features.
- C7.0** Accela warrants that it has full power and authority to agree to these Terms and that, as of the effective date hereof, the Subscribed Services do not infringe on any existing intellectual property rights of any third party. If a third party claims that the Subscribed Services do infringe, Accela may,

at its sole option, secure for Customer the right to continue using the Subscribed Services or modify the Subscribed Services so that these do not infringe. Accela will have the sole right to conduct the defense and will defend any legal action and conduct all negotiations for its settlement or compromise.

C8.0 WARRANTIES AND DISCLAIMERS

C8.1 Specifications. Accela shall be responsible for the acquisition and operation of all network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of Accela. The system shall be available 24/7/365 (with agreed-upon maintenance downtime) and provide service to customer as defined in the SLC set forth in Section C8.2 of this Exhibit. Subject to the limitations set forth below, Accela warrants that the Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty, Accela will use commercially reasonable efforts to modify the Service so that it conforms to foregoing warranty.

C8.2 Service Level Commitment. During the Subscription Period, Accela further warrants that the Service will meet the performance level specified in the Service Level Commitment, as made available by Accela in Exhibit D. The Service Level Commitment sets forth Customer's sole and exclusive remedy for Accela's failure to achieve the stated Service performance level.

C8.3 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ACCELA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Accela will not be responsible to the extent failure of the Service to operate as warranted is caused by or results from: (i) any modification to the Service other than a Supported Modification; (ii) combination, operation or use of the Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than Accela or Accela's designee; (iv) use of the Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Accela documentation or (v) any of the SLC Exclusions (as defined in the Service Level Commitment).

C8.4 MUTUAL INDEMNIFICATION

C8.5 Indemnification by Customer. Customer will defend (or settle), indemnify and hold harmless Accela, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any End User's use of the Service (other than any claim for which Accela is responsible under Section C8.6); or (ii) Customer or any End User has used the Service in a manner that violates these Terms or applicable law. Customer's obligations under this Section C8.5 are contingent upon: (a) Accela providing Customer with prompt written notice of such claim; (b) Accela providing reasonable cooperation to Customer, at Customer's expense, in defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

C8.6 Indemnification by Accela. Accela will defend (or settle) any suit or action brought against Customer to the extent that it is based upon a claim that the Service, as furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Accela's obligations under this Section C8.6 are contingent upon: (a) Customer

providing Accela with prompt written notice of such claim; (b) Customer providing reasonable cooperation to Accela, at Accela's expense, in the defense and settlement of such claim; and (c) Accela having sole authority to defend or settle such claim. THIS SECTION C8.6 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE. Accela will have no liability under this Section C8.6 to the extent that any third-party claims described herein are based on any combination of the Service with products, services, methods, or other elements not furnished by Accela, or any use of the Service in a manner that violates this Agreement or the instructions given to Customer by Accela..

- C8.7** Mitigation Measures. In the event that (i) any claim or potential claim covered by Section C8.2 arises or (ii) Accela's right to provide the Service is enjoined or in Accela's reasonable opinion is likely to be enjoined, Accela may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Service, by replacing or modifying the Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section C8.7, Accela will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).
- C9.0** LIMITATIONS OF LIABILITY. IN NO EVENT WILL ACCELA'S AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER DURING THE SUBSCRIPTION PERIOD UNDER WHICH INCIDENT OCCURS.
- C9.1** Exclusion of Damages. NEITHER ACCELA NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT ACCELA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THESE TERMS EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.
- C9.2** Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section C8, Accela will have no liability for any security breach caused by any such persons, entities, or technologies.
- C9.3** Any Accela security patches for "Very High" and "High" severity level security risks will be available to customer and patched within thirty (30) days of patch availability. Accela defines a Very High severity level where the offending line or lines of code is a very serious weakness and is an easy target for an attacker. Accela defines High severity level where the offending line or lines of code

have significant weakness.

- C9.4** Customer further acknowledges that the Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or End Users use the Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.
- C9.5** Basis of Bargain. THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH IN THIS SECTION C9 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN ACCELA AND CUSTOMER AND WILL APPLY TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW.
- C9.6** Data Breach Notification: The service provider shall inform the Customer of any unauthorized and unlawful acquisition of unencrypted personal data (“Data Breach”).
- C9.7** Data Breach Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing Data Breach with the Customer should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- C9.8** Data Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed Data Breach that affects the security of any Customer content that is subject to applicable Data Breach notification law, the service provider shall (1) promptly notify the appropriate Customer identified contact within 48 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach.
- C10.0** The following are not covered by these Terms, but may be separately available at rates and on terms which may vary from those described herein: a) Services required due to misuse of the Subscribed Services; b) Services required due to external factors including, but not necessarily limited to, Customer’s use of software or hardware not authorized by Accela; or c) Services required to resolve or work-around conditions which cannot be reproduced in Accela’s support environment.
- C11.0** Customer warrants that it owns or has been authorized to provide the data to Accela. Customer retains full ownership of said data and grants to Accela a limited, nonexclusive, nontransferable license to use said data only to perform Accela’s obligations in accordance with these Terms.
- C12.0** Subject to the limitations of Section C6, Customer may authorize access to the Subscribed Services by creating unique user names and passwords (“Logins”) up to the number of users indicated in the Order.
- C13.0** Each Login must be assigned to a single individual and may not be shared or used by more than one such user. Customer may reassign any Login to another individual, provided that such reassignments do not circumvent the “single individual” requirement described in this Section.
- C14.0** Customer acknowledges that transmissions and processing of Customer’s electronic communications are fundamental to Customer’s use of the Subscribed Services. Customer further acknowledges that portions of such transmissions and processing may occur within various computer networks not owned or operated by Accela. Customer agrees that Accela is not responsible for any delays, losses, alterations, interceptions, or storage of its electronic communications which occur in computer networks not owned or operated by Accela.
- C15.0** “Disclosing Party” and “Recipient” refer respectively to the party which discloses information and the

party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section: a) information which is in Recipient's possession prior to disclosure by Disclosing Party; b) information which is available to Recipient from a third party without violation of this Section or Disclosing Party's intellectual property rights; c) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party; d) information which is subpoenaed by governmental or judicial authority; and e) information subject to disclosure pursuant to a state's public records laws. Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

Accela acknowledges that Customer is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Customer acknowledges that Accela may submit information to Customer that Accela considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Accela acknowledges that Customer may submit to Accela information that Customer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Recipient as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Recipient. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Recipient, the Recipient shall be permitted to comply with the Requestor's demand and is not required to defend against it.

C16.0 ACCELA WILL, AT ALL TIMES DURING THE AGREEMENT, MAINTAIN INSURANCE COVERAGE AS SET FORTH IN SECTION 11 OF MAIN AGREEMENT. TO THE EXTENT NOT OFFSET BY ITS INSURANCE COVERAGE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT WILL ACCELA'S CUMULATIVE LIABILITY FOR ANY GENERAL, INCIDENTAL, SPECIAL, COMPENSATORY, OR PUNITIVE DAMAGES WHATSOEVER

SUFFERED BY CUSTOMER OR ANY OTHER PERSON OR ENTITY EXCEED THE FEES PAID TO ACCELA BY CUSTOMER DURING THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRECEDING THE CIRCUMSTANCES WHICH GIVE RISE TO SUCH CLAIM(S) OF LIABILITY.

- C17.0** If Accela is delayed in its performance of any obligation hereunder due to causes or effects beyond its control, Accela will give timely notice to Customer of such circumstances and will act in good faith to resume performance as soon as practicable.
- C18.0** Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets without Customer's written consent.
- C19.0** Section C5 will survive the End of Term for so long as is required to complete collection of unpaid amounts. The limitations and waivers described in Sections C8, and C18 will survive the End of Term. Section C11 will survive the End of Term for a period of thirty (30) calendar days. Section C15 will survive the End of Term for a period of thirty (30) calendar days or for so long as is required for Accela to complete its response to a Customer request made during said thirty-day period. Section C19 will survive the End of Term for a period of two (2) years. With the exceptions of the foregoing surviving sections, the remainder of these Terms will terminate at the End of Term.

EXHIBIT “D” – Service Level Commitment

ACCELA, INC. SERVICE LEVEL COMMITMENT

This SaaS Service Level Commitment (“SLC”) is a policy governing the use of Accela software-as- service products (individually or collectively, the “Service”) under the terms of the Accela Master Services Agreement (the “Agreement”) between Accela, Inc. and its affiliates (“Accela”, “us” or “we”) and the purchaser of Accela’s Subscription Service (“Customer”).

Unless otherwise provided herein, this SLC is subject to the terms of the Agreement and capitalized terms will have the meaning specified in the Agreement. Accela reserves the right to change the terms of this SLC in accordance with the Agreement.

DEFINITIONS

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was Unavailable. Measurement of the Monthly Uptime Percentage excludes downtime resulting directly or indirectly from any SLC Exclusion.

“Service Credit” is a dollar credit, calculated as set forth below, that Accela may credit back to an eligible Customer account.

“Unavailable” means, as applicable: (i) Customer is repeatedly unable to log into the Service; (ii) Customer experiences repeated connection request failures; (iii) Customer experiences lack of connectivity of external, public instances or sites lasting for more than five (5) minutes; (iv) Customer is unable to connect and sync mobile applications within the Service to Accela servers; and/or (v) Customer is unable to download or sync data from mobile applications within the Service to Accela servers. The foregoing events must be verifiable or replicable by Accela or its designee. Availability of Accela APIs, as separate from Service access, is expressly excluded from this SLC.

SERVICE COMMITMENT

Accela will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.5%, in each calendar month of the Subscription Period (the “Commitment”). In the event the Service does not meet this Commitment, Customer will be eligible to receive a Service Credit as described below.

SCHEDULED & EMERGENCY MAINTENANCE

Accela will maintain certain scheduled maintenance windows during which regular, planned maintenance of the Service may be performed. Accela will use commercially reasonable efforts to provide Customer with no less than twenty-four (24) hours’ notice prior to Services unavailability due to planned maintenance.. Accela’s standard maintenance window will generally fall between the hours of 9:00 PM [21:00] Thursday and 1:00 AM [1:00] Friday local time.

Accela will endeavor to provide as much notice as is practicable under the circumstances for patches, updates, fixes and other emergency maintenance activities which may be applied on an urgent basis.

Accela will provide three (3) business days’ notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

SERVICE CREDITS

System availability is measured by the following formula:

$$x = (n - y) * 100 / n$$

Notes: (1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar month.
 (2) Specifically excluded from "n and "y" in this calculation are the exception times on scheduled upgrade and maintenance windows.

Service Availability	Percentage of Monthly Service Fees Credited
> 99.5%	None
99.0% - < 99.5%	15%
95.0% - < 99.0%	35%
< 95.0%	100%

Accela will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from Accela. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by Accela to provide the Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLC.

SLC EXCLUSIONS

The Service Commitment does not apply to any unavailability, suspension or termination of the Service or any Service performance issues: (i) caused by factors outside of Accela's reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (ii) that result from customizations (if outside of Accela's best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (iii) that result from Customer's or any End User's or third party's equipment, software or other technology or integrations (other than third party equipment within Accela's direct control); (iv) that result from any maintenance as provided for pursuant to the above terms; or (vii) arising from our suspension or termination of Customer's right to use the Service in accordance with the Agreement (collectively, the "SLC Exclusions"). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, Accela may issue a Service Credit with consideration to pertinent factors as assessed by Accela in its sole discretion.

SUPPORT COMMITMENT

This Silver Support SLA Addendum (the "Addendum") is issued under and subject to additional conditions and limitations as set out in the agreement by and between Accela and Customer.

The following Issues, Response Goals and Resolution Goals are applicable to support services for Accela supported products functioning in Customer's production environment (the "Supported Products") and is not applicable to any other Accela software, services or environments. Any references to "business day" are exclusive of the U.S. federal and state holidays observed by Accela:

Priority	Definition	Response Goal	Resolution Goal
Critical Severity Issue (Priority 1)	Supported Product is non-functional or seriously affected and there is no reasonable workaround available (e.g. business is halted).	Confirmation of receipt within one (1) business hour. Update as information arrives or at the interval specified by Customer.	Upon confirmation of receipt, Accela will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High Severity Issue (Priority 2)	Supported Product is affected and there is no workaround available or the workaround is impractical (e.g. Supported Product response is very slow, day to day operations continue but are impacted by the work around).	Confirmation of receipt within four (4) business hours.	Accela will put forth our best effort to provide a workaround or fix or estimated completion date within fourteen (14) business days after the problem has been diagnosed and/or replicated.
Medium Severity Issue (Priority 3)	Support Product is non-functional however a convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).	Confirmation of receipt within eight (8) business hours.	Accela will put forth our best effort to provide a workaround or fix or estimated completion date within twenty-one (21) business days after the problem has been diagnosed and/or replicated.
Low Severity Issue (Priority 4)	Supported Product works, but there is a minor problem (e.g. incorrect label, or cosmetic defect).	Confirmation of receipt within twenty-four (24) business hours.	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

EXHIBIT "E" – SaaS Security**ACCELA SECURITY EXHIBIT**

Accela will provide hosting at a SSAE-16 SOC 2 or higher facility as defined by the AICPA. Per the hosting datacenter's disclosure policies, Accela will provide, where allowable, a copy of the datacenter's annual SSAE-16 Type 2 audit report on written request under NDA. Accela will provide a backup hosting site with equivalent status for disaster recovery should a major catastrophic outage occur.

The hosting facility will be constructed and configured to ensure reasonable and adequate protection of the equipment in the event of a natural event considered possible for the physical location, including but not limited to earthquake, flood, hurricane, tornado, etc.

Data Location:

The service provider shall provide its services to the Customer and its end users solely from data centers in the U.S. Storage of Customer data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store Customer data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access Customer data remotely only as required to provide technical support. The service provider may provide technical user support on a 24/7 basis using a Follow-the-Sun model, unless otherwise prohibited in the SLC listed in this Exhibit H.

The hosting facility must have power sufficient to support the equipment platform as configured; this includes provisions for back-up power supplies. The facility will include:

- Dual power availability to each rack unit from independent Power Distribution Units (PDUs) removes PDU loss as a single point of failure
- N+1 redundancy of uninterruptible power supplies
- Redundant fuel-based generator power supplies, in the event of a power failure from commercial power.

The hosting facility will have reasonable and adequate heating and cooling to insure continuous operation of equipment within acceptable operational limits. The hosting facility shall include but not be limited to the following features:

- N+1 redundancy of cooling towers, water pumps and chillers
- Multiple air handling units providing an additional level of redundancy
- Cooling units maintain consistent environment temperature and relative humidity levels
- Rack cabinet fans to circulate warm air generated by the servers

The hosting facility will have physical security to control unauthorized access to the equipment, including but not limited to:

- 24/7 on-site security guard
- Indoor and outdoor security monitoring
- Badge/picture ID access screening
- Biometric access screening
- Escort requirements for access to raised floor areas
- Logged entries for all users entering or leaving the premises

The hosting facility will have data line capacity to ensure responsive access to the proposed data system by Accela employees, jurisdictions and customers.

Accela shall provide the equipment, hardware and network infrastructure necessary to operate and sustain all contracted software on behalf of customer and to provide the necessary development, test, production, and training environments.

The hosting facility will provide secure encrypted transmission over non-trusted networks of personal data to include, but not limited to, personal name and address, SSN, credit card, banking, and payment data, passwords, and any other data subject to Federal or California State data privacy protection laws, and provide protection that meets or exceeds any such statutory requirements. Transport Layer Security (TLS) encryption or better will be utilized to meet this requirement.

Accela will be responsible for the data communication infrastructure that connects the data servers to the communication network (switches, etc.)

Accela will maintain any service agreements for the equipment and operating systems, and maintain the equipment in optimal working order.

Accela shall provide a PCI compliant infrastructure for deployment within the data center. Accela's applications have been developed to comply with all 12 requirements of PCI Data Security Standard, including:

- The use of a firewall within the proposed infrastructure to protect cardholder data provided via both Accela Automation and Accela Citizen Access (public portal)
- The use of strong passwords and password policies to ensure password protection and delineates and enforces role-based security to ensure that only authorized users and administrators can access sensitive data
- The use of secured sessions to prevent any unauthorized access to sensitive cardholder data
- The use of encryption per PCI and PABP standards whenever cardholder data is transmitted across open, public networks
- Adherence to all applicable industry standards for the development of secure systems and the Accela applications that operate within these systems
- The assignment of unique User IDs and Passwords for each user granted access to the system
- The provision of full audit trail tracking to track and monitor all access to network resources and cardholder data

Accela will provide operational services to support the infrastructure and operating environment.

Accela shall provide the equipment, hardware and network infrastructure necessary to operate and sustain all contracted software and to provide the necessary, production, support and staging environments.

Accela shall ensure there are no covert channels to access the system and must take precautions to protect the system and data from Trojan invasion.

Accela contracts for warranty services. In the event that warranty services are required, Accela shall provide staff support sufficient to complete all necessary service and maintenance to the hardware and software platform for the duration of a Vendor-site support agreement.

Accela shall perform daily backups of the data. The images that constitute the functional system will have snapshots taken weekly and stored to the fully redundant storage system. Accela's backup strategies and fully redundant Data Recovery (DR) site ensure that a complete system rebuild of data will not be necessary. Accela will use commercially reasonable efforts to replicate all relevant agency data "in near real-time" to a geographically separate location where we have the ability to stand up the Accela application stack and restore service.

Throughout the term of the agreement, upon the request of Customer, Accela will provide Customer with:

- (i) a copy of its data in a database dump file
- (ii) an APO property conversion upload
- (iii) a Crystal Report placement

Within thirty (30) calendar days following the end of its final Subscribed Services term ("End of Term"), Accela shall provide a complete copy of Customer's data and associated documents, as updated or modified by Customer's use of the Subscribed Services, in a database dump file format. Accela will comply in a timely manner with such request, provided that Customer pays any and all unpaid amounts due to Accela.

Accela will meet measurable standards for expected and reasonable system availability (up- time) as established elsewhere in this Hosting Attachment. The system must generally be available seven days a week, twenty-four hours per day. Scheduled down time is acceptable. Unplanned down time between 6:00 am and 8:00 pm Pacific time must be to resolve production emergencies only, limited to no more than One Hundred and Twenty (120) minutes and occur no more than one time per month. In no event will any proposed standard be less than a commercially reasonable standard.

The Accela system implementation shall provide functional equivalents of the following environments; hardware and software requirements must include provisions to support these environments:

- Support – An environment available to customers to develop and test new configurations or changes to existing configurations prior to implementation in production.
- Staging – An environment available to customers to test new Accela Automation application releases against their production configuration. New application code will be deployed to the Staging environment within one week of becoming Generally Available (GA) from Engineering. New application code will be deployed to the Support and Production environments one month after being deployed to Staging for Major releases and two weeks for Minor releases (Service Packs).
- Production – The environment used by customers, jurisdiction staff, central administrative staff, and analysts/programmers to submit, track and manage live transactions and associated data.

The Customer shall have the ability to import or export data in piecemeal at its discretion without interference from the service provider. Accela will provide the customer with a full database export on a quarterly basis at the request of Customer. The customer has the option to request a more frequent export if desired, but will not exceed one per calendar week.

Accela will respond to requests for production or support/staging environment report posting within 72 hours of the request. Reports will be reviewed for system performance and data integrity before posting. If issues are found they will be documented and communicated back to the customer for correction. In the event that a report request is urgent, Accela will expedite this process to an extent that is reasonable for the request.

To provide the Hosting Services, Accela shall provide, host, manage and maintain the System as follows:

A. Management, Support and Maintenance of Hardware

1. Accela will provide, manage and maintain operating systems on all System environment hardware. This will involve application of any necessary patches or updates and upgrades as necessary. Accela will provide system redundancy.
2. Accela will provide, manage and maintain, for the System, the physical or virtual resources. This will involve any physical fix as needed, updates or refreshes as necessary.

B. Capacity Planning and Monitoring

Accela will be responsible for monitoring capacity and performing capacity planning to ensure the System environment has sufficient capacity to meet the service level agreements agreed upon in this Agreement.

C. Asset Management

Asset Management services provide inventory and tracking of equipment and the management of vendor-provided maintenance agreements.

Accela will perform the following tasks:

1. Manage third party vendor contracts for equipment used in support of this Agreement (rental agreements, leases, service agreements, warranties, amendments, maintenance contracts, and insurance policies)
2. Provide hardware and software at the appropriate hardware and software levels to comply with vendor maintenance contracts.
3. Provide an asset tracking tool to maintain a database of asset information such as make, model, operating system, number of CPUs, amount of memory, and amount of storage.

D. Facilities Services

Accela will provide a PCI-DSS compliant facility.

E. Monitoring Server and OS

1. Monitoring Server and OS service detects and responds to up/down availability faults generated by monitored servers.
2. Accela will perform the following:
 - Provide the operational support processes required for up/down monitoring
 - Document and track all detected problems using the site problem management process
 - Escalate all detected problems to the appropriate support personnel

F. Operations Management

1. Operations Management are those activities requiring physical hands-on support. Accela shall provide skilled staff to support all operational support services at an

Accela data center facility.

2. Accela will perform the following:
 - Perform systems operation functions such as power on/off and start/stop/reset device intervention
 - Monitor vendors on the Accela premise performing work maintenance or problem resolution work
 - Maintain responsibility for procuring any expendable supplies (CDs, tapes, cleaning supplies, and so forth)

G. Operating System Management

1. Accela shall provide proper functionality of hosting software on servers. Support is provided for operating systems and related software products. Included are all ongoing processes to maintain supplier-supported operating platforms including preventive software maintenance services.
2. Accela will perform the following:
 - Install and maintain system-level software, such as operating system and other system-level products software requiring user access
 - Monitor system software status and take necessary action to resolve any issues
 - Perform operation system software tuning as required to maintain daily operations for Accela-provided services
 - Install preventive maintenance patches deemed critical by the vendor to support system software products to prevent known problems from impacting the operating environment
 - Install patches per vendor instructions for security exposures deemed critical by the vendor
 - Participate in the identification of connectivity and associated network problems
 - Plan and implement necessary changes for the System
 - Document and track all configuration management changes using the site change management process
 - Provide problem escalation and interact as necessary with third-party suppliers

H. System/File Backup and Restore

1. System/File Backup and Restore Services provide the operational and management processes to backup and restore operating system.
2. Accela will perform the following:
 - Design and implement the backup Plan
 - Perform backups
 - Provide for data restores as needed if Agency causes the need for a data restoration, Agency will be responsible for the cost of the data restore at the hourly service rate in the Contract.
 - Monitor backup processes and verification of successful completion
 - Adjust backup and restore plans as new components are added to the System

I. Server Storage Management

1. Server Storage Management provides for the support of server direct-attached storage environment.
2. Accela will perform to following:
 - Integrate the storage hardware and software to provide the appropriate level of capacity, scalability, and performance of the server storage hardware and software
 - Manage hardware and software maintenance requirements based on the manufacturer's recommended schedule
 - Implement security practices, such as logical unit masking, preventing unauthorized storage access from an unauthorized server
 - Maintain proper storage configuration(s) (mapping logical volumes, creating file systems, balancing I/O capacity)

J. Server Management Services

Accela will provide server management services.

K. Hardware Management

Accela will provide Hardware Management. Hardware management provides the services necessary to enable compute equipment to be physically installed, maintained, and kept operational.

L. Controlled Server Access

Accela will provide Controlled Server Access. Controlled server access provides the tools and processes to manage access to assets. This includes the management of user logon IDs and their access rights to system-level resources, as well as maintaining server-level security parameters and security product options.

M. Virus Protection

Accela will provide Virus Protection services. Server level anti-virus service provides anti-virus software on each server to provide protection and detection of viruses, worms, and other malicious code. The anti-virus software can be updated with current virus signatures and detection engines automatically or by file distribution software. This service also provides the means to scan the server at the system level to detect malicious code.

N. Security Event Logging

Accela will provide Security Event Logging. Security Event Logging is a detective control that enables the recording of security events on system hosts based on preset

parameters. The administrative tool's logging function is enabled and the security events are retained in a record for future review.

O. Vulnerability Scan and Report

Accela will provide Vulnerability management. Vulnerability management includes preventive and

detective services to identify vulnerabilities as they emerge; to prevent those vulnerabilities from affecting the in-scope systems; to detect when an in-scope system has been affected; and to cure those affected systems. Vulnerability management includes both Vulnerability Alert management and Vulnerability Scanning processes.

Vulnerability Alert management is the preventive process that collects known vulnerabilities and prioritizes vulnerabilities based on associated risk. Vulnerability Scanning is the detective process of identifying potential vulnerabilities on servers for exposures to such vulnerabilities.

P. Managed Cluster

Accela will provide Managed Cluster Management. Managed Cluster Management provides processes to deliver server/storage configurations clustered together in the same physical site. This is delivered through the use of hardware configuration and software to meet availability requirements.

Q. Host Based Intrusion Detection

Accela will provide Host Based Intrusion Detection. Host Based Intrusion Detection is the real-time identification, detection, and notification of suspected unauthorized intrusions on individual servers.

R. Secondary Mirrored Site Management

Accela will provide mirrored secondary site allows for replication of the primary site in the event of a natural disaster rendering the primary data center inoperable. Accela will provide skilled staff to support all operational support services. These services include support processes necessary to provide a secondary mirrored site.

S. Data Recovery

Accela will provide multiple ways to recover data:

Suspected error conditions will be investigated and corrected by ACCELA personnel at ACCELA'S offices to the extent possible. Onsite corrections shall be at the exclusive judgement of ACCELA at no additional cost to the User. User may, however, request that ACCELA conduct such investigations and travel to the location of the User at the User's request; User will pay ACCELA for reasonable travel and subsistence expenses. If ACCELA, in its reasonable judgment, determines that the suspected error condition was attributable to a

cause other than an error in ACCELA'S Subscribed Service or an enhancement by ACCELA, the User will pay for ACCELA'S efforts on a time and materials basis.

ACCELA may provide the User with unsolicited error corrections or changes to the Subscribed Service, without additional charge, which ACCELA determines are necessary for proper operation of its Subscribed Service, and User shall incorporate these corrections or changes into the Subscribed Service within 180 days of release by ACCELA. ACCELA will provide all documentation changes necessary as a result of changes to the software.

ACCELA will provide User all enhancements released by ACCELA as standard enhancements, and which are generally made available to other users purchasing comparable Subscribed Service during the term of this agreement.

EXHIBIT "F" – Cloud Service Provider Checklist

Compliance					
Compliance	Audit Planning	CO-01	CO-01.1	Do you produce audit assertions using a structured, industry accepted format (ex. CloudAudit/A6 URI Ontology, CloudTrust, SCAP/CYBEX, GRC XML, ISACA's Cloud Computing Management Audit/Assurance Program, etc.)?	Yes. Accela enforces policies and standards that align with NIS 800-53.
Compliance	Independent Audits	CO-02	CO-02.1	Do you allow (describe/explain/attach/embed associated documents) tenants to view your SAS70 Type II/SSAE 16 SOC2/ISAE3402/ISO27001:2005 or similar third party audit reports?	Yes. Accela makes the following reports available to clients and potential clients with NDA's on file for their review: <ul style="list-style-type: none"> * SSAE 16/SOC 2 * PCI DSS SAQ-A-EP * Yes. Penetration tests, that include assessing the infrastructure and application, are completed bi-annually. Vulnerability scans are completed at a minimum quarterly. Yes. External SSAE 16/SOC 2 and PCI audits are completed annually. Accela has an internal audit function that is continuously reviewing compliance with specific control families.
Compliance			CO-02.2	Do you conduct (describe/explain/attach/embed associated documents) network penetration tests of your cloud service infrastructure regularly as prescribed by industry best practices	

				and guidance?	
Compliance			CO-02.3	Do you conduct (describe/explain/attach/embed associated documents) regular application penetration tests of your cloud infrastructure as prescribed by industry best practices and guidance?	
Compliance			CO-02.4	Do you conduct (describe/explain/attach/embed associated documents) internal audits regularly as prescribed by industry best practices and guidance?	
Compliance			CO-02.5	Do you conduct (describe/explain/attach/embed associated documents) external audits regularly as prescribed by industry best practices and guidance?	Yes. External SSAE 16/SOC 2 and PCI audits are completed annually. Accela has an internal audit function that is continuously reviewing compliance with specific control families. SOC 2 report available under NDA
Compliance		CO-02.6	Are the results of the network penetration tests available to tenants at their request?		
Compliance		CO-02.7	Are the results of internal and external audits available to tenants at their request?		
Compliance	Third Party Audits	CO-03	CO-03.1	Do you permit tenants to perform independent vulnerability assessments?	No. Due to the instability this may cause in shared tenant environment, this activity is carefully planned and coordinated by Accela. Yes. Penetration tests, that include assessing the infrastructure and application, are
Compliance			CO-03.2	Do you have (describe/explain/attach/embed associated documents) external third-party conduct vulnerability scans and periodic penetration tests on your applications and networks?	

					completed annually. Vulnerability scans are completed at a minimum quarterly.
Compliance	Contact / Authority Maintenance	CO-04	CO-04.1	Do you maintain liaisons and points of contact with local authorities in accordance with contracts and appropriate regulations?	Yes. Accela maintains contact with various parties associated including law enforcement as applicable, and contacts for PCI-DSS and SSAE 16 compliance.
Compliance	Information System Regulatory Mapping	CO-05	CO-05.1	Do you have (describe/explain/attach/embed associated documents) the ability to logically segment or encrypt customer data such that data may be produced for a single tenant only, without inadvertently accessing another tenant's data?	Yes. Tenants are logically segmented at the database.
			CO-05.2	Do you have (describe/explain/attach/embed associated documents) capability to logically segment and recover data for specific customer in the case of a failur or data loss?	Yes. Tenants are logically segmented at the database attribute level. Procedures are in place for tenant data restoration.
Compliance	Intellectual Property	CO-06	CO-06.1	Do you have (describe/explain/attach/embed associated documents) policies and procedures in place describing what controls you have in place to protect tenants intellectual property?	Yes. Accela has several policies that address confidentiality, integrity and availability of client data.

Compliance	Intellectual Property	CO-07	CO-07.1	If utilization of tenants services housed in the cloud is mined for cloud provider benefit, are the tenants IP rights preserved?	Accela does not mine client data.
Compliance	Intellectual Property	CO-08	CO-08.1	If utilization of tenants services housed in the cloud is mined for cloud provider benefit, do you provide (describe/explain/attach/embed associated documents) tenants the ability to opt-out?	Accela does not mine client data.
Data Governance					
Data Governance	Ownership / Stewardship	DG-01	DG-01.1	Do you follow (describe/explain/attach/embed associated documents) a structured data-labeling standard (ex. ISO 15489, Oasis XML Catalog Specification, CSA data type guidance)?	Yes. Accela enforces policies and standards that align with NIST 800-53, Media Protection (MP) security controls.
Data Governance	Classification	DG-02	DG-02.1	Do you provide (describe/explain/attach/embed associated documents) a capability to identify virtual machines via policy tags/metadata (ex. Tags can be used to limit guest operating systems from booting/instantiating/transporting data in the wrong country, etc.)?	No, however, platform instantiation is carefully managed and monitored.
Data Governance			DG-02.2	Do you provide (describe/explain/attach/embed associated documents) a capability to identify hardware via policy tags/metadata/hardware tags (ex. TXT/TPM, VN-Tag, etc.)?	Yes. All hardware is tracked as part of asset management.

Data Governance			DG-02.3	Do you have (describe/explain/attach/embed associated documents) a capability to use system geographic location as an authentication factor?	No.
Data Governance			DG-02.4	Can you provide (describe/explain/attach/embed associated documents) the physical location/geography of storage of a tenant's data upon request?	Yes. All data is housed in the continental United States in either our East or West Coast data centers.
Data Governance			DG-02.5	Do you allow (describe/explain/attach/embed associated documents) tenants to define acceptable geographical locations for data routing or resource instantiation?	No. Accela carefully selects geographical locations for services and data based on numerous factors, including throughout associated with physical distance and client load patterns.
Data Governance	Handling / Labeling / Security Policy	DG-03	DG-03.1	Are Policies and procedures established for labeling, handling and security of data and objects, which contain data?	Yes. Accela enforces policies and standards that align with NIST 800-53, Media Protection (MP) security controls.
Data Governance			DG-03.2	Are mechanisms for label inheritance implemented for objects that act as aggregate containers for data?	<p>Applications do not use data labeling.</p> <p>Although Public or private/sensitive data are implied during system implementation/configuration , it is which controlled by access rights.</p> <p>At the application level, 'sensitive data' is managed by leveraging hashing & encryption algorithms.</p> <p>No labeling is used at the database level.</p>

Data Governanc e	Retentio n Policy	DG - 04	DG- 04. 1	Do you have (describe/explain/attach/embed associated documents) technical control capabilities to enforce tenant data retention policies?	Accela does not delete or archive client data. Clients have the capability, via the user interface or a special Services request, to delete and archive data.
Data Governanc e			DG- 04. 2	Do you have (describe/explain/attach/embe d associated documents) a documented procedure for responding to requests for tenant data from governments or third parties?	
Data Governanc e	Secure Disposal	DG - 05	DG- 05. 1	Do you support (describe/explain/attach/embe d associated documents) secure deletion (ex. degaussing / cryptographic wiping) of archived data as determined by the tenant?	Data is deleted according to NIST 800-88 standards.
Data Governanc e			DG- 05. 2	Can you provide (describe/explain/attach/embed associated documents) a published procedure for exiting the service arrangement, including assurance to sanitize all computing resources of tenant data once a customer has exited your environment or has vacated a resource?	Service termination involves a written request, a contract termination, with a request for a data copy. Subsequently the data will be deleted or written request / or after a reasonably period after termination.
Data Governance	Nonproduction Data	DG- 06	DG- 06.1	Do you have (describe/explain/attach/embed associated documents) procedures in place to ensure production data shall not be replicated or used in non- production environments?	Yes. Accela has policies in place prohibiting the exporting of production data to non-production environments with the exception of using sanitized production data for testing and troubleshooting purposes.
Data Governance	Information Leakage	DG- 07	DG- 07.1	Do you have (describe/explain/attach/embed associated documents) controls in place to prevent data leakage or intentional/accidental compromise between tenants in a multi-tenant	Segregated logical tenants and maintained with data segregation controls at the data store level. Customer data is not scanned for specific

				environment?	content. (No DLP)
Data Governance			DG-07.2	Do you have (describe/explain/attach/embed associated documents) a Data Loss Prevention (DLP) or extrusion prevention solution in place for all systems which interface with your cloud service offering?	
Data Governance	Risk Assessments	DG-08	DG-08.1	Do you provide (describe/explain/attach/embed associated documents) security control health data in order to allow tenants to implement industry standard Continuous Monitoring (which allows continual tenant validation of your physical and logical control status?)	Security & Compliance control status information is available to all clients upon request as SSAE 16 SOC 2 reports annually.

Facility Security

Facility Security	Policy	FS-01	FS-01.1	Can you provide (describe/explain/attach/embed associated documents) evidence that policies and procedures have been established for maintaining a safe and secure working environment in offices, rooms, facilities and secure areas?	Yes. Accela enforces policies and standards that comply with SSAE 16 SOC 2 controls per TSP 101.
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Facility Security	User Access	FS-02	FS-02.1	Pursuant to local laws, regulations, ethics and contractual constraints are all employment candidates, contractors and third parties subject to background verification?	Yes. Per Accela Background Check policy, background checks are conducted on all permanent employees.
Facility Security	Controlled Access Points	FS-03	FS-03.1	Are physical security perimeters (fences, walls, barriers, guards, gates, electronic surveillance, physical authentication mechanisms, reception desks and security patrols) implemented?	Yes. All data centers and work areas have standard physical controls in place. Data centers comply with SSAE 16 compliance.
Facility Security	Secure Area Authorization	FS-04	FS-04.1	Do you allow (describe/explain/attach/embed associated documents) tenants to specify which of your geographic locations their data is allowed to traverse into/out of (to address legal jurisdictional considerations based on where data is stored vs. accessed)?	No. Accela carefully selects geographical locations for services and data based on numerous factors, including throughput associated with physical distance and client-load patterns.

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Facility Security	Unauthorized Persons Entry	FS-05	FS-05.1	Are ingress and egress points such as service areas and other points where unauthorized personnel may enter the premises monitored, controlled and isolated from data storage and process?	Yes. Accela leverages SOC 2 controls from authorized third parties.
Facility Security	Offsite Authorization	FS-06	FS-06.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation that describes scenarios where data may be moved from one physical location to another? (ex. Offsite backups, business continuity failovers,	Yes. Accela enforces policies and standards that comply SSAE 16 SOC 2 data center entities.

				replication)	
Facility Security	Offsite equipment	FS-07	FS-07.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation describing your policies and procedures governing asset management and repurposing of equipment?	Yes..Accela enforces policies and standards that comply with SOC 2 Type 2 for physical security.
Facility Security	Asset Management	FS-08	FS-08.1	Do you maintain a complete inventory of all of your critical assets, which includes ownership of the asset?	Yes All critical assets are maintained in the Configuration Management Database (CMDB) and updated through the use of Accela's Change Management process. Yes. Our contract management function maintains this list.
Facility Security			FS-08.2	Do you maintain a complete inventory of all of your critical supplier relationships?	
Human Resources Security					
Human Resources Security	Background Screening	HR-01	HR-01.1	Pursuant to local laws, regulations, ethics and contractual constraints are all employment candidates, contractors and third parties subject to background verification? What is checked during the background verification?	Yes. Per Accela Background Check policy, background checks are conducted on all permanent employees.
	Employment Agreements	HR-02	HR-02.1	Do you specifically train your employees regarding their role vs.	Yes. All Accela employees are required to participate in required, annual Security and Compliance

					awareness classes.
Human Resources Security				the tenant's role in providing information security controls?	Yes. This is systematically captured in our centralized training system.
			HR-02.2	Do you document employee acknowledgment of training they have completed?	
Human Resources Security	Employment Termination	HR-03	HR-03.1	Are Roles and responsibilities for following performing employment termination or change in employment procedures assigned, documented and communicated?	Yes.
Information Security					
Information Security	Management Program	IS-01	IS-01.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation describing your Information Security Management Program (ISMP)?	Yes. Various security and compliance artifacts, SSAE 16 SOC 2 reports.
Information Security	Management Support / Involvement	IS-02	IS-02.1	Are policies (describe/explain/attach/embed associated documents) in place to ensure executive and line management take formal action to support information security through clear documented direction, commitment, explicit assignment and verification of assignment execution?	Yes. Accela publishes and maintains Information Technology and Security Standards documentation that is distributed to all applicable team members. Executive management reviews and approves security and compliance

					roadmaps and risks.
Information Security	Policy	IS-03	IS-03.1	Do your information security and privacy policies align with particular	Yes. They are aligned with NIST 800-53, PCI and SSAE 16 controls.
				industry standards (ISO-27001, ISO- 22307, CoBIT, etc.)?	
			IS-03.2	Do you have (describe/explain/attach/embed associated documents) agreements, which ensure your providers adhere to your information security and privacy policies?	Yes. Accela has Agreements in place, and reviews security and compliance contracts on an annual basis of service provides involved in delivery.
			IS-03.3	Can you provide (describe/explain/attach/embed associated documents) evidence of due diligence mapping of your controls, architecture and processes to regulations and/or standards?	Yes. SSAE 16 SOC 2 reports and PCI DSS SAQ-A-EP.
Information Security	Baseline Requirements	IS-04	IS-04.1	Do you have (describe/explain/attach/embed associated documents) documented information security baselines for every component of your infrastructure (ex. Hypervisors, operating systems, routers, DNS servers, etc.)?	Yes. Baselines are documented for critical components. These baselines are reviewed and potentially adjusted annually.
Information Security			IS-04.2	Do you have (describe/explain/attach/embed associated documents) a capability to continuously monitor and report the compliance of your infrastructure against your information security baselines?	Yes. Accela's internal audit function regularly audits security controls

Information Security			IS-04.3	Do you allow (describe/explain/attach/embed associated documents) your clients to provide their own trusted virtual machine image to ensure conformance to their own internal standards?	No.
Information Security	Policy Reviews	IS-05	IS-05.1	Do you notify your tenants when you make material changes to your information security and/or privacy policies?	No. However, Accela's security and compliance status are available for client review under NDA.
Information Security	Policy Enforcement	IS-06	IS-06.1	Is a formal disciplinary or sanction policy established for employees who have violated security policies and procedures?	Yes. This is specifically managed Human Resources and the resource manager. Yes.
Information Security			IS-06.2	Are employees made aware of what action might be taken in the event of a violation and stated as such in the policies and procedures?	
Information Security	User Access Policy	IS-07	IS-07.1	Do you have (describe/explain/attach/embed associated documents) controls in place ensuring timely removal of systems access, which is no longer required for business purposes?	Yes. Accela enforces policies and standards that comply with SSAE 16 SOC 2 Controls. Yes. Timely deactivation of accounts is governed by policy.
Information Security			IS-07.2	Do you provide (describe/explain/attach/embed associated documents) metrics that track the speed with which you are able to remove systems access which is no longer required for business purposes?	

Information Security	User Access Restriction / Authorization	IS-08	IS-08.1	Do you document how you grant and approve access to tenant data?	Internal access requests from Accela team members is reviewed through the use of the change management process and explicit approval is required by the Change Management Review Board (CMRB). All change management activity is recorded using an enterprise change management tool. Yes. Accela adhered to a data classification methodology.
Information Security			IS-08.2	Do you have (describe/explain/attach/embed associated documents) a method of aligning provider and tenant data classification methodologies for access control purposes?	
Information Security	User Access Revocation	IS-09	IS-09.1	Is timely de-provisioning, revocation or modification of user access to the organizations systems, information assets and data implemented upon any change in status of employees, contractors, customers, business partners or third parties?	Yes. Timely deactivation of accounts is governed by policy. Yes. Status changes requiring access review include termination, role change or department transfer.
Information Security			IS-09.2	Is any change in status intended to include termination of employment, contract or agreement, change of employment or transfer within the organization?	

Information Security	User Access Reviews	IS-10	IS-10.1	Do you require at least annual certification of entitlements for all system users and administrators	Yes. Accela adheres to bi-annual and annual policy, procedure and standards review, which includes entitlements.
				(exclusive of users maintained by your tenants)?	Yes. The incident and change management processes are used.
Information Security			IS-10.2	If users are found to have inappropriate entitlements, are all remediation and certification actions recorded?	Yes.
Information Security			IS-10.3	Will you share user entitlement remediation and certification reports with your tenants, if inappropriate access may have been allowed to tenant data?	
Information Security	Training / Awareness	IS-11	IS-11.1	Do you provide (describe/explain/attach/embed associated documents) or make available a formal security awareness training program for cloud-related access and data management issues (i.e., multi-tenancy, nationality, cloud delivery model segregation of duties implications, and conflicts of interest) for all persons with access to tenant data?	Yes. All Accela employees are required to participate in required, annual Security and Compliance awareness classes.
Information Security			IS-11.2	Are administrators and data stewards properly educated on their legal responsibilities with regard to security and data integrity?	
Information Security	Industry Knowledge / Benchmarking	IS-12	IS-12.1	Do you participate in industry groups and professional associations related to information security?	Yes. Some of the groups Accela is associated with are ISACA, (ISC) ² , NIST, US-Cert.
			IS-12.2	Do you benchmark your security controls against industry standards?	Yes. SSAE 16 SOC 2 (TSP 101) and PCI are reviewed on a continuous basis by our internal audit team for compliance.

					External audits are conducted annually.
Information Security	Roles / Responsibilities	IS-13	IS-13.1	Do you provide (describe/explain/attach/embed associated documents) tenants with a role definition document clarifying your administrative responsibilities vs. those of the tenant?	Yes.
Information Security	Management Oversight	IS-14	IS-14.1	Are Managers responsible for maintaining awareness of and complying with security policies, procedures and standards that are relevant to their area of responsibility?	Yes. Security policies and procedures are reviewed annually with managers. Managers are expected to disseminate relevant information to staff.
Information Security	Segregation of Duties	IS-15	IS-15.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation on how you maintain segregation of duties within your cloud service offering?	Yes. Information is available upon request.
Information Security	User Responsibility	IS-16	IS-16.1	How are users made aware of their responsibilities for maintaining awareness and compliance with published security policies, procedures, standards and applicable regulatory requirements?	Accela uses the Security and Compliance awareness program to achieve this goal. Additionally, meetings are held on as needed basis to review policies with stakeholders, especially if material changes have been made to these documents. Accela uses the Security and Compliance awareness program to achieve this goal.
Information Security			IS-16.2	How are users made aware of their responsibilities for maintaining a safe and secure working environment?	
Information Security			IS-16.3	How are users made aware of their responsibilities for leaving unattended equipment in a secure manner?	

					Accela communicates these requirements through the on-boarding process and is governed by security policies.
Information Security	Workspace	IS - 17	IS-17.1	Do your data management policies and procedures address tenant and service level conflicts of interests?	Although this is not explicitly addressed within our policies, however, Accela is committed to remediating any SLA/service conflicts with our clients. To date, this has not been an area of contention or conflict with our clients. Yes. Data integrity algorithms are enforced. Log activity is also monitored on a periodic basis. Yes. Baselines are defined and used to detect changes to the build/configuration of the VM's
Information Security			IS-17.2	Do your data management policies and procedures include a tamper audit or software integrity function for unauthorized access to tenant data?	
Information Security			IS-17.3	Does the virtual machine management infrastructure include a tamper audit or software integrity function to detect changes to the	
				build/configuration of the virtual machine?	
Information Security	Encryption	IS - 18	IS-18.1	Do you have (describe/explain/attach/embed associated documents) a capability to allow creation of unique encryption keys per tenant?	Encryption keys are not unique per tenant.

Information Security			IS-18.2	Do you support (describe/explain/attach/embed associated documents) tenant generated encryption keys or permit tenants to encrypt data to an identity without access to a public key certificate. (E.g. Identity based encryption)?	No. This is not practical in a multi-tenant environment with shared data stores.
Information Security	Encryption Key Management	IS-19.9	IS-19.1	Do you encrypt tenant data at rest (on disk/storage) within your environment?	Yes.
Information Security			IS-19.2	Do you leverage encryption to protect data and virtual machine images during transport across and between networks and hypervisor instances?	Data at rest and in
Information Security			IS-19.3	Do you have (describe/explain/attach/embed associated documents) a capability to manage encryption keys on behalf of tenants?	transit are
Information Security			IS-19.4	Do you maintain key management procedures?	encrypt ed. Yes. Yes.
Information Security	Vulnerability / Patch Management	IS-20	IS-21.1	Do you conduct (describe/explain/attach/embed associated documents) network-layer vulnerability scans regularly as prescribed by industry best practices?	Yes. This is integrated into Accela Information Technology and Security Standards. Yes. This is conducted on a quarterly basis.

Information Security			IS-20.2	Do you conduct (describe/explain/attach/embed associated documents) application-layer vulnerability scans regularly as	Yes. This is conducted on an annual basis or as deemed necessary due to significant changes.
				prescribed by industry best practices?	
Information Security			IS-20.3	Do you conduct (describe/explain/attach/embed associated documents) local operating system-layer vulnerability scans regularly as prescribed by industry best practices?	Yes. This is conducted on a quarterly basis.
Information Security			IS-20.4	Will you make the results of vulnerability scans available to tenants at their request?	High-level summary of findings, along with general remediation plans may be made available to tenants upon request. Detailed vulnerability scan and penetration test results are general not available due to the sensitive nature of this information.
Information Security			IS-20.5	Do you have (describe/explain/attach/embed associated documents) a capability to rapidly patch vulnerabilities across all of your computing devices, applications, and systems?	Yes. This is systematically performed on a regular basis.
Information Security			IS-20.6	Will you provide your risk-based systems patching timeframes to your tenants upon request?	Yes.
Information Security	Antivirus / Malicious Software	IS-21	IS-21.1	Do you have (describe/explain/attach/embed associated documents) anti-malware programs installed on all systems that support your cloud service offerings?	Yes. These programs are updated on a regular basis.

Information Security			IS-21.2	Do you ensure that security threat detection systems that use signatures, lists, or behavioral patterns are updated across all infrastructure components within industry accepted timeframes?	Accela has IDS capabilities deployed in a limited fashion. Accela's IDS capabilities is currently under review. The goal is to define an enterprise strategy across all data centers
Information Security	Incident Management	IS-22	IS-22.1	Do you have (describe/explain/attach/embed associated documents) a documented security incident response plan?	Yes. Accela enforces policies and standards that align with NIST 800-53.
Information Security			IS-22.2	Do you integrate customized tenant requirements into your security incident response plans?	Accela is committed to continuous improvement of the IR processes and welcomes client feedback that may be incorporated as enterprise standards.
Information Security			IS-22.3	Do you publish a roles and responsibilities document specifying what you vs. your tenants are responsible for during security incidents?	Tenant responsibilities are not included yet. This will be considered in the roles and responsibilities section of a future version of the IR policy.
Information Security	Incident Reporting	IS-23	IS-23.1	Does your security information and event management (SIEM) system merge data sources (app logs, firewall logs, IDS logs, physical access logs, etc.) for granular analysis and alerting?	Yes. BI tools are used against the merged results to conduct analysis and generate trending data. Yes.
Information Security			IS-23.2	Does your logging and monitoring framework allow isolation of an incident to specific tenants?	

Information Security	Incident Response Legal Preparation	IS-24	IS-24.1	Does your incident response plan comply with industry standards for legally admissible chain-of-custody management processes & controls?	Yes. Accela enforces policies and standards that align with NIST 800-53, Incident Response (IR) security controls. Yes. Yes. Point in time archives may be completed for this purpose. Yes. Tenant data separation is accomplished through the use of logical controls.
Information Security			IS-24.2	Does your incident response capability include the use of legally admissible forensic data collection and analysis techniques?	
Information Security			IS-24.3	Are you capable of supporting litigation holds (freeze of data from a specific point in time) for a specific tenant without freezing other tenant data?	
Information Security			IS-24.4	Do you enforce and attest to tenant data separation when producing data in response to legal subpoenas?	
Information Security	Incident Response Metrics	IS-25	IS-25.1	Do you monitor and quantify the types, volumes, and impacts on all information security incidents?	Yes. The IR lifecycle includes, identification, validation, impact analysis and after-incident debriefs. Yes.
Information Security			IS-25.2	Will you share statistical information security incident data with your tenants upon request?	
Information Security	Acceptable Use	IS-26	IS-26.1	Do you provide (describe/explain/attach/embed associated documents) documentation regarding how you may utilize or access tenant data and/or metadata?	Yes. Accela discloses how it uses tenant data. Tenant data is not sold or shared with external entities unless required by law.
Information Security			IS-26.2	Do you collect or create metadata about tenant data usage through the use of inspection technologies (search engines, etc.)?	

Information Security			IS-26.3	Do you allow (describe/explain/attach/embed associated documents) tenants to opt-out of having their data/metadata accessed via inspection technologies?	<p>Yes. This is mainly done to help with product and feature roadmaps.</p> <p>No, since this is performed strictly for Accela-internal use and to help improve the product.</p>
Information Security	Asset Returns	IS-27	IS-27.1	Are systems in place to monitor for privacy breaches and notify tenants expeditiously if a privacy event may have affected their data?	Yes.
Information Security			IS-27.2	Is your Privacy Policy aligned with industry standards? What standards are they aligned to?	Yes. Nist 800-53 security controls.
Information Security	e-commerce Transactions	IS-28	IS-28.1	Do you provide (describe/explain/attach/embed associated documents) open encryption methodologies (3.4ES, AES, etc.) to tenants in order for them to protect their data if it is required to traverse public networks? (ex. the Internet)	Yes.
Information Security			IS-28.2	Do you utilize open encryption methodologies any time your infrastructure components need to communicate to each other over public networks (ex. Internet-based replication of data from one environment to another)?	Yes.

Information Security	Audit Tools Access	IS-29	IS-29.1	Do you restrict, log, and monitor access to your information security management systems? (Ex. Hypervisors, firewalls, vulnerability scanners, network sniffers, APIs, etc.)	Yes. Only select roles are granted access to these components.
Information Security	Diagnostic / Configuration Ports Access	IS-30	IS-30.1	Do you utilize dedicated secure networks to provide management access to your cloud service infrastructure?	Yes.
Information Security	Network / Infrastructure Services	IS-31	IS-31.1	Do you collect capacity and utilization data for all relevant components of your cloud service offering?	Yes. Capacity planning and utilization reports are internally monitored to provide clients with adequate support and resources. This information may be made available upon request.
Information Security			IS-31.2	Do you provide (describe/explain/attach/embed associated documents) tenants with capacity planning and utilization reports?	

Information Security	Portable / Mobile Devices	IS-32	IS-32.1	Are policies (describe/explain/attach/embed associated documents) and procedures established and measures implemented to strictly limit access to sensitive data from portable and mobile devices, such as laptops, cell phones, and personal digital assistants (PDAs), which are generally higher-risk than non-portable devices (e.g., desktop computers at the provider organization's facilities)?	Yes. Accela enforces policies and standards that align with NIST 800-53.
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Information Security	Source Code Access Restriction	IS-33	IS-33.1	Are controls in place to prevent unauthorized access to your application, program or object source code, and assure it is restricted to authorized personnel only?	Yes. Access control is role based and carefully monitored. Access rights are audited on a periodic basis.
Information Security			IS-33.2	Are controls in place to prevent unauthorized access to tenant application, program or object source code, and assure it is restricted to authorized personnel only?	
Information Security	Utility Programs Access	IS-34	IS-34.1	Are utilities that can significantly manage virtualized partitions (ex. shutdown, clone, etc.) appropriately restricted and monitored?	Yes. Access control is role based and carefully monitored. Access rights are audited on a periodic basis. The virtual infrastructure is not a component of the presentation layer. ESXi firewalls are in place with limited open ports. ESXi 6 hardening methods are generally used which serve as preventative measures against threats such as "blue pill".
Information Security			IS-34.2	Do you have (describe/explain/attach/embed associated documents) a capability to detect attacks which target the virtual infrastructure directly (ex. shimming, Blue Pill, Hyper jumping, etc.)?	
Information Security			IS-34.3	Are attacks that target the virtual infrastructure prevented with technical controls?	Yes.
Legal					

Legal	Nondisclosure Agreements	LG-01	LG-01.1	Are requirements for non-disclosure or confidentiality agreements reflecting the organization's needs for the protection of data and operational details identified, documented and reviewed at planned intervals?	Yes, these items are documented and reviewed on planned intervals.
Legal	Third Party Agreements	LG-02	LG-02.1	Do you select and monitor outsourced providers to verify that they comply with laws in the country where the data is processed and stored and transmitted?	Legal places requirements in contracts that are passed through for these types of data issues, and our provides comply. Yes, we address for Canada and the United States. The Mideast and SOPAC are managed separately. Yes, legal reviews.
Legal			LG-02.2	Do you select and monitor outsourced providers in compliance with laws in the country where the data originates?	
Legal			LG-02.3	Does legal counsel review all third party agreements?	
Operations Management					
Operations Management	Policy	OP-01	OP-01.1	Are policies (describe/explain/attach/embed associated documents) and procedures established and made available for all personnel to adequately support services operations roles?	Yes. Policies and standards are periodically reviewed with personnel and are also made available post-review.

Operations Management	Documentation	OP-02	OP-02.1	Are Information system documentation (e.g., administrator and user guides, architecture diagrams, etc.) made available to authorized personnel to ensure configuring, installing, and operating the information system is completed and performed correctly?	Yes. System documentation is periodically reviewed with personnel and are also made available post-review. Security baselines have been established and incorporated into Information Technology and Security standards.
Operations Management	Capacity / Resource Planning	OP-03	OP-03.1	Do you provide (describe/explain/attach/embed associated documents) documentation regarding what levels of system (network, storage, memory, I/O, etc.) oversubscription you maintain and under what circumstances/scenarios?	No.
Operations Management			OP-03.2	Do you restrict use of the memory oversubscription capabilities present in the hypervisor?	Yes, however, these limits are usually not reached.
Operations Management	Equipment Maintenance	OP-04	OP-04.1	If using virtual infrastructure, does your cloud solution include hardware independent restore and recovery capabilities?	Yes.
Operations Management			OP-04.2	If using virtual infrastructure, Do you provide (describe/explain/attach/embed associated documents) tenants with a capability to restore a Virtual Machine to a previous state in time?	Tenant data may be restored to particular point in time.
Operations Management			OP-04.3	If using virtual infrastructure, Do you allow (describe/explain/attach/embed associated documents) virtual	No. This is shared environment with multiple tenants.

				machine images to be downloaded and ported to a new cloud provider?	No.
Operations Management			OP-04.4	If using virtual infrastructure, are machine images made available to the customer in a way that would allow the customer to replicate those images in their own off-site storage location?	Yes.
Operations Management			OP-04.5	Does your cloud solution include software / provider independent restore and recovery capabilities?	
Risk Management					
Risk Management	Program	RI-01	RI-01.1	Is your organization insured by a 3rd party for losses?	We do provide downtime credits for unplanned unavailability for Subscription/Hosting per those standard agreements.
Risk Management			RI-01.2	Do your organization's service level agreements provide tenant remuneration for losses they may incur due to outages or losses experienced within your infrastructure?	
Risk Management	Assessments	RI-02	RI-02.1	Are formal risk assessments aligned with the enterprise-wide framework and performed at least annually, or at planned intervals, determining the likelihood and impact of all identified risks, using qualitative and quantitative methods?	Yes. Risk assessments are conducted in tandem with internal, external audits. Yes, but not using formal methods.

Risk Management			RI-02.2	Is the likelihood and impact associated with inherent and residual risk determined independently, considering all risk categories (e.g., audit results, threat and vulnerability analysis, and regulatory compliance)?	
Risk Management	Mitigation / Acceptance	RI-03	RI-03.1	Are risks mitigated to acceptable levels based on company-established criteria in accordance with reasonable resolution time frames?	Yes. In areas where company-wide criteria is not pre-defined, management reviews risks on an as-needed basis. Yes. In areas where company-wide criteria is not pre-defined, management reviews remediation plans and residual risk on an as-needed basis.
		RI-03	RI-03.2	Is remediation conducted at acceptable levels based on company-established criteria in accordance with reasonable time frames?	
Risk Management	Business / Policy Change Impacts	RI-04	RI-04.1	Do risk assessment results include updates to security policies, procedures, standards and controls to ensure they remain relevant and effective?	Risk assessments are evaluation and consequently, a remediation plan is developed and managed to completion. Annual reviews are conducted to maintain relevance with policies and standards.

Risk Management	Third Party Access	RI-05	RI-05.1	Do you provide (describe/explain/attach/embed associated documents) multi-failure disaster recovery capability?	Yes this is included in Accela's Business Continuity Plan (BCP). Accela works closely with service providers during and post incident activity. Yes for infrastructure, critical components and services. Yes, upon request. No, however, the client may be a key stakeholder to validate a declaration of a disaster depending the extent, location and impact of such an event.
			RI-05.2	Do you monitor service continuity with upstream providers in the event of provider failure?	
			RI-05.3	Do you have (describe/explain/attach/embed associated documents) more than one provider for each service you depend on?	
			RI-05.4	Do you provide (describe/explain/attach/embed associated documents) access to operational redundancy and continuity summaries that include the services on which you depend?	
			RI-05.5	Do you provide (describe/explain/attach/embed associated documents) the tenant the ability to declare a disaster?	
			RI-05.6	Do you provide (describe/explain/attach/embed associated documents) a tenant triggered failover option?	No. Failover options are managed by Accela personnel.
			RI-05.7	Do you share your business continuity and redundancy plans with your tenants?	Yes upon request.

Release Management					
Release Management	New Development / Acquisition	RM-01	RM-01.1	Are policies (describe/explain/attach/embed associated documents) and procedures established for management authorization for development or acquisition of new applications, systems, databases, infrastructure, services, operations, and facilities?	Yes. Accela enforces policies and standards that align with NIST 800-53.
Release Management	Production Changes	RM-02	RM-02.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation which describes your production change management procedures and their roles/rights/responsibilities within it?	Yes, upon request
Release Management	Quality Testing	RM-03	RM-03.1	Do you provide (describe/explain/attach/embed associated documents) your tenants with documentation which describes your quality assurance process?	Yes, upon request.
Release Management	Outsourced Development	RM-04	RM-04.1	Do you have (describe/explain/attach/embed associated documents) controls in place to ensure that standards of	Yes. They are available for review upon request.
				quality are being met for all software development?	

Release Management			RM-04.2	Do you have (describe/explain/attach/embed associated documents) controls in place to detect source code security defects for any outsourced software development activities?	Yes. Detailed code walk-throughs, Veracode scanning and internal scanning are part of our security review process.
Release Management	Unauthorized Software Installations	RM-05	RM-05.1	Do you have (describe/explain/attach/embed associated documents) controls in place to restrict and monitor the installation of unauthorized software onto your systems?	Yes. This is governed by policy. Additionally, periodic review of software and system configurations (bi-annual and annual, depending on the subject area).
Resiliency					
Resiliency	Management Program	RS-01	RS-01.1	Are Policy, process and procedures defining business continuity and disaster recovery in place to minimize the impact of a realized risk event and properly communicated to tenants?	Yes. Accela leverages database real-time replication and automated deployment abilities that allow us to recover in a timely fashion. This allows us to recreate an environment in case of a disaster. Documented RTO and RPO are to be finalized by Apr 2019.
Resiliency	Impact Analysis	RS-02	RS-02.1	Do you provide (describe/explain/attach/embed associated documents) tenants with ongoing visibility and reporting into your operational Service Level Agreement (SLA) performance?	Yes. This is available upon request.
Resiliency			RS-02.2	Do you make standards-based information security metrics (CSA, CAMM, etc.) available to your tenants?	

Resiliency			RS-02.3	Do you provide (describe/explain/attach/embed associated documents) customers with ongoing visibility and reporting into your SLA performance?	Yes. This is available upon request.
Resiliency	Business Continuity Planning	RS-03	RS-03.1	Do you provide (describe/explain/attach/embed associated documents) tenants with geographically resilient hosting options?	Yes. Accela has established a DR plan that includes a geographically, separate DR data center.
Resiliency			RS-03.2	Do you provide (describe/explain/attach/embed associated documents) tenants with infrastructure service failover capability to other providers?	Accela manages all infrastructure failover capabilities, including ones associated with services provided by other providers.
Resiliency	Business Continuity Testing	RS-04	RS-04.1	Are business continuity plans subject to test at planned intervals or upon significant organizational or environmental changes to ensure continuing effectiveness?	Yes. Accela tests a variety of plans on an annual basis, including Incident Response and related plans such as BCP and DR.
Resiliency	Environmental Risks	RS-05	RS-05.1	Is physical protection against damage from natural causes and disasters as well as deliberate attacks anticipated, designed and countermeasures applied?	Yes. This is incorporated in Accela's Business Continuity Plan (BCP).
Resiliency	Equipment Location	RS-06	RS-06.1	Are any of your datacenters located in places which have a high probability/occurrence of high- impact environmental risks (floods, tornadoes, earthquakes, hurricanes, etc.)?	No. Accela has taken great care in selecting production and disaster recovery data centers.

Resiliency	Equipment Power Failures	RS-07	RS-07.1	Are Security mechanisms and redundancies implemented to protect equipment from utility service outages (e.g., power failures, network disruptions, etc.)?	Yes. Comprehensive power redundancy is in place.
Resiliency	Power / Telecommunications	RS-08	RS-08.1	Do you provide (describe/explain/attach/embed associated documents) tenants with documentation showing the transport route of their data between your systems?	Not usually, however, this is an area that may be revisited especially in the context of a related incident. All network traffic is constrained to continental United States. No. All network traffic is constrained to continental United States.
Resiliency			RS-08.2	Can Tenants define how their data is transported and through which legal jurisdiction?	
Security Architecture					
Security Architecture	Customer Access Requirements	SA-01	SA-01.1	Are all identified security, contractual and regulatory requirements for customer access contractually addressed and remediated prior to granting customers access to data, assets and information systems?	Yes.
Security Architecture	User ID Credentials	SA-02	SA-02.1	Do you support (describe/explain/attach/embed associated documents) use of, or integration with, existing customer- based Single Sign On (SSO) solutions to your service?	Not at the moment, however, this is actively being pursued and it is on the product roadmap.
Security Architecture			SA-02.2	Do you use open standards to delegate authentication capabilities to your tenants?	
Security Architecture			SA-02.3	Do you support (describe/explain/attach/embed associated documents) identity federation standards (SAML, SPML, WS-Federation, etc.) as a means of authenticating/authorizing users?	

Security Architecture			SA-02.4	Do you have (describe/explain/attach/embed associated documents) a Policy Enforcement Point capability (ex.	actively being pursued and it is on the product roadmap. Accela uses Active Directory (AD).
				XACML) to enforce regional legal and policy constraints on user access?	Although role-based identity management is in place, it is not done systematically, yet. Not at the moment, however, this is actively being pursued and it is on the product roadmap.
Security Architecture			SA-02.5	Do you have (describe/explain/attach/embed associated documents) an identity management system in place which enables both role-based and context-based entitlement to data (enables classification of data for a tenant)?	Agency administrators can restrict users in the system to groups which have different levels of functionality and access.
Security Architecture			SA-02.6	Do you provide (describe/explain/attach/embed associated documents) tenants with strong (multifactor) authentication options (digital certs, tokens, biometric, etc.) for user access?	Not in the hosted environment.
Security Architecture			SA-02.7	Do you allow (describe/explain/attach/embed associated documents) tenants to use third party identity assurance services?	We don't have any in the hosted environment using this. SSO adapters in an on-premise setting may provide that depending on the use case.

Security Architecture	Data Security / Integrity	SA-03	SA-03.1	Is your Data Security Architecture designed using an industry standard? (ex. CDSA, MULITSAFE, CSA Trusted Cloud Architectural Standard, FedRAMP CAESARS)	We are working towards a FISMA (NIST 800-53) compliancy audit date 10/16.
Security Architecture	Application Security	SA-04	SA-04.1	Do you utilize industry standards (Build Security in Maturity Model [BSIMM] Benchmarks, Open Group ACS Trusted Technology Provider Framework, NIST, etc.) to build-in security for your Systems/Software Development Lifecycle (SDLC)?	Accela is working towards OWASP ASVS and leveraging Veracode and OWASP scanning in our build processes. Veracode is used during the development process to detect issues.
Security Architecture			SA-04.2	Do you utilize an automated source- code analysis tool to detect code security defects prior to production?	
Security Architecture			SA-04.3	Do you verify that all of your software suppliers adhere to industry standards for Systems/Software Development Lifecycle (SDLC) security?	
Security Architecture	Data Integrity	SA-05	SA-05.1	Are data input and output integrity routines (i.e., reconciliation and edit checks) implemented for application interfaces and databases to prevent manual or systematic processing errors or corruption of data?	There is basic data input validation. Additionally, administrators can create custom expressions for other types of extended validation.
Security Architecture	Production / Nonproduction Environments	SA-06	SA-06.1	For your SaaS or PaaS offering, Do you provide (describe/explain/attach/embed associated documents) tenants with separate environments for production and test processes?	Yes, each tenant gets two other environments (support, test) along with production.

Security Architecture			SA-06.2	For your IaaS offering, Do you provide (describe/explain/attach/embed associated documents) tenants with guidance on how to create suitable production and test environments?	Yes, our Customer Support and Services teams can help with these.
Security Architecture	Remote User Multifactor Authentication	SA-07	SA-07.1	Is multi-factor authentication required for all remote user access?	Yes
Security Architecture	Network Security	SA-08	SA-08.1	For your IaaS offering, Do you provide (describe/explain/attach/embed associated documents) customers with guidance on how to create a layered security architecture equivalence using your virtualized solution?	We can provide information on network communication for all endpoints such that the architecture can be built.
Security Architecture	Segmentation	SA-09	SA-09.1	Are system and network environments logically separated to ensure Business and customer security requirements?	Yes
Security Architecture			SA-09.2	Are system and network environments logically separated to ensure compliance with legislative, regulatory, and contractual requirements?	Yes
Security Architecture			SA-09.3	Are system and network environments logically separated to ensure separation of production and non-production environments?	Yes, production and non-production environments use their own independent resources.

Security Architecture			SA-09.4	Are system and network environments logically separated to ensure protection and isolation of sensitive data?	Yes
Security Architecture	Wireless Security	SA-10	SA-10.1	Are policies (describe/explain/attach/embed associated documents), procedures established, and mechanisms implemented to protect network environment perimeter and configured to restrict unauthorized traffic?	Yes
Security Architecture			SA-10.2	Are policies (describe/explain/attach/embed associated documents) and procedures established and mechanisms implemented to ensure proper security settings enabled with strong encryption for authentication and transmission, replacing vendor default settings? (e.g., encryption keys, passwords, SNMP community strings, etc.)	Yes
Security Architecture			SA-10.3	Are policies (describe/explain/attach/embed associated documents) and procedures established and mechanisms implemented to protect network environments and detect the presence of unauthorized (rogue)	
				network devices for a timely disconnect from the network?	

Security Architecture	Shared Networks	SA-11	SA-11.1	Is access to systems with shared network infrastructure restricted to authorized personnel in accordance with security policies, procedures and standards? Networks shared with external entities shall have a documented plan detailing the compensating controls used to separate network traffic between organizations. Provide information about your plan.	Yes
Security Architecture	Clock Synchronization	SA-12	SA-12.1	Do you utilize a synchronized time- service protocol (ex. NTP) to ensure all systems have a common time reference?	Yes
Security Architecture	Equipment Identification	SA-13	SA-13.1	Is automated equipment identification used as a method of connection authentication to validate connection authentication integrity based on known equipment location?	No, equipment is not identified in an automated fashion.
Security Architecture	Audit Logging / Intrusion Detection	SA-14	SA-14.1	Are file integrity (host) and network intrusion detection (IDS) tools implemented to help facilitate timely detection, investigation by root cause analysis and response to incidents?	Yes
Security Architecture			SA-14.2	Is Physical and logical user access to audit logs restricted to authorized personnel?	Yes
Security Architecture			SA-14.3	Can you provide (describe/explain/attach/embed associated documents) evidence that due diligence mapping of regulations and standards to your	Yes, Third party audited SSAE 16 SOC 2 reports to be provided under NDA annually.
				controls/architecture/processes has been done?	

Security Architecture	Mobile Code	SA-15	SA-15.1	Is mobile code authorized before its installation and use? Is the code configuration checked to ensure that the authorized mobile code operates according to a clearly defined security policy?	Yes
Security Architecture			SA-15.2	Is all unauthorized mobile code prevented from executing?	Yes

Exhibit G
Signed Order Form



2633 Camino Ramon, Suite 500
San Ramon, CA 94583

Proposed by: Ron Schlitzkus
Contact Phone: (503) 820-6287
Contact Email: rschlitzkus@accela.com
Valid Through: 11/16/2018
Currency: USD

Order Form

Address Information

Bill To:
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Ship To:
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Billing Contact: Gene Garces
Billing Phone: (650) 330-6657
Billing Email Address: ggarces@menlopark.org

Services

Service	Start Date	End Date	Order Term (months)	Unit Price	Quantity	Total Price
Accela Civic Platform Silver - Subscription User	11/16/2018	11/15/2019	12	\$197.10	10	\$23,652.00
Accela Civic Platform Silver - Subscription User	2/16/2019	11/15/2019	9	\$197.10	15	\$26,608.50
Accela Civic Platform Silver - Subscription User	5/16/2019	11/15/2019	6	\$197.10	15	\$17,739.00
Accela Citizen Access - Subscription Population Population Under 50K	11/16/2018	11/15/2019	12	\$0.00	1	\$0.00
Total						\$67,999.50

Service	Start Date	End Date	Order Term (months)	Unit Price	Quantity	Total Price
Accela Civic Platform Silver - Subscription User	11/16/2019	11/15/2020	12	\$203.01	40	\$97,444.80
Accela Citizen Access - Subscription Population Population Under 50K	11/16/2019	11/15/2020	12	\$0.00	1	\$0.00
Total						\$97,444.80

Accela Quote ID: Q-17608

Service	Start Date	End Date	Order Term (months)	Unit Price	Quantity	Total Price
Accela Civic Platform Silver - Subscription User	11/16/2020	11/15/2021	12	\$209.10	40	\$100,368.00
Accela Citizen Access - Subscription Population Under 50K	11/16/2020	11/15/2021	12	\$0.00	1	\$0.00
Total						\$100,368.00

Service	Start Date	End Date	Order Term (months)	Unit Price	Quantity	Total Price
Accela Civic Platform Silver - Subscription User	11/16/2021	11/15/2022	12	\$215.37	40	\$103,377.60
Accela Citizen Access - Subscription Population Under 50K	11/16/2021	11/15/2022	12	\$0.00	1	\$0.00
Total						\$103,377.60

Service	Start Date	End Date	Order Term (months)	Unit Price	Quantity	Total Price
Accela Civic Platform Silver - Subscription User	11/16/2022	11/15/2023	12	\$221.83	40	\$106,478.40
Accela Citizen Access - Subscription Population Under 50K	11/16/2022	11/15/2023	12	\$0.00	1	\$0.00
Total						\$106,478.40

Annual Pricing Summary

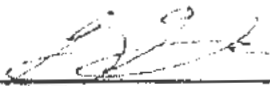
Fees	Total Price
11/16/2018 – 11/15/2019	\$67,999.50
11/16/2019 – 11/15/2020	\$97,444.80
11/16/2020 – 11/15/2021	\$100,368.00
11/16/2021 – 11/15/2022	\$103,377.60
11/16/2022 – 11/15/2023	\$106,478.40
Total	\$475,668.30

Accela Quote ID: Q-17608

Additional Terms

1. No additional or conflicting terms or conditions stated in Customer's order documentation, including purchase orders, will be incorporated into or form any part of this Order Form or the governing agreement, and all such terms or conditions will be null.
2. All Software Licenses, Maintenance, and Subscription purchases are non-cancelable and non-refundable.
3. If this Order Form is executed and/or returned to Accela by Customer after the Order State Date above, Accela may adjust the Order Start Date and Order End Date without increasing the total price based on the date Accela activates the products and provided that the total term length does not change.

Customer: CITY OF MENLO PARK (Name)

Signature 

Name GENE GARCIA

Business Title INFORMATION TECHNOLOGY MANAGER

Date 11/13/2018

ACCELA:



DAVID KHAN

SVP ACCOUNTING & CORP CONTROLLER

11/15/2018



Accela Quote ID: Q-17608



STAFF REPORT

City Council Meeting Date: 10/10/2023
Staff Report Number: 23-233-CC

Consent Calendar: **Approve the resolution to authorize the city manager to execute all documents necessary to complete the acquisition of 975 Florence Ln., Unit 8, Menlo Park, CA 94025 and approve the appropriation of below market rate housing funds not to exceed \$408,949 to purchase and retain the property in the below market rate housing program**

Recommendation

Staff recommends the City Council;

1. Approve the resolution (Attachment A) authorizing the city manager to execute a Purchase and Sale Agreement (PSA) with Florence Lane Ventures LLC for acquisition of 975 Florence Ln., Unit 8, Menlo Park, CA 94025 (Attachment B) and authorize the city manager and city attorney to make modifications to the PSA to conclude negotiations and finalize the sale of the residential unit.
2. Approve the appropriation of below market rate (BMR) housing funds not to exceed \$408,949 to purchase and retain 975 Florence Ln., Unit 8, a condominium unit, and thereafter sell the unit to an income-qualifying household.

Policy Issues

In order to preserve the property as a deed-restricted ownership, affordable housing unit, staff recommends the City purchase the property located at 975 Florence Ln., Unit 8. The BMR program was created to facilitate affordable housing opportunities for extremely low, very low and moderate-income households. BMR ownership units are especially important since they provide a long-term housing solution in a safe and affordable unit, and the opportunity to build equity, and stability in the community.

Background

On July 16, 2019, the City Council approved a project at 975 Florence Ln. to develop eight condominium units with the requirement that one unit be set aside as a BMR unit. The BMR unit is a one bedroom, one bathroom unit designated for a moderate-income household. The BMR agreement was executed Nov. 25, 2019, designating Unit 8 as the BMR unit. The property owner acknowledged the sales price of \$408,949 for the BMR unit established by the City in a letter dated Oct. 24, 2022. City staff certified Unit 8 as meeting the provisions of the BMR agreement and Guidelines in a letter to the owner dated Feb. 17.

Per the City's BMR Guidelines, the City must obtain a qualified buyer or offer to purchase the BMR Unit within six months from the date of the Certifying letter (Aug. 17). Before initiating the sales process, the city attorney's office sent a letter to the owner outlining the BMR sales process and timeline. Shortly after, HouseKeys, Inc., the City's BMR administrator at the time, began marketing the unit. Through the buyer selection process, a qualified homebuyer was identified. In July 2023, a purchase agreement was extended to the buyer. Concurrently, understanding that the six-month deadline was nearing, the city attorney's office

requested a 30-day extension to Sept. 18, which was approved by the owner's attorney. A revised purchase agreement was circulated Aug. 16 and signed by the buyer Aug. 23. That same day, the city attorney's office requested another extension to the six month deadline to Oct. 18. This extension was also approved by the owner's attorney.

On Aug. 31, the owner signed the purchase agreement but with two additional amendments. The first amendment increased the deposit amount and the other amendment was to require that the loan close by Sept. 18, negating the previously agreed upon Oct. 18 deadline. The buyer agreed to the first amendment, however meeting Sept. 18 deadline was problematic. Typically, it takes about four weeks to close a loan and to close a loan in less than three weeks is challenging. On Sept. 7, because of the uncertainties of the closing date, the owner decided to terminate negotiations and elected to have the City purchase the BMR unit, as outlined in the BMR agreement.

The City Council met in closed session Sept. 12 to discuss the potential purchase of the unit.

Analysis

Menlo Park's BMR Guidelines provide that within 180 days of the sales price for an ownership BMR unit being set, the sale of such BMR unit shall close (See Guidelines, sec. 11.2.) The Guidelines further provide that the property owner "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 no 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." (See Guidelines, sec. 9.1.16.)

In order to ensure the Property remains deed restricted affordable, the City has offered to purchase the property for the established sales price of \$408,949. The BMR housing fund would be used to purchase the unit. Upon sale of the BMR unit to an eligible buyer, the BMR housing fund would be reimbursed. The PSA (Attachment B) before the City Council reflects the City's purchase offer and is based on the California Association of Realtor's Purchase Agreement and Joint Escrow Instructions. The PSA incorporates a BMR Housing Agreement which deed restricts the Property. Staff recommends the City Council authorize the city manager and city attorney to modify the PSA in order to conclude negotiations with property owner.

Impact on City Resources

Funds to purchase the BMR unit for \$408,949 would come from the BMR Housing Fund. The City will recoup these funds in the future as it will sell the unit to a qualified BMR household minus any closing and transactional costs of the sale. Those costs will be paid from the BMR Housing Fund.

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 No. XXXX
- B. PSA for 975 Florence Ln., Unit 8
 - a. Exhibit A: Grant Deed
 - b. Exhibit B: Performance Deed of Trust
 - c. Exhibit C: BMR Housing Agreement
 - i. Exhibit A: Property Description
 - ii. Exhibit B: Property (Unit 8) Location
 - iii. Exhibit C: Insurance Requirements
 - iv. Exhibit D: Resale Restriction Agreement

Report prepared by:
Tim Wong, Housing Manager

Report reviewed by:
Nira Doherty, City Attorney
Deanna Chow, Assistant Community Development Director

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO ACCEPT THE GRANT DEED
FOR 975 FLORENCE LANE, UNIT 8, EXECUTE ALL DOCUMENTS
NECESSARY TO COMPLETE THE PURCHASE AND APPROVE THE
APPROPRIATION OF UP TO \$408,949 FROM THE BELOW MARKET
RATE (BMR) HOUSING FUND TO PURCHASE AND RETAIN THE
PROPERTY IN THE BMR HOUSING PROGRAM**

WHEREAS, on October 10, 2023 the City Council for the City of Menlo Park allocates BMR housing funds not to exceed \$408,949 to purchase and retain 975 Florence Lane, Unit 8 [APN 118-090-080] (hereinafter the "Property");

WHEREAS, on August 6, 2002 the City entered into a below market rate (BMR) agreement and deed restriction regarding resale controls (hereinafter the "Agreement") with a qualified BMR homeowner (hereinafter the "Owner"), which provides that prior to a sale of the Property the Owner shall issue to the City a notice of intent to transfer the property and the City shall have 60 days to exercise a right of first refusal to accept Owner's offer to sell the Property;

WHEREAS, on the September 7, 2023 the Owner provided City a notice that it was his desire to have the City exercise its right of first refusal and purchase the property;

WHEREAS, the need to facilitate affordable homeownership opportunities for low and moderate-income households remains a policy and priority in Menlo Park; and

WHEREAS, the BMR Program Guidelines allows the City of Menlo Park to purchase and preserve real estate property as an eligible use of the BMR Housing Fund; and

WHEREAS, the City of Menlo Park affirms the City's commitment to providing affordable homeownership units to lower income households;

WHEREAS, in order to ensure the Property remains within the City's BMR unit inventory, the City wishes to exercise its right of first refusal and acquire the Property from Owner.

NOW, THEREFORE, BE IT RESOLVED, by the Menlo Park City Council that: (a) authorizes the City Manager to exercise a right of first refusal on behalf of the City and accept the grant deed for 975 Florence Lane, Unit 8 and to execute all documents necessary to complete the purchase, including but not limited to a real estate purchase contract, escrow instructions and closing documents; and (b) approve the appropriation of below market rate (BMR) housing funds not to exceed \$408,949 to purchase and retain 975 Florence Lane, Unit 8, a condominium unit, and thereafter sell the unit to an income-qualifying household in accordance with Menlo Park Municipal Code Ch. 16.96 and the City's BMR Program Guidelines, and

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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 tenth day of October, 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 October, 2023.

Judi A. Herren, City Clerk

**RESIDENTIAL PURCHASE AGREEMENT
AND ESCROW INSTRUCTIONS**

(Condominium Project)

FLORENCE LANE

4888-9991-5906 v3

03/19/21

-1-

T:\WPWIN60\PROJECTS\Florence Lane\Purchase Agreement[03 19 21].doc

Initials:

Buyer _____

Seller _____

**RESIDENTIAL PURCHASE AGREEMENT
AND ESCROW INSTRUCTIONS**

FLORENCE LANE

This Purchase Agreement and Escrow Instructions (the "Agreement") is entered into on the ____ day of _____, 2023, by and between the following parties and with regard to the Property herein described, which Property is part of a condominium Common Interest Development, at times referred to herein as the "Project."

1. Parties; Property Description:

Buyer(s): City of Menlo Park
Buyer(s) Address: 701 Laurel Street
Menlo Park, CA 94025

Buyer(s) Tel. No(s): [\(650\) 330-6600](tel:6503306600)

Seller: Florence Lane Ventures, LLC,
a California limited liability company
Seller(s) Address: 152 Nevada Street
Redwood City, CA 94062-2134
Seller(s) Tel. No(s): (650) 533-5800

Seller shall sell to Buyer and Buyer shall buy from Seller the following property (the "Property") with a street address of 975 Florence Lane, Menlo Park, CA, the legal description of which is the following: A condominium consisting of Unit 8 (the "Unit"), as shown on that certain Condominium Plan ("Plan"), attached as Exhibit "A" to the Declaration entitled "Florence Lane Enabling Declaration Establishing A Plan For Condominium Ownership" recorded in the Official Records of San Mateo County, State of California, on the 5th day of October 2020, Instrument No. 2020-106317, as amended by "First Amendment to Florence Lane Enabling Declaration Establishing a Plan for Condominium Ownership" recorded in the Official Records of San Mateo County, State of California, on the 10th day of August 2023, Series No. 2023-038500("Declaration"). Title shall include 1/8th interest in the Common Area as described in the Plan and Declaration, subject to all easements, dedications, and rights of way of record. The Property is situated within the real property more particularly described in the Subdivision Map entitled: "975 Florence Lane", recorded on the 17th day of July 2020, Book 142 of Maps, pages 83-84, San Mateo County Records ("Map"). The Unit shall include the following exclusive use common areas as described in the Declaration and in the Plan as an appurtenance to said Unit:

Parking Space shown on the Plan as "P-5";
Deck designated "D-8" on the Plan.

2. Seller Representations and Warranties. Seller represents and warrants that:

- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of California. Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and the execution, delivery and performance of this Agreement on the part of Seller have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement by Seller.
- (b) The entry by Seller into this Agreement and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Property to which Seller is a party or by which it is bound.
- (c) There are no agreements affecting the right to possession of the Property.

- (d) Neither Seller nor any entity or person that owns or controls Seller is bankrupt or insolvent under any applicable Federal or state standard, has filed for protection or relief under any applicable bankruptcy or creditor protection statute, or has been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. No general assignment for the benefit of creditors has been made by Seller and no trustee or receiver of Seller's property has been appointed. Seller is not entering into the transactions described in this Agreement intending to defraud any creditor or to prefer the rights of one creditor to any other.

3. Buyer Representations and Warranties:

- (a) Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.
- (b) Buyer represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in any breach of the terms of, conditions of, or constitute a default under, any instrument or obligation by which Buyer is bound, or violate any order, writ, injunction or decree of any court in any litigation to which Buyer is a party.
- (c) Buyer represents and warrants that each person executing this Agreement is legally competent and is duly authorized so as to fully and legally bind Buyer.

4. Purchase Price: The Purchase Price of the Property, with all improvements to be installed or constructed thereon by Seller shall be \$408,949.00. The Purchase Price will be paid as follows:

(a) Initial Deposit:	\$12,268.47
(b) Price of Optional Extras or Upgrades: (as of the execution date)	\$0.00
(c) Loan Proceeds (if applicable)	
(d) Remaining Cash Down Payment Due at Closing	\$396,680.53
TOTAL:	\$408,949.00

5. Deposits: Buyer hereby delivers to Seller the Initial Deposit indicated in paragraph 4(a), which shall be deposited with Fidelity National Title Group ("Escrow Holder"). In the event Seller does not execute its acceptance of this Agreement, Seller shall immediately return to Buyer the Initial Deposit or instruct the Escrow Holder to return the Initial Deposit to Buyer. In the event the Initial Deposit is given to Seller or Escrow Holder in the form of a check, it shall not be considered delivered and any written acceptance by Seller of this Agreement shall not be effective and Escrow shall not be considered open, until such check has cleared and such funds are available on an unrestricted basis.

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Initials:

Buyer _____

Seller _____

6. Financing:

(a) Verification of Cash Payment Sources: Buyer represents to Seller that Buyer has sufficient funds to make the cash payments of the Purchase Price required to close the Escrow. No later than seven (7) days after the date of the acceptance of this Agreement, Buyer shall deliver to Seller satisfactory documentation that Buyer has funds available in sufficient amounts to enable Buyer to pay the cash to close the Escrow. Such documentation may include financial statements, federal income tax returns, bank statements, and/or other appropriate documentation that confirms Buyer's unconditional access to the necessary funds to acquire the Property. If Buyer fails to provide such verification within the time required, or if Seller, in the exercise of its reasonable judgement, determines that verification is inadequate, Seller may elect in writing to terminate this Agreement, in which case neither party shall have any further rights or duties, and Buyer's Initial Deposit shall be refunded to Buyer. From time to time after the submittal of the initial documentation and prior to Close of Escrow, Seller may require Buyer to resubmit satisfactory documentation that Buyer has retained sufficient funds to enable Buyer to deliver the cash needed at Close of Escrow. The evidence shall be submitted to Seller no later than seven (7) days after Seller requests the documentation. Buyer's failure to provide such documentation within the time required shall be a breach of this Agreement, and Seller may elect to terminate this Agreement and recover liquidated damages as described in paragraph 17 (if both parties have initialed the liquidated damages provision).

(b) Loan Requirements:

- (i) Loan Contingency:** Buyer's obligations under this Agreement are contingent on Buyer obtaining loan approval as described in paragraph 6(b)(iii). This contingency must be satisfied or waived, or the Agreement shall terminate, all as described in paragraph 6(b)(iii).
- (ii) Loan Application Deadline:** No later than seven (7) days after the date of the acceptance of this Agreement Buyer shall deliver to Seller satisfactory evidence that Buyer has submitted a completed loan application to at least one institutional lender ("Lender"). Buyer's failure to provide evidence within the time required is a breach of this Agreement, and Seller may elect to terminate this Agreement and recover liquidated damages as described in paragraph 17 (if both parties have initialed the liquidated damages provision). Buyer must cooperate with the lender in providing the lender with all required documentation in a timely manner to enable lender to grant or deny the loan approval within the loan approval period described in paragraph 6(b)(iii). Buyer's failure to so cooperate shall be a breach of this Agreement and Seller may elect to terminate this Agreement and recover liquidated damages as described in paragraph 17 (if both parties have initialed the liquidated damages provision).
- (iii) Loan Approval Deadline:** Within thirty (30) days after the date of the acceptance of this Agreement (the "Loan Approval Period"), Buyer shall deliver to Seller written verification of loan approval in the full amount necessary to complete the purchase of the Property. Loan approval means the lender's written approval of the loan to the Buyer in the amount set forth in paragraph 4, above, subject only to such conditions as may be acceptable to Seller. If loan approval is obtained within the time required, it shall be presumed conclusively that Buyer's loan contingency has been permanently satisfied and that Buyer is obligated to

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purchase the Property. The loan contingency shall remain satisfied even if the lender's subsequent appraised value of the Property is less than the Purchase Price. If lender's subsequent appraised value is less than the Purchase Price, the provisions of paragraph 6(b)(v) shall apply. If loan approval is not obtained within the Loan Approval Period, either party may elect to terminate this Agreement within five (5) days after the Loan Approval Period. If neither party elects to terminate this Agreement in writing within thirty-five (35) days after the date of the acceptance of this Agreement, it shall be presumed conclusively that Buyer's loan contingency has been permanently waived and that Buyer is obligated to purchase the Property.

- (iv) **Loan Terms:** Buyer understands that the interest rate and loan fees prevailing at the time of Close of Escrow might be different from the rate or loan fees or costs quoted by the lender at time of loan approval. Buyer is required to purchase the Property in accordance with this Agreement on the terms available from the lender at Close of Escrow. Buyer may not change lenders after receiving loan approval without Seller's written approval. Seller will not withhold such approval unreasonably, but Buyer agrees that Seller is not obligated to grant such approval if it could delay Close of Escrow.
- (v) **Appraisal:** Buyer acknowledges that Seller has no obligation to adjust the Purchase Price or otherwise compensate Buyer if the appraised value of the Property does not equal or exceed the Purchase Price. If the appraised value results in a reduction in the loan amount described in paragraph 4, Buyer shall be obligated to pay the difference in cash at the Close of Escrow.

7. Construction/Failure to Complete:

- (a) **Models and Specifications:** Seller represents that the Residence has been constructed in substantial conformity with the plans and specifications therefore which are on file with the City or the County in which the Property is located. Seller did not build the Residence specifically for Buyer, nor to the precise specifications or design of any model home, plan or brochure. Any model home is displayed for illustrative purposes only and such display shall not constitute an agreement or commitment on the part of Seller to deliver the Property in exact accordance with any such model home. Buyer is purchasing a completed Residence, and Seller is not acting as Buyer's general contractor. Consultation with Buyer with respect to the specifications of the Residence to be built shall not, in any case, be deemed a waiver of Seller's rights to make any such changes or substitutions as Seller in its sole discretion deemed necessary. During the course of construction, Seller may substitute, eliminate or modify materials, appliances and fixtures in the Property from those used in the models or shown in the plans and specifications, provided that such modifications meet with the approval of the appropriate governmental entity or agency having jurisdiction over the construction of the Residence and that the substitute materials, appliances and fixtures are of approximately equal or better quality. None of the appurtenances, furnishings and finishes shown in any model home is included in the Residence unless Buyer and Seller specifically agree in writing that the same are included in the total Purchase Price or added

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as an Optional Item pursuant to paragraph 9. Any changes requested by Buyer will not be made unless Seller agrees in writing.

- (b) **Landscaping:** All grading, fill, planting and/or removal of trees and shrubs, and control of water flow on the Property will be performed in a lawful manner, and consistent with Seller's plans approved by the City, but otherwise will be completed at Seller's sole discretion. As of the Close of Escrow, except as expressly provided in Seller's Limited Warranty, and except as required by California Civil Code Section 896, Seller's responsibility for maintenance of landscaping on the Property, including, without limitation, erosion control, drainage, soil conditions, and conditions of any landscaping and irrigation materials, shall terminate.
- (c) **Completion:** Buyer agrees that recordation of a Notice of Completion and/or the issuance of a Certificate of Occupancy for the Property by the appropriate City or County, or department or agency, shall constitute conclusive evidence of Seller having completed construction of the Property.

8. **Insulation Disclosure:** Insulation will be installed in the Residence in accordance with applicable governmental requirements. Insulation to be installed will be as follows:

<u>Area Insulated</u>	<u>Type of Insulation</u>	<u>Thickness</u>	<u>Manufacturer R-Value of Insulation</u>
Garage Ceilings and Floor	Fiberglass	NA	NA
Exterior Walls of Living Area (excluding garage)	Fiberglass	3.5"	R13
Common Walls (if applicable)	Fiberglass	3.5"	R13
Interior Walls (optional)	Fiberglass	NA	NA
Roofs	Fiberglass	5.5"	R30
Roofs in all areas where ceiling is vaulted	Fiberglass	5.5"	R30

Other areas of the Residence may contain insulation type materials; however, these materials have no influence on the thermal effectiveness of the Residence. Buyer acknowledges and agrees that, notwithstanding the general specifications set forth above, insulation may be of lesser thickness and R-value than indicated in certain areas where the design and/or construction of the Residence do not permit greater thickness. Examples of such locations where the thickness and R-value may vary include locations where the studs are placed in the walls, at corners, and windows where the roof trusses attach to outside walls. These R-values are based upon the

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information provided by the manufacturer and/or installer of the insulation and Seller does not warrant or represent that the R-Values are correct.

9. Options/Upgrades: Seller may offer Buyer various color selections, upgrades, and/or extras on items that may be installed in the Property (collectively the "Optional Items"). Buyer shall notify Seller of Buyer's decision regarding the Optional Items no later than five (5) days after the Optional Items are presented to Buyer. If Buyer fails to notify Seller within the time required, Buyer conclusively shall be considered to have authorized Seller to select the colors, to have accepted the standard items, and to have elected no Optional Items. If Buyer selects any Optional Items as offered by Seller, Buyer immediately shall increase the deposit by the cost of the Optional Items, and Seller shall have no obligation to install Optional Items until this increase has been deposited in Escrow. Buyer may select its own upgrades or extras from third parties but under no circumstances shall any third party perform any labor or deliver or install any goods on the Property prior to the Close of Escrow without the prior written consent of Seller. In granting its consent, Seller may impose such conditions as Seller, in its sole discretion, considers necessary to protect the Property from liens or other rights or remedies of the party performing the labor or providing the goods. Any upgrades or extras that may be installed by third parties are limited to the types of Optional Items offered by Seller. Deposits to Escrow for upgrades or extras shall be paid to Seller at closing. If Buyer defaults, said deposit shall be retained in Escrow.

10. Escrow:

- (a) Opening of Escrow:** An escrow (the "Escrow") shall be opened by Seller with Escrow Holder to consummate the purchase and sale of the Property, within five (5) business days of the acceptance of this Agreement by Seller. The parties agree to execute supplemental or additional Escrow Instructions consistent with this Agreement as may be reasonably required by Escrow Holder. Buyer shall execute promptly all documents and make all Deposits required by Seller, Escrow Holder, Lender or governmental agency having jurisdiction over matters in question. If Buyer fails to perform under this provision, Buyer shall be in material default hereunder, and Seller shall be entitled to terminate this Agreement and the Escrow and retain Buyer's deposit as liquidated damages as provided in paragraph 17 hereof (if both parties have initialed the liquidated damages provision).
- (b) Prorations/Costs:** As of the Close of Escrow, the following shall be pro-rated: cost of any fire and extended coverage insurance paid by Seller, if applicable; and current Homeowners Association assessment, if any. The portion of current property taxes which would otherwise be allocable to the period after the close of Escrow shall not be allocated, as Buyer is exempt from payment of property taxes. Accordingly, Escrow Agent shall pay and charge Seller for that portion of current property taxes and assessments and any penalties and interest thereon allocable to the period prior to the close of Escrow. Escrow Agent shall pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property. Seller shall have the sole right, after Close of Escrow, to apply to the San Mateo County Tax Collector for a refund of any excess property taxes which have been paid by Seller with

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respect to the Property. This refund would apply to the period after Buyer's acquisition of the Property, pursuant to Revenue and Taxation Code Section 5096.7.

The following items shall be paid by Buyer at the Close of Escrow: Title insurance fees; recording costs, Escrow fees, transfer taxes, loan fees, inspection fees.

(c) **Delay Due to Buyer:** In the event Escrow does not close upon the Closing Date provided for in paragraph 10(e) due to Buyer's failure to timely perform its obligations under this Agreement, Buyer acknowledges that Seller will be materially harmed due to additional expenses that will be incurred by Seller as carrying costs for the Property (which include, without limitation, loan interest charges, property taxes and insurance costs). Therefore, in such event, Seller shall have the right to terminate this Agreement and retain Buyer's Deposit as liquidated damages under paragraph 17 (if both parties have initialed the liquidated damages provision); provided, however, Buyer may make a written request to extend the Closing Date by paying Seller's daily carrying costs applicable to the Property during the period of such delay in the amount of \$200 per day ("Extension Payment"), which request may be approved or denied by Seller in its sole and absolute discretion, by written notice to Buyer. In the event Seller approves such request for extension, Buyer shall deposit into Escrow the applicable Extension Payment and shall execute any additional liquidated damages agreement and any extension Escrow Instructions required by Escrow Holder. The payment of such Extension Payment will not constitute a waiver by Seller of any default or breach of the Agreement by Buyer in failing to timely perform its obligations to close the Escrow by the extended Closing Date, and Seller's right to damages set forth in paragraph 17 (if both parties have initialed the liquidated damages provision) shall not be limited by the terms of this paragraph 10(c). Any such Extension Payment made by Buyer shall not be applicable to the Purchase Price and shall be separate consideration to Seller for Seller's agreement to extend the Closing Date.

(d) **Title Insurance:** Buyer shall receive a CLTA policy of title insurance effective as of the Closing Date, insuring title to the Property in Buyer's name free and clear from liens and encumbrances (except those created by Buyer) and subject to the lien of current taxes (not delinquent), the recorded Declaration, and any other easements, reservations, rights, and rights of way of record. To the extent that Buyer is not exempt, all bonds and assessments for the period from and after the Closing Date which are part of or paid with the Property tax bill will be assumed by Buyer. Buyer and Seller agree that if Buyer does not desire that the title insurance be obtained from the title company represented by Escrow Holder, Buyer may designate any other responsible title insurance company, and, if such other insurance company is acceptable to Seller, and to Buyer's lender, such insurance policy will be obtained from the company designated by Buyer. If Buyer fails to so designate an alternate insurance company within five (5) days after Buyer's execution of this Agreement, such failure shall constitute an irrevocable waiver of Buyer's right to designate an alternate insurance company. Buyer's designation of an alternate insurance company shall not affect Seller's right to designate the Escrow Holder, or result in the transfer of the Escrow to some other escrow holder.

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(e) **Close of Escrow:** Escrow shall close on or before sixty (60) days after Escrow opens (the "Closing Date"), unless Buyer and Seller agree to an extension. If Escrow does not close on the Closing Date (or any extended Closing Date) for reasons other than Buyer's default, Seller shall instruct Escrow Holder to return all Deposits to Buyer within fifteen (15) days thereafter and then this Agreement shall be terminated. As used herein the term "Close of Escrow," "Closing Date" or "Closing" shall mean the date the grant deed in the form attached as Exhibit "A" ("Grant Deed") conveying the Property to Buyer is recorded in the Office of the Recorder in the county in which the Property is located.

The foregoing notwithstanding, the Closing shall not occur until the following events have occurred:

- (i) All blanket encumbrances affecting the Property, if any, as defined in Section 11013 of the Business and Professions Code, have been fully released and reconveyed; or the holder of the deed of trust has executed a release agreement per Regulation 2791.1(b)(2)(A), which agreement has been deposited with Escrow Holder, and Buyer has been provided with a policy of title insurance insuring against loss by reason of the deed of trust, and until legal title, or leasehold interest, as applicable, is conveyed to the Buyer;
- (ii) Seller has recorded a Notice of Completion, as defined in Section 8182 of the Civil Code, for the construction of all structures, landscaping and other improvements on the Property, as applicable, to be constructed or installed pursuant to this Agreement or any addenda hereto;
- (iii) The residential structure in which the Buyer's Unit is located has been completed, and the statutory period for recording of any mechanics' liens against the Property (including Buyer's separate interest and undivided interest in the entire Project, as defined in the Declaration) has expired, or Buyer is provided with a policy of title insurance and endorsement insuring Buyer against unrecorded mechanics' liens affecting the Buyer's separate and undivided interests in the entire Project. Such policy of Title Insurance shall be in an amount not less than the cost of the completed improvements or the purchase price of the Property; and,
- (iv) The statutory period for recording of any mechanic's liens against the Property has expired, or Buyer is provided with a policy of title insurance and endorsement insuring Buyer against unrecorded mechanics' liens.
- (v) Buyer has delivered to Escrow Holder a Performance Deed of Trust and Security Agreement, in the form attached hereto as Exhibit "B", signed by Buyer; and
- (vi) Buyer has delivered to Escrow Holder an Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property, in the form attached hereto as Exhibit "C", signed by Buyer and City of Menlo Park.

11. **Title:** Seller shall provide Buyer a copy of the preliminary title report for the Property for review and approval within five (5) days. If Buyer does not notify Escrow Holder in writing on or before thirty (30) days after receipt of the report that Buyer disapproves of the preliminary title report, the

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preliminary title report will be deemed approved. Unless otherwise designated by Buyer to Escrow Holder prior to the Close of Escrow, title shall vest in Buyer as follows: City of Menlo Park, a municipal corporation.

12. Buyer's Investigation of the Property:

(a) Buyer's Inspection Contingency. For a period of thirty (30) days commencing on Seller's acceptance of this Agreement ("Inspection Period"), Buyer shall have the right, at Buyer's expense, to conduct inspections, investigations, tests, surveys and other studies of the Property ("Buyer Investigations"). Buyer's Investigations may include, but shall not be limited to, a general home inspection of the Unit, an inspection of the Unit for lead-based paint and other lead-based paint hazards, an inspection of the Unit and exclusive use common areas for wood destroying pests and organisms, and any other specific inspections of the physical condition of the land and improvements that comprise the Property. On or before the expiration of the Inspection Period, Buyer shall provide Seller with notice of Buyer's acceptance of the condition of the Property or termination of this Agreement. During the Inspection Period, Buyer shall have the right to request repairs of any component of the Property. In the event that Seller agrees to complete the requested repairs, Seller's completion of the repairs shall be a condition to the Close of Escrow and must be completed before the Close of Escrow.

(b) Entry Upon the Property: Buyer acknowledges that entry upon the Property during construction can be dangerous and that hazards may exist which are not observable. Buyer's entry upon the Property shall be solely at Buyer's risk. Buyer must obtain permission from Seller prior to entering the Property and must be accompanied by an authorized representative of Seller, and, if required, wear a hard hat and comply with all safety procedures established by Seller. Buyer hereby waives any and all claims against Seller for injury or loss to person or property arising out of or in connection with, such entry by Buyer or any other person accompanying Buyer or entering at Buyer's direction. Buyer shall indemnify, defend and hold Seller and its officers, employees, contractors, subcontractors and agents harmless from and against any injury, loss, damage or expense to persons or property arising out of, or in connection with, any such entry or Buyer's Investigations. Under no circumstances may any invasive or destructive Buyer Investigations (except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material) be performed without Seller's written consent.

13. Possession and occupancy of the Property shall be delivered to Buyer at the Close of Escrow, and Buyer shall have no right to possession or occupancy prior to the Close of Escrow.

14. Destruction of the Property Prior to Close of Escrow: If the improvements on the Property are destroyed, materially damaged, or found to be materially defective as a result of such damage prior to Close of Escrow, Buyer may terminate this Agreement by written notice delivered to Seller or his or her Broker, and all Deposits will be returned. In the event Buyer does not elect to terminate this Agreement, Buyer shall either (i) be entitled to receive the Property, in its then "as-is" condition, and any insurance proceeds payable on account of the damage or destruction of the

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improvements on the Property, in which event, Buyer shall assume all responsibility for the construction of the Residence and other improvements on the Property; or (ii) complete the purchase of the Property after allowing Seller a reasonable period of time to repair or replace the damaged or destroyed improvements, and waive any and all rights to any insurance proceeds.

- 15. Receipt of Documents:** Buyer has received and has had the opportunity to read, prior to the execution of this Agreement, the California Department of Real Estate's Final Subdivision Public Report for the Property, including the statement entitled "Common Interest Development General Information" that was included as a part of the Final Subdivision Public Report.

Buyer acknowledges receipt of the exhibits, addenda and disclosures listed below which are incorporated into this Agreement by reference herein, and Buyer agrees to be bound by all the terms and provisions set forth therein. Seller may deliver additional addenda or disclosures to Buyer in connection with the sale of the Property, the receipt of which shall be acknowledged in writing by Buyer and thereafter shall be incorporated into the terms of this Agreement:

<u>Document</u>	<u>Buyer's Initials</u>
Enabling Declaration Establishing a Plan for Condominium Ownership (or other title used) (CC&Rs)	_____
Articles of Incorporation of Florence Lane Condominium Association	_____
Bylaws of Florence Lane Condominium Association	_____
Association's Budget (approved by DRE)	_____
Statement from Association regarding any outstanding delinquent assessments and related to charges levied by the Association against the Property to be purchased (if applicable)	_____
Seller's Disclosure and Information Statement.	_____
Escrow Holder's General Instructions.	_____
Natural Hazards Disclosure Statement.	_____
Seller's Limited Warranty.	_____

Buyer agrees to provide copies of all these documents to any subsequent purchasers from Buyer, prior to the transfer of title.

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Buyer's Initials _____ Buyer's Initials _____

- 16. Association Membership and Assessments:** Buyer acknowledges that the Florence Lane Condominium Association has been established for the purpose of operating and maintaining certain portions of the Project and Buyer understands that by purchasing the Property Buyer automatically becomes a member of the Association and is bound to abide by the provisions of the Project legal documents, including those referred to in paragraph 15, and any rules and regulations that may be adopted by the Association. The monthly assessments to be paid to the Association by the Owner of each Unit in the Project are set forth in the approved Project budget. The budget is based upon Seller's best estimates. The budget shall be revised annually.
- 17. Liquidated Damages:** If buyer fails to complete the purchase of the property by reason of a default of buyer, seller shall be released from all obligations to sell the property to buyer, and seller may pursue any remedy that seller may have in law or equity against buyer on account of the default; provided, however, that by placing their initials here (buyer _____) (seller _____) the parties agree that:
- (a) \$12,268.47 (The "liquidated damages amount") representing seller's estimate of the probable cost of taking the property back into inventory, it being agreed that seller's actual damages would be difficult to compute and that said amount of liquidated damages bears a reasonable relationship to seller's probable actual damages in the event of buyer's default, shall constitute liquidated damages payable to seller in the event of a default by buyer; and
 - (b) The payment of such liquidated damages to seller shall constitute the exclusive remedy of seller on account of the default of buyer and shall be in lieu of any other monetary relief to which seller might otherwise be entitled; and
 - (c) The sum stipulated as liquidated damages shall be payable to seller according to the following procedures:
 - (i) If escrow holder has received the deposit, at any time after the date provided herein for the close of escrow, or any extended date for closing, seller shall give written notice to escrow holder and to buyer in the manner prescribed in §116.340 of the Code of Civil Procedure for Service in a Small Claims Action, stating that the buyer is in default and demanding that the escrow holder remit to the seller the liquidated damages amount from the purchase money held by the escrow holder as liquidated damages, unless the buyer gives written objection to the escrow holder within twenty (20) days. If the amount of funds disbursed to seller is less than the agreed amount of liquidated damages, the balance shall be a debt of the buyer to the seller. The buyer shall have twenty (20) days from the date of receipt of the seller's notice and demand in which to give the escrow holder buyer's written objection to disbursement of the purchase money as liquidated damages and instructions to the escrow holder not to so disburse the purchase money.
 - (ii) If seller is holding the deposit in accordance with Paragraph 3, at any time after the date provided herein for the close of escrow, or any extended date for closing, seller

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shall give written notice to buyer in the manner prescribed in §116.340 of the Code of Civil Procedure for Service in a Small Claims Action, stating that the buyer is in default. Seller shall concurrently transfer the deposit to the escrow holder and proceed as provided in (i) above.

- (iii) If buyer gives such written objection and instructions to escrow holder, within 20 days after the receipt of seller's notice and demand, the controversy shall be adjudicated in the superior court of the county where the property is located.
- (iv) If buyer fails to give to escrow holder, within twenty (20) days after receipt of seller's notice and demand, written notice of buyer's objections: (a) escrow holder shall promptly remit the liquidated damages amount to seller; and (b) seller shall be released from any obligation to sell the property to buyer.
- (v) Seller agrees to indemnify and hold escrow holder harmless from any claim arising out of any distributions made by escrow holder in accordance with and pursuant to the provisions of this paragraph.

Note: If both buyer and seller do not initial this paragraph in the spaces provided above, this Paragraph 17 is not operative. The balance of the agreement remains operative.

18. Notices: All notices must be in writing and delivered to the addresses set forth on page 1, above. All notices of default must be sent by certified or registered mail, return receipt requested, or receipt of hand delivery. Notices are deemed received two (2) days after mailing or on the date shown on the receipt for hand delivery. Either party may change its address for the purposes of this paragraph by giving written notice in the manner set forth herein.

Buyer understands and acknowledges that buyer is responsible for advising seller of any change in buyer's address from the address stated in this agreement, and seller shall be entitled to rely upon the address of buyer stated in this agreement unless and until it has been changed by buyer in the manner set forth in this paragraph.

Buyer's Initials _____ Seller's Agent's Initials: _____

19. Warranties and Representations; Construction or Design Disputes:

(a) Disclaimer - Consumer within Products, Warranties Limited to Manufacturers: Buyer acknowledges that Seller makes no warranties, including, without limitation, warranties as to merchantability or fitness, either express or implied, with respect to appliances or other Consumer Products, either attached to or installed in the Residence, and Seller is not responsible for any promise or warranty made by the manufacturers of such products. Seller shall make available to Buyer all written warranties of Consumer Products which may be installed in the Residence as the term "Consumer Products" is defined in the U.S. Code, and in the Federal Trade Commission Rules and Regulations. Buyer agrees to look solely to the manufacturers and not the Seller with respect to warranties on such Consumer Products which include, but are not limited to, the following, as applicable: Furnace; air-

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conditioner; exhaust fan; thermostat; smoke detector; door chime; electric meter; water meter; gas meter; garbage disposal; water heater; dishwasher; range; oven; oven hood; washer; dryer; refrigerator; freezer; microwave oven and other similar items.

(b) **Limited Warranty:** seller will provide buyer with a limited warranty providing: (i) limited warranty for the building components of the residence set forth in California Civil Code Section 900. (this includes the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, counter tops, paint finishes, and trim); and (ii) a warranty of the "functionality standards" as set forth in California Civil Code Sections 895 through 897. Except as specifically set forth in this agreement, and in the limited warranty seller is not making or offering any warranties, express or implied, with respect to the property, the residence, or the project, including, without limitation, any warranties of merchantability, habitability, quality of construction or fitness for a particular purpose. Seller expressly disclaims any warranties other than seller's as stated herein. Notwithstanding anything to the contrary contained in this agreement, buyer acknowledges and agrees, in the event of any post-closing disputes in which it is determined that seller has breached its contractual, statutory, or common law duties to buyer, or has breached the limited warranty, that seller shall be liable only for the damages recoverable under Civil Code Section 944. Under no circumstances shall seller be liable for any other damages, whether special, consequential, indirect, incidental or punitive damages, or damages for emotional distress.

(c) **Customer Care Program and Homeowner/Association Maintenance:** Buyer understands that Buyer is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the Buyer by Seller and by product manufacturers, as well as commonly accepted maintenance practices, as provided in Civil Code Section 907, and that failure of the Buyer to satisfy the obligations may result in invalidation of warranties and provide Seller with a defense to any claim of breach of warranty. Buyer agrees to follow the maintenance requirements set forth in and/or referred to in the covenants, conditions and restrictions, in the limited warranty as supplied by seller at the close of escrow.

Buyer agrees to provide copies of the Limited Warranty to any subsequent purchasers from Buyer, prior to the transfer of title.

Buyer's Initials _____

Buyer's Initials _____

20. **Assignments; Successors and Assigns:** Buyer shall have the right to assign this Agreement to a participant in the City of Menlo Park's Below Market Rate Housing Program with notice to Seller, in which case Seller shall agree to reasonable amendments to this Agreement to remove provisions that are only applicable to Buyer due to its status as a public entity. This Agreement shall bind the heirs, executors, administrators, and successors of the parties, and their assigns (subject to the limitations stated above).

21. **Lease of Residences:** Buyer understands that Seller reserves the right to lease remaining unsold Residences from time to time, pending sale and Close of Escrow of said Residences.

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22. **Contingencies:** Unless Buyer and Seller have executed a written Contingency Addendum, the purchase of the Property is not contingent on the prior sale of other property. Buyer acknowledges and agrees that Seller has no obligation to execute a Contingency Addendum.
23. **Cooperation/Non-Interference:** Buyer shall cooperate with Seller in the process of completing the construction and delivery of the Residence by meeting required deadlines and providing such cooperation as may be reasonably requested by Seller. Buyer shall not interfere with the work in progress in any manner, including, without limitation, by unauthorized visits to the construction site, by directing or attempting to direct, or advise construction personnel on methods of completion or installation, by requesting custom work (other than that agreed to by Buyer and Seller in writing) or by any other activity that would interfere with completion of the home on a timely basis.
24. **Force Majeure Events:** Seller is not responsible for "force majeure events," which means events which are beyond Seller's reasonable control, including, but not limited to, strikes, boycotts, unavailability of materials, labor shortages, delays in receiving materials, governmental interference in the market place, moratoriums, civil riot, insurrection, war, acts of terrorism, foreign military commitments, flood, fire, earthquake, act of God, unusually severe weather, delays or inaction of independent contractors, litigation, or delays caused by conditions imposed on the Project (or any part thereof) by any governmental entity resulting in significantly increased costs or delays.
25. **Interpretation:** Any rule of law (including California Civil Code Section 1654), or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement. Buyer and Seller acknowledge that changes in economic conditions during the Escrow period may cause the terms and conditions not to appear as satisfactory as when the Agreement is signed. Nonetheless, Buyer and Seller agree they are bound to such terms and conditions and agree to take all necessary and appropriate actions to cause Escrow to close in a timely fashion.
26. **Modifications:** All amendments or other modifications of this Agreement must be in writing and signed by the parties hereto.
27. **Time:** Time is of the essence of this Agreement.
28. **Severability:** Should any provision or portion of this Agreement be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions of this Agreement shall remain unaffected and in full force and effect. The parties further agree to replace any such invalid, illegal or unenforceable portion with a valid and enforceable provision which will achieve, to the extent possible, the economic, business or other purposes of the invalid, illegal or unenforceable portion.

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29. **No Waiver:** The waiver by Seller of any term, condition or provision of this Agreement shall not be construed as a waiver of any other term, condition or provision of this Agreement.
30. **Entire Agreement:** This Agreement constitutes the sole and entire agreement between Buyer and Seller for the purchase and sale of the Property, and supersedes all prior agreements, representations or understandings, oral or written. All advertising material and/or prior statements and representations, if any, whether oral or written, are replaced and superseded by this Agreement. The terms of this Agreement may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. No addition or modification of any term or provision of this Agreement shall be effective except in a writing signed by Buyer and Seller. Buyer acknowledges and agrees that Buyer has not and will not rely upon any representation made by Seller or any of its agents, employees or representative concerning the Property or the Project, including, without limitation, the condition or use of the Property or the Project, or the rights or duties of the parties under this Agreement, except as expressly set forth in this Agreement. Any right or duty described herein that by its terms extends beyond the Close of Escrow shall survive the Close of Escrow and remain in full force and effect in accordance with its terms.
31. **Buyer's Offer; Right to Rescind:** Buyer has read and understood the provisions contained herein and offers and agrees to purchase the Property on these terms. Buyer further understands that this Agreement initially is an offer only and will not become a binding contract until accepted by Seller, and is subject to the possible acceptance by Seller of an offer from another Buyer. Buyer grants the undersigned agent the irrevocable right for a period of five (5) days from the date hereto to obtain an acceptance of this offer by Seller. The signature of the sales person receipting for the Initial Deposit is not an acceptance by Seller. A valid acceptance of this offer requires a signature of a representative of Seller authorized to accept Buyer's offer. Buyer has three (3) calendar days from the date Buyer signs this offer to rescind this offer, or if Seller has accepted this offer, to rescind the Agreement (the "Rescission Period"). Buyer may rescind by notifying Seller in writing of Buyer's election to rescind on or before the termination of the Rescission Period (the "Rescission Notice"). If Buyer elects to rescind, the offer shall be rescinded; or if Seller has accepted the offer, the Agreement shall be rescinded, all deposits shall be refunded in full to Buyer and thereafter neither party shall have any further rights or duties hereunder. If Seller fails to receive the Rescission Notice within the Rescission Period, it shall be presumed conclusively that Buyer has elected not to rescind the offer or the Agreement, and that Buyer's right of rescission has terminated. The purpose of the Rescission Period is to provide Buyer with additional time to review the sales documentation provided to Buyer by Seller or Seller's agent and, if desired, to have this Agreement and the sales documentation reviewed by legal counsel of Buyer's choosing.
32. **FIRPTA:** The Foreign Investment and Real Property Tax Act (FIRPTA) requires a buyer purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. Seller agrees to provide Buyer with a certification establishing that no Federal

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income tax is required to be withheld under FIRPTA.

- 33. **Headings; Pronouns:** The headings of this Agreement are for convenience only and do not in any way limit or amplify the terms or provisions of this Agreement. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine or neuter, and to the singular or plural, as the identity of the party or parties may require.
- 34. **Calendar Days:** All periods of time referred to in this Agreement shall include all Saturdays and Sundays and any holidays. In the event the day upon which any action is required to be taken under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.
- 35. **Disclosures:** Buyer acknowledges receipt of the Disclosure and Information Statement from Seller.
- 36. **Notice of Your Supplemental Property Tax Bill:** California property tax law requires the assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes. The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental tax bills directly to the tax collector. If you have any questions regarding this matter, please call your local tax collector's office.
- 37. **Brokers:** Buyer and Seller each represent and warrant that Buyer and Seller have each engaged no broker or finder in connection with this transaction, and each agrees to defend and hold harmless the other from claims by any broker or finder consistent with this representation and warranty.
- 38. **Megan's Law:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.
- 39. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- 40. **Default by Buyer:** Any of the following actions or failures to act by Buyer under this Agreement, without limitation, constitutes a default of the Buyer:
 - Failure to submit a complete loan package (if applicable) on a timely basis.
 - Failure to make Optional Item selections on or before dates required. ***[Delete if no optional***

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section under paragraph 7]

- Failure to comply with all requirements of lender, if any.
- Failure to make any deposit due under this Agreement on a timely basis.
- Any voluntary act of Buyer taken for the purpose of preventing lender from approving Buyer's loan.
- Failure of Buyer to safeguard Buyer's funds so that sufficient funds are available to make all deposits and to close Escrow.
- Any attempt by Buyer to assign its rights in violation of this Agreement, or to attempt to arrange a double escrow.
- Failure to close Escrow on time.

41. Termination: Seller may (but is not required to) terminate this Agreement within thirty (30) days of the occurrence of any of the following:

- (a) Seller determines that Buyer's loan approval does not meet the requirements of this Agreement or was not obtained within the required time, or is conditional or non-binding.
- (b) Default by Buyer as per paragraph 40, above.

Seller will notify Buyer in writing if Seller elects to terminate the Agreement, and, if so, will direct Escrow Holder to return all Deposits to Buyer without any deduction, except for such sums (if any) as may then be subject to a claim for liquidated damages under paragraph 17 (provided both parties have initialed paragraph 17).

42. Seller's Default. In the event the sale of the Property as contemplated hereunder is not consummated due to Seller's default hereunder, Buyer shall be entitled, in addition to any other remedies it may have at law or equity, to enforce specific performance of Seller's obligation to convey the Property to Buyer in accordance with the terms of this Agreement.

43. Venue. The venue for any action shall be the County of San Mateo, California.

44. SB 800 Notices:

- (a) **Notice of SB 800 Adoption:** The California Legislature has enacted Title 7 of Division 2 of the Civil Code, commonly referred to as SB 800 (hereinafter "the Code"), which provides certain standards, requirements and procedures for claims of construction defects in new homes [first sold after January 1, 2003]. Under the Code the builder/seller (hereinafter "Seller") shall elect whether it will adopt the standards and procedures of the Code or provide some alternative standards and procedures in compliance with the Code. Buyer acknowledges receipt of this notice that the Code provides procedures that impact the legal rights of homeowners, and that a copy of Title 7 of Division 2 has been delivered to and

received by Buyer.

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Initials:

Buyer _____

Seller _____

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____
(b) **Notice to Buyer of Adoption of Standards and Procedures.** Buyer is hereby notified that Seller has elected to adopt the standards and procedures set forth in the Code. Chapter 2 of the Code provides certain standards regarding the functionality of the home ("Functionality Standards") and lengths of time for these standards during which the Buyer may pursue repair/redress under the Code (Sections 896 and 897). Buyer is further notified that Seller has also elected to adopt the Pre-Litigation Procedures set forth in Chapter 4 of the Code. In the event of a claim by Buyer that falls within the parameters of the Code, Seller and Buyer mutually acknowledge and agree that Chapter 4 of the Code sets forth the process for maintaining a valid claim (Civ. Code §§ 910, et seq.).

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____
(c) **Notice Regarding Subsequent Purchasers.** By initialing below, Buyer further acknowledges that the Code is binding on Buyer's successors-in-interest pursuant to Civil Code Section 945. Therefore, Buyer acknowledges being obligated to provide the Code and a copy of all documents provided by Seller to Buyer to a subsequent purchaser of Buyer's unit. Buyer shall indemnify Seller from any adverse effects upon Seller due to Buyer's failure to provide a subsequent purchaser with copies of all documents provided by Seller to Buyer.

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____
(d) **Claim Notification.** If Buyer makes a claim for violation of the Functionality Standards pursuant to the Code, the Notice of Claim shall be served upon Seller at the address as provided on page 1, above.

In the event Seller can no longer be contacted at the address set forth above, and has not provided an alternative address for notices, Buyer shall contact the California Secretary of State to locate Seller's agent for service of process. The Secretary of State can be contacted at: 1500 11th Street, Sacramento, California 95814, phone number 916-657-5448 or at www.ss.ca.gov.

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____
(e) **Limited Warranty.** Seller has provided a Limited Warranty in compliance with Section 900 for "fit and finish" items. The prelitigation procedures set forth in Civil Code Sections 910-938 shall apply, and if the matter is not resolved through such prelitigation procedures, Buyer shall have the right to file an action in the Superior Court of San Mateo County. See paragraph 17(b). Seller has not elected to provide an Enhanced Protection Agreement ("EPA") pursuant to Civil Code sections 901-906, and Buyer acknowledges that nothing in the Seller's Limited Warranty or Building Standards shall be deemed to constitute the offering of an EPA to Buyer.

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____

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Initials:

Buyer _____

Seller _____

(f) **Disclaimer of all other Warranties.** No other warranties, whether express or implied, exist beyond those set forth in the Limited Warranty. By initialing below, Buyer acknowledges receipt of the Limited Warranty.

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____

(g) **Customer Care Program and Homeowner/Association Maintenance:** Buyer understands that Buyer is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the Buyer by Seller and by product manufacturers, as well as commonly accepted maintenance practices, as provided in Civil Code Section 907, and that failure of the Buyer to satisfy the obligations may result in invalidation of warranties and provide Seller with a defense to any claim of breach of warranty. Buyer agrees to follow the maintenance requirements set forth in and/or referred to in the covenants, conditions and restrictions, seller's warranty, and in the homeowners manual and maintenance guide, as supplied by seller at the close of escrow.

Buyer agrees to provide copies of the Limited Warranty and the Homeowners Manual and Maintenance Guide as furnished by Seller to any subsequent purchasers from Buyer, prior to the transfer of title.

Initials: Buyer _____ Seller's Sales Representative _____ Initials: Buyer _____

45. **Anti-Terrorism Regulations:** Buyer represents and warranties to Seller that: (1) Buyer is not on the prohibited parties list of the Office of Foreign Assets Control maintained pursuant to the Patriot Act and Executive Order 13224 and (2) Buyer's purchase of the Property is not designed, even in part, to conceal or disguise the "nature, the location, the source, the ownership, or the control" of proceeds of criminal activity in violation of the Money Laundering Control Act. Buyer acknowledges and agrees that Seller may be legally obligated to report any suspicious activity related to this Agreement to the Department of Treasury and/or terminate this Agreement if Seller obtains information about Buyer that would result in a violation of the Patriot Act or Money Laundering Control Act.
46. **Estimates Of Square Footage:** the square footage amounts that are contained in any documents received by buyer are estimates only. They were derived from plans and not actual measurements. The actual measurements may differ. Varying methods of measurement may have been used. No buyer should rely on any of these estimates of square footage in making a decision to buy a condominium.
47. **Notice Regarding Gas And Hazardous Liquid Transmission Pipelines:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines

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Initials:

Buyer _____

Seller _____

near the property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

THIS IS A LEGALLY BINDING CONTRACT. READ IT CAREFULLY BEFORE SIGNING.

OFFER TO PURCHASE BY BUYER:

Date: _____, 2023

BUYER:

CITY OF MENLO PARK, a California
Municipal corporation

RECEIPT FOR DEPOSIT:

Date: _____, 2023

SALES REPRESENTATIVE:

[Signature is not acceptance]

ACCEPTANCE BY SELLER:

Date: _____, 2023

FLORENCE LANE VENTURES, LLC,
a California limited liability company

By: _____
Its: _____

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Initials:

Buyer _____

Seller _____

Recording requested by:

CITY OF MENLO PARK

When recorded mail and tax statements to:
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

GRANT DEED

The undersigned grantor(s) declare(s):

County transfer tax is \$ _____

City transfer tax is \$ _____

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area; or (X) City of Menlo Park and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FLORENCE LANE VENTURES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY hereby GRANTS to CITY OF MENLO PARK, a California municipal corporation, the following described real property in the City of Menlo Park, County of San Mateo, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO THE FLORENCE LANE ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP RECORDED OCTOBER 5, 2020, SERIES NO. 2020-106317, AS AMENDED BY THE FIRST AMENDMENT TO FLORENCE LANE ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP RECORDED AUGUST 10, 2023, SERIES NO. 2023-038500, AND ANY AMENDMENTS AND/OR ANNEXATIONS THERETO.

FLORENCE LANE VENTURES, LLC, A California limited liability company

By: _____

Name: Surinder P. Goswamy

Its: Manager

Dated: _____

SAMPLE FORM DEED - CONDOMINIUM

\\WPWIN60WROJECTS FLORENCE LANE\SAMPLE FORM DEED - CONDO\8.9.231DOC

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 202__ before me, _____
Personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(SEAL)

EXHIBIT "A"

All that certain real property situated in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL I: A condominium comprised of: A separate interest in Unit #8 as shown on the Condominium Plan (the "Plan") attached as Exhibit "A" to the Florence Lane Enabling Declaration Establishing a Plan for Condominium Ownership" (the "Declaration") recorded on October 5, 2020, Instrument No. 2020-106317, San Mateo County Official Records, as amended by the First Amendment to Florence Lane Enabling Declaration Establishing a Plan for Condominium Ownership recorded on August 10, 2023, Instrument No. 2023-038500, San Mateo County Official Records.

PARCEL II: An undivided 1/8th interest in the Common Area as described in the Plan and the Declaration, which condominium is located on the real property described on the Map entitled "975 Florence Lane" (the "Map") recorded on July 17, 2020, in Book 142 of Maps, pages 83-84 in San Mateo County Records.

PARCEL III: The exclusive right to use the following appurtenant "Exclusive Use Common Areas" set aside and allocated for the exclusive use of the owner of the condominium described as Parcel I above, as described in the Declaration **and** as shown on the Plan, as follows: Parking Space P-5 and Deck D-8.

EXCEPTING THEREFROM AND RESERVING EASEMENTS as defined in the Declaration.

FURTHER EXCEPTING THEREFROM all numbered condominium units shown on the Plan and described in the Declaration other than the unit conveyed as Parcel I above, and those portions of the "Exclusive Use Common Area" as defined in the Declaration and/or shown on the Plan which are set aside and allocated for the exclusive use of the owners of condominiums other than the condominium described herein as Parcel I.

This conveyance is made and accepted, and the real property is hereby granted, in accordance with and subject to the Declaration, and any amendments thereto, which document is, by this reference, incorporated herein and made a part hereof, as though fully set forth at length herein.

SUBJECT TO:

1. General and special real property taxes for the current fiscal year; and
2. Covenants, conditions, restrictions and easements, reservations, rights, declarations, and rights-of-way of record.

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 202__ before me, _____
Personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

(SEAL)

Recording requested by

When recorded mail to:

CITY OF MENLO PARK
c/o CITY CLERKS OFFICE
701 LAUREL STREET
MENLO PARK, CA 94025

Exempt From Recording Fees Per Gov. Code
§ 27383 And Building Homes & Jobs Trust Fund
Fee Per Gov. Code § 27388.1(A)(2)(D) (instrument
recorded on behalf of a
municipality)

THE UNDERSIGNED TRUSTOR DECLARES:
This transaction is exempt from documentary transfer tax
pursuant to Revenue & Taxation Code Section §11922.
City of Menlo Park, an exempt agency, is acquiring a deed
of trust by this instrument.

(Space Above This Line For Recorder's Use Only)

Signature of Declarant

PERFORMANCE DEED OF TRUST AND SECURITY AGREEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY ENCUMBERED BY THIS DEED OF TRUST. EXCEPT FOR A TRANSFER TO THE CITY OF MENLO PARK (THE "CITY") OR CITY'S ASSIGNEE FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN INCOME QUALIFYING PURCHASER ON THE CITY'S WAITING LIST AT A SALES PRICE ESTABLISHED BY THE CITY. THE AGREEMENT AND DEED RESTRICTIONS REGARDING RESALE CONTROLS FOR BELOW MARKET RATE PROPERTY ALSO RESTRICTS THE EXTENT TO WHICH THIS PROPERTY MAY BE ENCUMBERED BY JUNIOR FINANCING AND LIMITS TRUSTOR'S RIGHTS TO REFINANCE EXISTING MORTGAGES.

This PERFORMANCE DEED OF TRUST ("Deed of Trust") is made as of _____, 202_ ("Effective Date") by _____ ("Trustor") whose address is _____ in favor of **City of Menlo Park** ("Trustee"), for the benefit of the City of Menlo Park (referred to variously as "City" or "Beneficiary") whose address is 701 Laurel Street, Menlo Park, CA 94025, as Beneficiary.

RECITALS

- A. Trustor is the owner of the real property located at 975 Florence Lane, Unit 8, Menlo Park, CA 94025 and more particularly described in the attached Exhibit A, (the "Property").
- B. The Trustor's predecessor in interest developed the Property pursuant to the City's Below Market Rate Program ("BMR") codified in Menlo Park Municipal Code Chapters 15.36 and 16.96 and BMR Housing Program Guidelines (collectively "BMR Program"), which require developers of rental and ownership housing to construct within their projects units that are affordable to very low-, low-, and moderate-income households and which regulations require the Property to be subjected to restrictions on resale that ensure that the Property remains affordable.
- C. In connection with the BMR Program, Beneficiary and Trustor entered into an Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property dated as of the Effective Date and recorded in the Official Records of San Mateo County substantially concurrently herewith (the "Resale Restriction Agreement") (capitalized terms used without definition herein have the meaning ascribed to such terms in the Resale Restriction Agreement); and
- D. Pursuant to the Resale Restriction Agreement, Trustor is obligated, among other requirements, to sell the Property only to the City or to income qualifying purchasers at a price designated by the City; and
- E. The Resale Restriction Agreement also provides (among other provisions) that: (i) Trustor is obligated to notify Beneficiary of Trustor's intent to sell the Property in order to enable Beneficiary to exercise its option to purchase the Property at a restricted price; (ii) Beneficiary has an option to purchase the Property if Trustor defaults under the Resale Restriction Agreement; and (iii) there are restrictions on Trustor's ability to encumber the Property and to refinance the existing loans secured by the Property.

AGREEMENT

NOW, THEREFORE, to secure the full and timely performance by Trustor of the Secured Obligation, it is agreed as follows:

- 1. **Incorporation by Reference.** The recitals and the Resale Restriction Agreement are incorporated herein by this reference.
- 2. **Grant in Trust.** Trustor, in consideration of the promises herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale, all estate, right title and interest which Trustor now has or may later acquire in and to that certain real property located in the City of Menlo Park, County of San Mateo, State of California, described in the attached Exhibit A and commonly known as:

975 Florence Lane, Unit 8, Menlo Park, CA 94025 (the "Property") together with all of the following:

- (i) all improvements now or hereafter located or constructed on the Property and all replacements and additions thereto ("Improvements");
- (ii) all easements, rights of way, appurtenances and other rights used in connection with the Property or as a means of access thereto ("Appurtenances");
- (iii) all fixtures now or hereafter attached to or used in and about the Property or the improvements located thereon or hereafter located or constructed on the Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the improvements in any manner ("Fixtures and Equipment"); and
- (iv) all leases, subleases, licenses and other agreements relating to use or occupancy of the Property ("Leases") and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of Trustor ("Rents") (whether or not such Leases and Rents are permitted by the Resale Restriction Agreement).

All of the above-referenced Property, Improvements, Appurtenance, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the "Security".

3. **Obligations Secured.** This Deed of Trust is given for the purpose of securing payment and/or performance of the following (the "Secured Obligations"): (i) all present and future obligations of Trustor set forth in this Deed of Trust or in the Resale Restriction Agreement (including without limitation, Trustor's obligation to convey the Property only to income qualifying purchasers on the City's BMR Waiting List at a purchase price determined by the City, as described in the City's BMR Housing Guidelines); (ii) all additional present and future obligations of Trustor, to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iii) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust.
4. **Assignment of Rents, Issues, and Profits.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Except to the extent that the lease or rental of the Property is prohibited by the Resale Restriction Agreement, Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or

demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

5. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of San Mateo County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 10.2 of this Deed of Trust.
6. Trustor's Representations, Warranties and Covenants.
 - 5.1 Trustor's Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this Deed of Trust, the Security is encumbered only by: (a) that deed of trust executed by Trustor in connection with a loan

made to Trustor by Guild Mortgage Company LLC, a California limited liability company (the "First Lender"), securing a promissory note executed by Trustor in favor of the First Lender ("First Lender Note"), to assist in the purchase of the Property (the "First Lender Deed of Trust") and (b) the Resale Restriction Agreement. Trustor agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Lender" shall include all successors and assigns of the First Lender.)

5.2 Repayment of Sums Owed under Resale Restriction Agreement. Trustor will promptly pay to the City all sums due under the Resale Restriction Agreement.

5.3 Resale Restriction Agreement. Trustor will observe and perform all of the covenants and agreements of the Resale Restriction Agreement.

5.4 First Lender Loan. Trustor will observe and perform all of the covenants and agreements of the First Lender Note, First Lender Deed of Trust, and related First Lender loan documents.

5.5 Charges; Liens. Trustor will pay prior to delinquency, all taxes, assessments and other charges, fines and impositions affecting the Security directly to the payee thereof. Upon request by the City, Trustor will promptly furnish to the City all notices of such amounts due. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to discharge the lien of the First Lender Deed of Trust or pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5.6 Hazard Insurance.

(a) Trustor will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). If the Security is located in a flood plain, Trustor shall also obtain flood insurance. In no event shall the amount of insurance be less than the amount necessary to prevent Trustor from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Trustor subject to approval by the City.

All insurance policies and renewals thereof will be in a form acceptable to the City, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Trustor. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless otherwise permitted by the City in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the Security damaged. If permitted by City, and subject to the rights of the First Lender, the insurance proceeds shall be used to repay any amounts due under the Resale Restriction Agreement, with the excess, if any, paid to Trustor. If the Security is abandoned by Trustor, or if Trustor fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to pay amounts due under the Resale Restriction Agreement.

If the Security is acquired by the City, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediate prior to such sale or acquisition, subject to the rights of the First Lender.

- (b) During the course of any rehabilitation of the improvements located on the Property, Trustor shall hire only licensed contractors who maintain the following forms of insurance:
 - (i) Liability Insurance. Comprehensive general liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Property. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

- (ii) Worker's Compensation Insurance. Worker's compensation insurance covering all persons employed in connection with any work on the Property.

- 5.7 Preservation and Maintenance of Security. Trustor will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of curing.
- 5.8 Protection of the City's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, without releasing Trustor from any obligation hereunder, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs. Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and City agree to other terms of payment, such amount will be payable upon notice from the City to Trustor requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.
- 5.9 Inspection. The City may make or cause to be made reasonable entries upon and inspections of the Security; provided that the City will give Trustor reasonable notice of inspection.
- 5.10 Hazardous Substances. Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances in, on, under, about, or from the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property when used and disposed of in accordance with Environmental Law.

"Hazardous Substances" means any substance defined as toxic or hazardous substances or hazardous waste or regulated under any

Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

“Environmental Law” means all federal, state or local statutes, ordinances, regulations, orders, decrees and judgments that relate to health, safety or environmental protection including without limitation the regulation of the use, disposal, manufacture, or release of Hazardous Substances.

Trustor shall promptly give City written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

7. Nonliability for Negligence, Loss, or Damage; No Joint Venture. Trustor acknowledges, understands and agrees that the relationship between Trustor and the City is solely that of a borrower and lender, and that the City does not undertake or assume any responsibility for or duty to Trustor to select, review, inspect, supervise, pass judgment on, or inform Trustor of the quality, adequacy or suitability of the Security or any other matter. The City owes no duty of care to protect Trustor against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Trustor agrees that neither Trustor, or Trustor’s heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things. Nothing contained herein or in Note or the Resale Restriction Agreement shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of a borrower and lender.
8. Indemnity. Trustor agrees to defend, indemnify, and hold the City of Menlo Park and its elected and appointed officials, officers, employees, and agents (“Indemnitees”) harmless from and against all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney’s fees that the Indemnitees may incur as a direct or indirect consequence of:
 - (i) Trustor’s failure to perform any obligations as and when required by the Resale Restriction Agreement and this Deed of Trust; or
 - (ii) the failure at any time of any of Trustor’s representations or warranties to be true and correct.
9. Acceleration; Remedies. Upon Trustor’s breach of any covenant or agreement of Trustor in the Resale Restriction Agreement or this Deed of Trust, including, but

not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to acceleration, will mail by express delivery with delivery receipt, notice to Trustor specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by Trustor (unless the Resale Restriction Agreement provides for shorter or no notice) as shown on the return receipt, by which such breach is to be cured; and (4) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may:

- (a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;
- (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale;
- (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 et seq., as amended from time to time; or
- (e) exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

10. **Trustor's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays City all sums which would be then due under this Deed of Trust if there were no acceleration under this Deed of Trust or the Resale Restriction Agreement; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in the Resale Restriction Agreement or this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Trustor contained in the Resale Restriction Agreement or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.
11. **Reconveyance.** Upon the expiration of the term of the Resale Restriction Agreement if the Trustor owns and occupies the Property and is not in violation of any provisions of this Deed of Trust or the Resale Restriction Agreement, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Resale Restriction Agreement to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.
12. **Substitute Trustee.** The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.
13. **Superiority of First Lender Documents.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of the Resale Restriction Agreement.

Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Trustor. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the Property pursuant to a deed or assignment in lieu of

foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title, provided that (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured or commenced to cure the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

14. Request for Notice. City requests that copies of the notice of default and notice of sale be sent to City at the address set forth in Section 15.5.

15. Miscellaneous.

15.1 Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require satisfaction of any obligations secured by this Deed of Trust.

15.2 Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

15.3 Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Trustor subject to the provisions of this Deed of Trust.

15.4 Joint and Several Liability. If this Deed of Trust is executed by more than one person as Trustor, the obligations of each shall be joint and several.

15.5 Notices. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust will be given by certified mail, return receipt requested, express delivery with delivery receipt or personal delivery with delivery receipt, addressed to Trustor at the address shown in the first paragraph of this Deed of Trust or such other address as Trustor may designate by notice to the City as provided herein, and (b) any notice to the City will be given by certified mail, return receipt requested, express delivery with delivery receipt or personal delivery with delivery receipt, to the City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025 Attn: Community Development Director or to such other address as the City may designate by notice to Trustor as provided above. Notice shall be effective as of the date received by City as shown on the return receipt.

15.6 Entire Agreement. This Deed of Trust, together with the Resale Restriction Agreement, sets forth the entire understanding between Trustor and the City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the

parties regarding the subject matter of the Resale Restriction Agreement and this Deed of Trust whether written or oral, are superseded by the terms of the Resale Restriction Agreement and this Deed of Trust. This Deed of Trust shall not be amended except by a written instrument duly executed by Trustor and City and recorded in the Official Records of San Mateo County.

- 15.7 Time of the Essence. Time is of the essence with regard to all matters contained in this Deed of Trust.
- 15.8 Governing Law. This Deed of Trust shall be governed by the laws of the State of California, without regard to principles of conflicts of law. This Deed of Trust was entered into and is to be performed in the County of San Mateo, which is the exclusive venue for any action or dispute arising out of this Deed of Trust.
- 15.9 Severability. In the event that any provision or clause of this Deed of Trust or the Resale Restriction Agreement conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Resale Restriction Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Resale Restriction Agreement are declared to be severable.
- 15.10 Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.
- 15.11 Nondiscrimination. Trustor covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Trustor or any person claiming under or through Trustor establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

Signatures on following page

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

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

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(SEAL)

EXHIBIT "A"
Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

A CONDOMINIUM COMPRISED OF: A SEPARATE INTEREST IN UNIT 8 AS SHOWN ON THE CONDOMINIUM PLAN (THE "PLAN") ATTACHED AS EXHIBIT "A" TO THE "FLORENCE LANE ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP" RECORDED IN THE OFFICIAL RECORDS OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON THE 5TH DAY OF OCTOBER 2020, INSTRUMENT NO. 2020-106317, AS AMENDED BY "FIRST AMENDMENT TO FLORENCE LANE ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP" RECORDED IN THE OFFICIAL RECORDS OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON THE 10TH DAY OF AUGUST 2023, SERIES NO. 2023-038500 ("DECLARATION").

PARCEL II:

AN UNDIVIDED 1/8TH INTEREST IN THE COMMON AREA AS DESCRIBED IN THE PLAN AND THE DECLARATION, WHICH CONDOMINIUM IS LOCATED ON THE REAL PROPERTY DESCRIBED ON THE MAP ENTITLED "975 FLORENCE LANE" (THE "MAP") RECORDED ON JULY 17, 2020, IN BOOK 142 OF MAPS, PAGES 83084 IN SAN MATEO COUNTY RECORDS.

PARCEL III:

THE EXCLUSIVE RIGHT TO USE THE FOLLOWING APPURTENANT "EXCLUSIVE USE COMMON AREAS" SET ASIDE AND ALLOCATED FOR THE EXCLUSIVE USE OF THE OWNER OF THE CONDOMINIUM DESCRIBED AS PARCEL I ABOVE, AS DESCRIBED IN THE DECLARATION AND AS SHOWN ON THE PLAN AS FOLLOWS: PARKING SPACE P-8 AND DECK D-8.

EXCEPTING THEREFROM AND RESERVING EASEMENTS AS DEFINED IN THE DECLARATION.

FURTHER EXCEPTING THEREFROM ALL NUMBERED CONDOMINIUM UNITS SHOWN ON THE PLAN AND DESCRIBED IN THE DECLARATION OTHER THAN THE UNIT CONVEYED AS PARCEL I ABOVE, AND THOSE PORTIONS OF THE "EXCLUSIVE USE COMMON AREA" AS DEFINED IN THE DECLARATION AND/OR SHOWN ON THE PLAN WHICH ARE SET ASIDE AND ALLOCATED FOR THE EXCLUSIVE USE OF THE OWNERS OF CONDOMINIUMS OTHER THAN THE CONDOMINIUM DESCRIBED HEREIN AS PARCEL I.

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

**Below Market Rate Agreement and Deed Restrictions Regarding Resale Controls for
Below Market Rate Property**

(975 Florence Lane Project)

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Agreement”) is entered into as of _____, 202[], by and between the City of Menlo Park, a California municipal corporation (“City”), and Florence Lane Ventures, LLC, a California limited liability company (“Owner”). City and Owner may be referred to individually as a “Party” or collectively as the “Parties” in this Agreement.

RECITALS

- A. WHEREAS, the City adopted a Below Market Rate Housing Program, codified in the Menlo Park Municipal Code at Chapters 16.96 and 15.36 (the “Ordinance”) and governed by the Below Market Rate Housing Program Guidelines (the “Guidelines”), to provide housing opportunities to persons with low or moderate incomes to purchase homes at prices which are below market rates prevailing in the community; and
- B. WHEREAS, the intent of the City is to preserve the number and availability of affordable homes in the program for persons with low or moderate incomes for as long as possible;
- C. WHEREAS, Owner is the owner of that certain property located at 975 Florence Lane, Menlo Park, CA 94025.
- D. WHEREAS, on July 16, 2019, the City approved the construction of an eight (8) unit condominium development at 975 Florence Lane, Menlo Park, CA 94025 (the “Project”). The applicant and owner of said development was Paul Goswamy.
- E. WHEREAS, pursuant to the Ordinance and the Guidelines, as a condition of entitlement of the Project, applicant was required to deed restrict one unit, Unit No. 8, of the Project bearing an APN of 118-090-080 (the “Property”) for moderate income households (i.e. households earning no more than 120% of the County of San Mateo Annual Medium Income) for a period of 55 years.

F. WHEREAS, the applicant recorded such deed restriction which did not contain any operation standards and this agreement is therefore required to memorialize the details of the moderate income deed restriction.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

1. OPERATION OF THE BMR UNITS.

1.1 Effective Date. The effective date of this Agreement shall be the date that the Property closes escrow and is transferred to a Qualified Buyer, as that term is used and defined in the Guidelines (the “**Effective Date.**”)

1.2 Affordability Period. The Property, shall be subject to the requirements of this Agreement from the Effective Date until the 55th anniversary of such date. The duration of this requirement shall be known as the “**Affordability Period.**”

1.3 Maintenance. Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.

1.4 Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines, or, at the Owner’s election, applicable recordkeeping and monitoring requirements in updated Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the the Property, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

1.5 Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall any occupant of the Property or any person claiming under or through such occupant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in

the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

1.5.1. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

1.5.2. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons,

as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

1.5.3. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

1.6 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

2. OPERATION OF THE PROPERTY UNITS.

2.1 Sale to Moderate Income Households. The Property shall be sold in accordance with the BMR Ordinance and the Guidelines. The Property shall be affordable to eligible households which are moderate income as defined in Section 50093 of the California Health and Safety Code, as described in the Guidelines, which households meet all of the requirements set forth in the Guidelines, and are of the smallest household size eligible for the Property on the BMR waiting list

maintained by the City on the date that the Sales Prices are set, as more particularly described below and in the Guidelines. The eligibility requirements for buyers of the Property, the selection process for buyers for the Property, the purchase process and sale procedures, the occupancy requirements for the Property and the process for resale of Property are all set forth in the Guidelines.

The Property shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for the duration of the Affordability Period, pursuant to the terms and conditions set forth in the Guidelines.

The Property shall be located in the Project as set forth in Exhibit B.

Any sale of the Property shall be subject to the setting of a sales price which shall be calculated according to the formula for calculating the sales price set forth in the Guidelines in effect at the time Owner notifies City that they wish to sell the Property (the “**Sales Price.**”) The Sales Price shall be set before the commencement of the sale process for the Property.

- 2.2 Term.** Any and all obligations or responsibilities of Owner under this Agreement with regard to the Property shall terminate upon the recording of the grant deed conveying the Property to a qualified third party purchaser or the City in accordance with the terms and provisions of Section 3 of this Agreement and this Agreement as a whole and the recording of the deed restrictions in compliance with the Guidelines against the Property.
- 2.3 Third Party Purchasers.** The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of the Property or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to the City for whose benefit this Agreement has been entered into. No third party purchaser of the Property or market rate unit, homeowners’ association or any other third party shall obtain any rights or standing to complain that the Property was not constructed, designed, sold or conveyed in accordance with this Agreement, or the Ordinance and the Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by the City, the acceptance of the interior specifications for the Property and the conveyance of the Property to qualified third parties shall conclusively indicate that Owner has complied with this Agreement and the Ordinance and the Guidelines.
- 2.4 Right of First Refusal.** Except as provided herein, Owner hereby grants and gives to the City of Menlo Park, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Paragraph 10 (“**Assignee**”), a right to purchase the Premises solely for resale as a BMR unit pursuant to the terms of the City’s Below Market Rate Housing Program, under conditions set forth below. City, at its sole discretion, may also assign this right to an individual buyer who meets the City’s eligibility qualifications to participate in the City’s Below Market Rate Housing Program (“**Eligible Buyer**”). City shall select an Eligible Buyer from the BMR Purchase and Rental Interest List or the BMR Purchase Legacy List or, if neither list exist, City shall market the Premises

and shall have the right to retain a realtor to locate Eligible Buyers. City reserves the right to reassign the right to another Eligible Buyer in the event the initial Eligible Buyer fails or is unable to complete the transaction. Notwithstanding the foregoing, no assignment or reassignment of this right shall extend any time limits for performance under this Agreement without the mutual, express and written agreement signed by both the Owner and any assignee.

3. CONDITIONS OF TRANSFER.

For purposes of this Agreement, “transfer” shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Premises, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A “transfer” shall also include the recording of one or more deeds of trust against the Premises to secure one or more loans or to refinance an existing loan. Until such time as the City’s right of first refusal is exercised, waived, or expired, there shall be no transfer of the Premises to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City’s goal of creating, preserving, maintaining, and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the Premises shall be subject to the conditions set forth in this Agreement, and any and all conditions contained in the Ordinance and the Guidelines, including any amendments thereto which may be adopted from time to time, as long as these amendments do not have a materially adverse affect on the interests of Owner.

3.1 Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a “**Prohibited Transfer**”. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

3.2 Permitted Transfer. Notwithstanding the foregoing, the following transfers are exempt from City’s right of first refusal and do not re-start the fifty-five (55) year deed restriction clock (each, a “**Permitted Transfer**”):

3.2.1. Transfer by devise or inheritance to Owner’s spouse;

3.2.2. 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);

3.2.3. Transfer of title to the Owner's spouse as part of divorce or dissolution proceedings;

3.2.4. Transfer of title or an interest in the property to the Owner's spouse in conjunction with marriage;

3.2.5. Transfer to Fannie Mae through foreclosure or its acceptance of a deed in lieu of foreclosure.

In the event of a Permitted Transfer, an instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

“This property is subject to the terms and provisions of that certain ‘Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property’. Transferee, on behalf of transferee, and transferee's successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Agreement, and to include this covenant in any further transfer of the property.”

3.3 Conditional Permitted Transfers. Owner may transfer the Premises to a child or other relative by devise or inheritance provided that: a) Owner provides written notice to the City with the transferee's name, contact information, and household income information and the City consents; b) the transferee household is an eligible, qualifying household under the BMR Guidelines at the time of the transfer; c) the transferee signs a new Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and Performance Deed of Trust and Security Agreement in a form acceptable to City and occupies the Premises. In the event that the transferee is not an eligible, qualifying household, the transferee may inherit the Premises but must offer the Premises for sale in accordance with Paragraph 11 below within ninety (90) days of the recording of the deed or probate order conveying title to the Premises to transferee. Failure to comply with the provisions of this Paragraph 5.C shall constitute a Prohibited Transfer.

4. OWNER OCCUPANCY.

Prospective purchasers of the Property must sign a written statement acknowledging their agreement that the Property must be occupied as the purchaser's principal residence, that the Property may not be rented or leased, except as allowed under the Resale Restriction Agreement.

5. SENIOR LIEN HOLDER.

Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage (“**First Deed of Trust**”) held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the Property (“**Senior Lien Holder**”). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the

First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Premises. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Premises pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) the City has been given written notice of a default under the First Deed of Trust, and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City. Any and all deeds of trust recorded against the Premises, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

6. RESALE PROCEDURES

6.1 Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Agreement. Such notice shall be in writing, and must be sent by certified mail through the United States Postal Service, addressed to the Community Development Director, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its designee, in writing, prior to acceptance by City or its designee.

6.2 Acceptance. City, its designee or Assignee shall have sixty (60) days from the date of receipt of Owner's notice to exercise the right of first refusal to accept Owner's offer to sell the Premises. This acceptance shall be in writing, shall indicate that City believes the Premises are in salable condition in accordance with Paragraph 18, state the purchase price for the Premises as determined in Paragraph 14, and whether City is exercising the right of first refusal on its own behalf or has located an Eligible Buyer, and shall be sent by certified mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the Premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or Assignee shall be deemed to be

an acceptance of that offer. Acceptance by City or its designee or Assignee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer. The Owner is responsible for all fees and expenses related to the sale of the unit, including but not limited to real estate commissions and inspections.

- 6.3 Escrow.** Within sixty (60) days of the date of acceptance, an escrow account shall be opened by the City or its designee or Assignee. At the closing, a title insurance company approved by City shall issue to the City, its designee, or Assignee, or the Eligible Buyer a CLTA owner's title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. The City, its designee, or Assignee or the Eligible Buyer shall pay the cost of the title insurance. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. If the Premises are sold to an Eligible Buyer, prior to the Closing, City and the Eligible Buyer shall deliver an executed Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and a Performance Deed of Trust and Security Agreement in a form acceptable to City. The Eligible Buyer must also certify at Closing that he or she will occupy the Premises as his or her primary residence. At the Closing, the Owner shall convey title to the City, the Assignee, or the Eligible Buyer by grant deed.
- 6.4 Resale Restriction Agreement.** The initial buyer and each subsequent buyer of the Property shall execute and record a covenant, substantially in the form of Exhibit D, that restricts the future sale of moderate income households at the Sales Price for a period of fifty-five (55) years (the "Resale Restriction Agreement").
- 6.5 Owner's Obligation to Cooperate.** At all times commencing on the date that the Owner provides the notice set forth in Paragraph 11.A, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective Eligible Buyers. Owner shall cooperate with the City of Menlo Park and their respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Agreement, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Agreement. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the Premises available for showing to prospective Eligible Buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the Premises, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In

addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph.

- 6.6 Assignment.** City reserves the right, at any time during this process, to subsequently assign its right to purchase to an Eligible Buyer. In no case shall the time between Owner's receipt of City's acceptance of an offer to sell and the date of close of escrow exceed one hundred eighty (180) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled.

7. DEFAULT AND REMEDIES

- 7.1 Events of Default.** The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.
- 7.2 Remedies.** The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
- 7.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner's interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner's obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to

have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

- 7.4 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.
- 7.5 Waiver of Terms and Conditions.** The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.
- 7.6 Non-Liability of City Officials and Employees.** No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of the Property, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.
- 7.7 Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by Owner’s mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

8. GENERAL PROVISIONS

- 8.1 Below Market Rate Guidelines (“Guidelines”).** This Agreement incorporates by reference the Guidelines as of the date the Owner submitted a complete Preliminary Application pursuant to Government Code section 65941.1 and, at the election of the Owner, any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.
- 8.2 Time.** Time is of the essence in this Agreement.
- 8.3 Notices.** Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party as follows:

Owner: Florence Lane Ventures, LLC
Paul Goswamy
XXXXXX

City: City of Menlo Park
701 Laurel Street
Menlo Park, California 94025-3483
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

- 8.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.
- 8.5 Intended Beneficiaries.** The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.
- 8.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.
- 8.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.
- 8.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.
- 8.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

8.10 Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “**Indemnitees**”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 5.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

8.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference, and shall, at Owner’s expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

8.12 Transfer and Encumbrance.

8.12.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “Transfer”) of the whole or any part of any Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.12.2. Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) transfers between entities owned or controlled by the Florence Lane Ventures, LLC.

8.12.3. Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement and/or a

Property if all of the following requirements are met (provided however, the requirements of this Section 8.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 8.12.2.

(1) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(2) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(3) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(4) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the Director unless the Director, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 8.13 shall not apply to Transfers described in clauses (i) and (ii) of Section 8.12.2.

8.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).

OWNER:

[INSERT]

By: _____

Its:

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____

City Manager

ATTEST:

By: _____

City Clerk

List of Exhibits:

Exhibit A: 975 Florence Lane Property Description

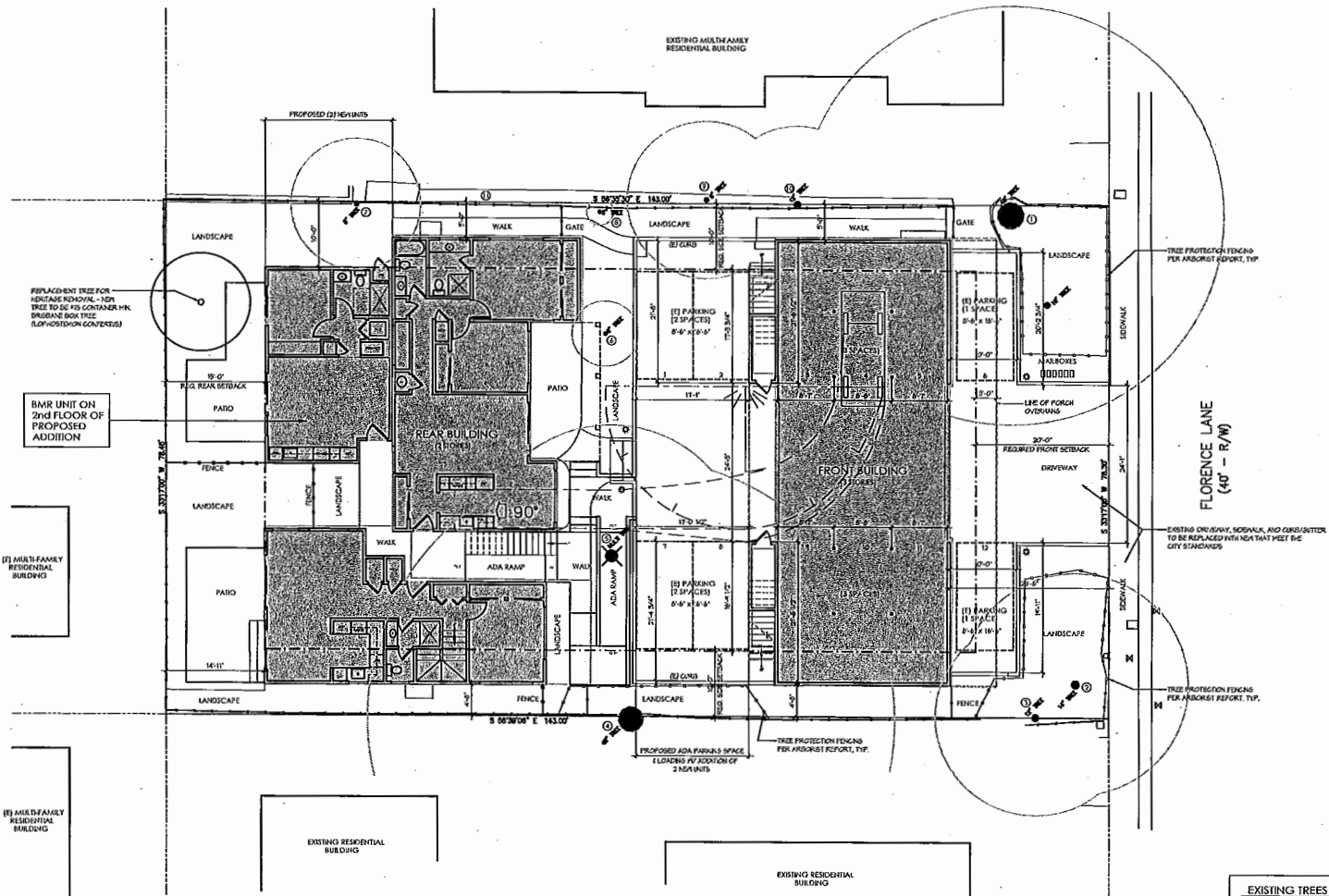
Exhibit B: Property (Unit 8) Location

Exhibit C: Insurance Requirements

Exhibit D: Resale Restriction Agreement

EXHIBIT A
975 Florence Lane Property Description

EXHIBIT B
Property Location



PROPOSED SITE PLAN

1/8"=1'-0" NORTH

- EXISTING TREES**
(PER ARBORIST REPORT)
- ① 45.5' COAST LIVE OAK
 - ② 14.2' COAST LIVE OAK
 - ③ 13.3' COAST LIVE OAK
 - ④ 45' COAST LIVE OAK
 - ⑤ 18.2' JAPANESE MAPLE
 - ⑥ 8' MEDITERRANEAN FAN PALM
 - ⑦ 12' CABRAGE PALM
 - ⑧ 5.1' BALM H CYPRESS
 - ⑨ 4' MEDITERRANEAN PALM
 - ⑩ 12' BLACK ACACIA
 - ⑪ 10' BLACK ACACIA

Kellond Architects
14510 Big Basin Way, #205
Saratoga, California 95070
408.741.0600 ph.
www.kellondarchitects.com

ALL DRAWINGS AND WRITTEN MATERIAL
HEREIN CONSTITUTE THE ORIGINAL AND
UNREPRODUCED WORK OF THE ARCHITECT,
WHICH MAY NOT BE DUPLICATED, USED, OR
DISCLOSED WITHOUT THE WRITTEN CONSENT
OF THE ARCHITECT.

PROJECT
975 Florence Ln.
Menlo Park, CA 94025

SHEET TITLE

PROPOSED SITE PLAN

REVISIONS

No.	Date	Notes
1	12/17/18	PLANNING REVIEWS
2	1/15/19	PLANNING REVIEWS
3	2/23/19	PLANNING REVIEWS
4	3/29/19	PLANNING REVIEWS

PROJECT #: 2017.10
DATE: 25 JUNE 2018
SHEET #: SD-1.2

EXHIBIT C
Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:
 - (a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.
 - (b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.
 - (c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.
 - (d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two

Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

- (f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, and as commercially available.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

- (a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
- (b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate. Subcontractors may maintain Products and Completed Operations with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
- (c) Commercial Automobile Liability: \$2,000,000 combined single limit.
- (d) Employer's Liability:
Bodily Injury by Accident - \$1,000,000 each accident.
Bodily Injury by Disease - \$1,000,000 policy limit.
Bodily Injury by Disease - \$1,000,000 each employee.
- (e) Professional Liability/Errors and Omissions : \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work. Subcontractors are required to carry coverage if their scope of work includes design services to the Project.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes

in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions: The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.
 - (d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
 - (e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
 - (f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

- (g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.
- (h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.
- (i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.
6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all

other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Exhibit D

RESALE RESTRICTION AGREEMENT

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT

WITH RIGHT OF FIRST REFUSAL

(975 Florence Lane Unit 8)

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“**Agreement**”) is entered into as of _____, 202[], by and between the City of Menlo Park a California municipal corporation (“**City**”), and _____, a California limited liability company (“**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**” in this Agreement.

RECITALS

- A. Pursuant to the terms of that certain BMR Agreement (“Regulatory Agreement”) between the City and Florence Lane Ventures , LLC, recorded on _____, 20 __, as Document No. _____ in the Official Records of San Mateo County (“Official Records”), that certain property described in Exhibit A to this Agreement (the “Property”) was designated as a moderate income unit, to be made available for sale only to moderate income households at a price not to exceed a moderate income housing costs for a period of fifty-five (55) years.
- B. Owner is a Moderate Income Household, and is purchasing the Property. As a condition of purchasing the Property, and in exchange for having the opportunity to acquire the Property at a sales price below market value for the property, Owner is required to enter into this Agreement to ensure the continued affordability of the Property, consistent with the Regulatory Agreement.
- C. This Agreement also provides the City a right of first refusal to purchase the Property given in consideration of the economic benefits to the Owner resulting from the purchase of the Property at a price below market value for the Property.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

1. OPERATION OF THE BMR UNIT.

- 2.1 Effective Date.** The effective date of this Agreement shall be the date that the Grant Deed conveying the Property to Owner is recorded in the Official Records. (the “**Effective Date.**”)
- 2.2 Affordability Period.** The Property, shall be subject to the requirements of this Agreement from the Effective Date until the 55th anniversary of such date. The duration of this requirement shall be known as the “**Affordability Period.**”
- 2.3 Maintenance.** Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.
- 2.4 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines, or, at the Owner’s election, applicable recordkeeping and monitoring requirements in updated Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the Property, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.
- 2.5 Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall any occupant of the Property or any person claiming under or through such occupant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

2.5.1. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.5.2. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.5.3. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.6 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF THE PROPERTY UNITS.

3.1 Sale to Moderate Income Households. The Property shall be sold in accordance with the BMR Ordinance and the Guidelines. The Property shall be affordable to eligible households which are moderate income as defined in Section 50093 of the California Health and Safety Code, as described in the Guidelines, which households meet all of the requirements set forth in the Guidelines, and are of the smallest household size eligible for the Property on the BMR waiting list maintained by the City on the date that the Sales Prices are set, as more particularly described below and in the Guidelines. The eligibility requirements for buyers of the Property, the selection process for buyers for the Property, the purchase process and sale procedures, the occupancy requirements for the Property and the process for resale of Property are all set forth in the Guidelines.

The Property shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for the duration of the Affordability Period, pursuant to the terms and conditions set forth in the Guidelines.

The Property shall be located in the Project as set forth in Exhibit B.

Any sale of the Property shall be subject to the setting of a sales price which shall be calculated according to the formula for calculating the sales price set forth in the Guidelines in effect at the time Owner notifies City that they wish to sell the Property (the “**Sales Price.**”) The Sales Price shall be set before the commencement of the sale process for the Property.

- 3.2 Term.** Any and all obligations or responsibilities of Owner under this Agreement with regard to the Property shall terminate upon the recording of the grant deed conveying the Property to a qualified third party purchaser or the City in accordance with the terms and provisions of Section 3 of this Agreement and this Agreement as a whole and the recording of the deed restrictions in compliance with the Guidelines against the Property.
- 3.3 Third Party Purchasers.** The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of the Property or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to the City for whose benefit this Agreement has been entered into. No third party purchaser of the Property or market rate unit, homeowners’ association or any other third party shall obtain any rights or standing to complain that the Property was not constructed, designed, sold or conveyed in accordance with this Agreement, or the Ordinance and the Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by the City, the acceptance of the interior specifications for the Property and the conveyance of the Property to qualified third parties shall conclusively indicate that Owner has complied with this Agreement and the Ordinance and the Guidelines.
- 3.4 Right of First Refusal.** Except as provided herein, Owner hereby grants and gives to the City of Menlo Park, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Paragraph 10 (“**Assignee**”), a right to purchase the Premises solely for resale as a BMR unit pursuant to the terms of the City’s Below Market Rate Housing Program, under conditions set forth below. City, at its sole discretion, may also assign this right to an individual buyer who meets the City’s eligibility qualifications to participate in the City’s Below Market Rate Housing Program (“**Eligible Buyer**”). City shall select an Eligible Buyer from the BMR Purchase and Rental Interest List or the BMR Purchase Legacy List or, if neither list exist, City shall market the Premises and shall have the right to retain a realtor to locate Eligible Buyers. City reserves the right to reassign the right to another Eligible Buyer in the event the initial Eligible Buyer fails or is unable to complete the transaction. Notwithstanding the foregoing, no assignment or reassignment of this right shall extend any time limits for performance under this Agreement without the mutual, express and written agreement signed by both the Owner and any assignee.

4. CONDITIONS OF TRANSFER.

For purposes of this Agreement, “transfer” shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Premises, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A “transfer” shall also include the recording of one or more deeds of trust against the Premises to secure one or more loans or to refinance an existing loan. Until such time as the City’s right of first refusal is exercised, waived, or expired, there shall be no transfer of the Premises to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City’s goal of creating, preserving, maintaining, and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the Premises shall be subject to the conditions set forth in this Agreement, and any and all conditions contained in the Ordinance and the Guidelines, including any amendments thereto which may be adopted from time to time, as long as these amendments do not have a materially adverse affect on the interests of Owner.

4.1 Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a “**Prohibited Transfer**”. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

4.2 Permitted Transfer. Notwithstanding the foregoing, the following transfers are exempt from City’s right of first refusal and do not re-start the fifty-five (55) year deed restriction clock (each, a “**Permitted Transfer**”):

4.2.1. Transfer by devise or inheritance to Owner’s spouse;

4.2.2. 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);

4.2.3. Transfer of title to the Owner’s spouse as part of divorce or dissolution proceedings;

4.2.4. Transfer of title or an interest in the property to the Owner’s spouse in conjunction with marriage;

4.2.5. Transfer to Fannie Mae through foreclosure or its acceptance of a deed in lieu of foreclosure.

In the event of a Permitted Transfer, an instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

“This property is subject to the terms and provisions of that certain ‘Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property’. Transferee, on behalf of transferee, and transferee’s successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Agreement, and to include this covenant in any further transfer of the property.”

4.3 Conditional Permitted Transfers. Owner may transfer the Premises to a child or other relative by devise or inheritance provided that: a) Owner provides written notice to the City with the transferee’s name, contact information, and household income information and the City consents; b) the transferee household is an eligible, qualifying household under the BMR Guidelines at the time of the transfer; c) the transferee signs a new Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and Performance Deed of Trust and Security Agreement in a form acceptable to City and occupies the Premises. In the event that the transferee is not an eligible, qualifying household, the transferee may inherit the Premises but must offer the Premises for sale in accordance with Paragraph 11 below within ninety (90) days of the recording of the deed or probate order conveying title to the Premises to transferee. Failure to comply with the provisions of this Paragraph 5.C shall constitute a Prohibited Transfer.

5. OWNER OCCUPANCY.

Prospective purchasers of the Property must sign a written statement acknowledging their agreement that the Property must be occupied as the purchaser’s principal residence, that the Property may not be rented or leased, except as allowed under the Resale Restriction Agreement.

6. SENIOR LIEN HOLDER.

Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage (“**First Deed of Trust**”) held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the Property (“**Senior Lien Holder**”). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Premises. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of

the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Premises pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) the City has been given written notice of a default under the First Deed of Trust, and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City. Any and all deeds of trust recorded against the Premises, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

7. RESALE PROCEDURES

7.1 Notice of Offer to Sell. Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Agreement. Such notice shall be in writing, and must be sent by certified mail through the United States Postal Service, addressed to the Community Development Director, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its designee, in writing, prior to acceptance by City or its designee.

7.2 Acceptance. City, its designee or Assignee shall have sixty (60) days from the date of receipt of Owner's notice to exercise the right of first refusal to accept Owner's offer to sell the Premises. This acceptance shall be in writing, shall indicate that City believes the Premises are in salable condition in accordance with Paragraph 18, state the purchase price for the Premises as determined in Paragraph 14, and whether City is exercising the right of first refusal on its own behalf or has located an Eligible Buyer, and shall be sent by certified mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the Premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or Assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its designee or Assignee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer. The Owner is responsible for all fees and expenses related to the sale of the unit, including but not limited to real estate commissions and inspections.

- 7.3 Escrow.** Within sixty (60) days of the date of acceptance, an escrow account shall be opened by the City or its designee or Assignee. At the closing, a title insurance company approved by City shall issue to the City, its designee, or Assignee, or the Eligible Buyer a CLTA owner's title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. The City, its designee, or Assignee or the Eligible Buyer shall pay the cost of the title insurance. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. If the Premises are sold to an Eligible Buyer, prior to the Closing, City and the Eligible Buyer shall deliver an executed Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and a Performance Deed of Trust and Security Agreement in a form acceptable to City. The Eligible Buyer must also certify at Closing that he or she will occupy the Premises as his or her primary residence. At the Closing, the Owner shall convey title to the City, the Assignee, or the Eligible Buyer by grant deed.
- 7.4 Resale Restriction Agreement.** The initial buyer and each subsequent buyer of the Property shall execute and record a covenant, substantially in the form of Exhibit D, that restricts the future sale of moderate income households at the Sales Price for a period of fifty-five (55) years (the "Resale Restriction Agreement").
- 7.5 Owner's Obligation to Cooperate.** At all times commencing on the date that the Owner provides the notice set forth in Paragraph 11.A, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective Eligible Buyers. Owner shall cooperate with the City of Menlo Park and their respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Agreement, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Agreement. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the Premises available for showing to prospective Eligible Buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the Premises, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph.
- 7.6 Assignment.** City reserves the right, at any time during this process, to subsequently assign its right to purchase to an Eligible Buyer. In no case shall the time between Owner's receipt of City's acceptance of an offer to sell and the date of close of escrow exceed one hundred eighty (180) days, unless both parties

mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled.

8. DEFAULT AND REMEDIES

- 8.1 Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.
- 8.2 Remedies.** The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
- 8.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner’s interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner’s obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner’s interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.
- 8.4 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and

each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

8.5 Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

8.6 Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of the Property, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

8.7 Cure Rights. Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by Owner’s mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

9. GENERAL PROVISIONS

9.1 Below Market Rate Guidelines (“Guidelines”). This Agreement incorporates by reference the Guidelines as of the date the Owner submitted a complete Preliminary Application pursuant to Government Code section 65941.1 and, at the election of the Owner, any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

9.2 Time. Time is of the essence in this Agreement.

9.3 Notices. Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party as follows:

Owner: _____

XXXXXX

City: City of Menlo Park
701 Laurel Street
Menlo Park, California 94025-3483
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

- 9.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.
- 9.5 Intended Beneficiaries.** The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.
- 9.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.
- 9.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.
- 9.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.
- 9.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.
- 9.10 Indemnification.** To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “Indemnitees”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges

and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 9.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 9.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

9.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference, and shall, at Owner’s expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

9.12 Transfer and Encumbrance.

9.12.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “Transfer”) of the whole or any part of any Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

9.12.2. Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) transfers between entities owned or controlled by the Florence Lane Ventures, LLC.

9.12.3. Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement and/or a Property if all of the following requirements are met (provided however, the requirements of this Section 9.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 9.12.2).

(1) Proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(2) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(3) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(4) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the deputy Director unless the Deputy Director, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

9.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 9.13 shall not apply to Transfers described in clauses (i) and (ii) of Section 9.12.2.

9.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).

OWNER:

[INSERT]

By: _____

Its:

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____
City Manager

ATTEST:

By: _____
City Clerk

List of Exhibits:

Exhibit A: 975 Florence Lane Property Description

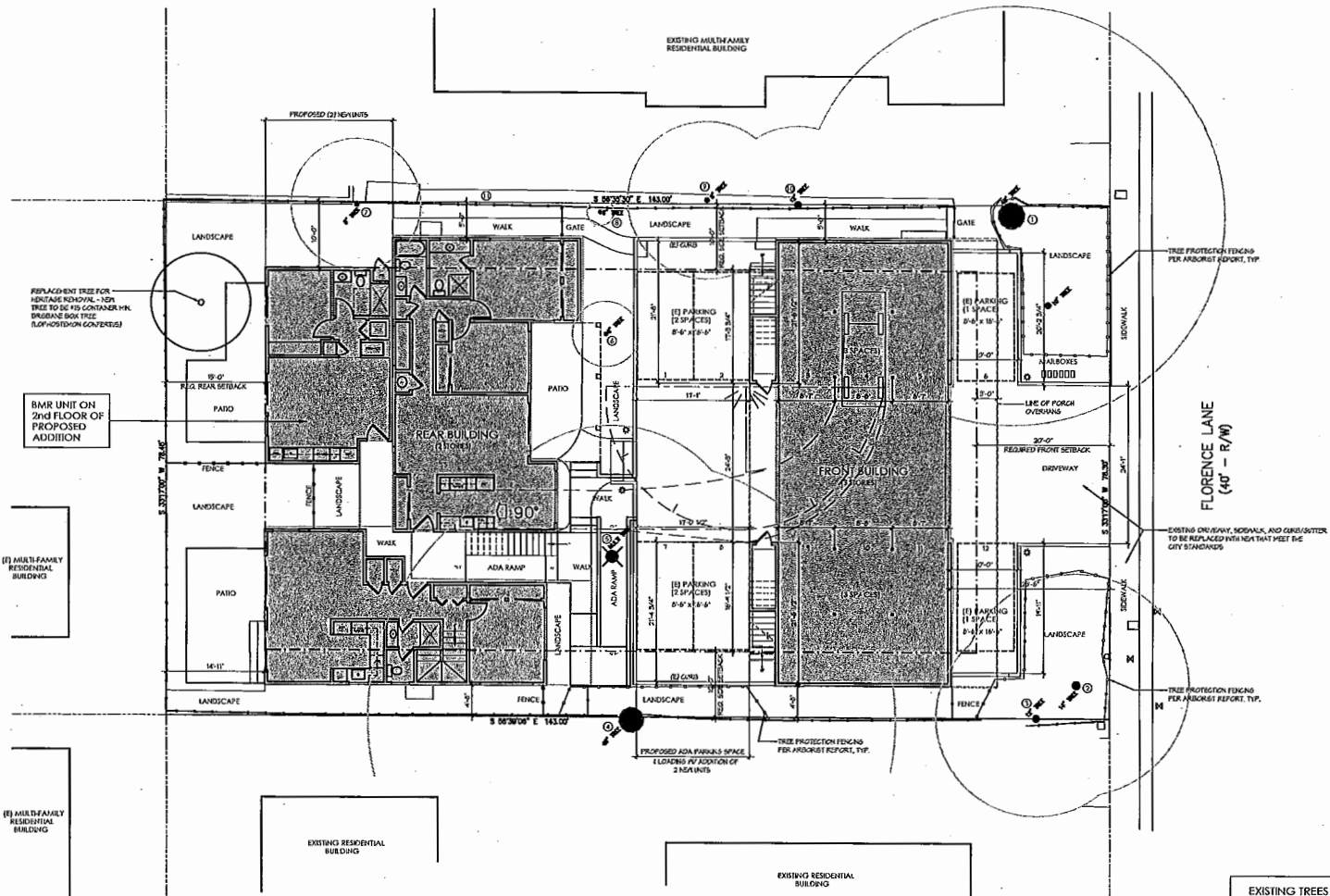
Exhibit B: Property (Unit 8) Location

Exhibit C: Insurance Requirements

Exhibit D: Buyer's Occupancy and Resale Restriction Agreement with First Right of Refusal

EXHIBIT A
975 Florence Lane Property Description

EXHIBIT B – Property Location



PROPOSED SITE PLAN 1/8"=1'-0" NORTH

- EXISTING TREES**
(PER ARBORIST REPORT)
- ① 45.5' COAST LIVE OAK
 - ② 14.2' COAST LIVE OAK
 - ③ 13.3' COAST LIVE OAK
 - ④ 45' COAST LIVE OAK
 - ⑤ 18.2' JAPANESE MAPLE
 - ⑥ 8' MEDITERRANEAN FAN PALM
 - ⑦ 8.7' CABRAGE PALM
 - ⑧ 5.1' BALM H CYPRESS
 - ⑨ 4.8' MEDITERRANEAN PALM
 - ⑩ 17' BLACK ACACIA
 - ⑪ 10' BLACK ACACIA

Kellond Architects
14510 Big Basin Way, #205
Saratoga, California 95070
408.741.0600 ph.
www.kellondarchitects.com

ALL DRAWINGS AND WRITTEN MATERIAL
HEREIN CONSTITUTE THE ORIGINAL AND
UNREPRODUCED WORK OF THE ARCHITECT,
WHICH MAY NOT BE DUPLICATED, USED, OR
DISCLOSED WITHOUT THE WRITTEN CONSENT
OF THE ARCHITECT.

PROJECT
975 Florence Ln.
Menlo Park, CA 94025

SHEET TITLE

PROPOSED SITE PLAN

REVISIONS

No.	Date	Notes
1	12/18/18	PLANNING REVISIONS
2	1/18/19	PLANNING REVISIONS
3	2/23/19	PLANNING REVISIONS
4	3/29/19	PLANNING REVISIONS

PROJECT #: 2017.10
DATE: 25 JUNE 2018
SHEET #: SD-1.2

EXHIBIT C
Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:
 - (a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.
 - (b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.
 - (c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.
 - (d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

- (e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.
- (f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, and as commercially available.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

- (a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
- (b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate. Subcontractors may maintain Products and Completed Operations with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
- (c) Commercial Automobile Liability: \$2,000,000 combined single limit.
- (d) Employer's Liability:
 Bodily Injury by Accident - \$1,000,000 each accident.
 Bodily Injury by Disease - \$1,000,000 policy limit.
 Bodily Injury by Disease - \$1,000,000 each employee.
- (e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work. Subcontractors are required to carry coverage if their scope of work includes design services to the Project.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions: The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.
 - (d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
 - (e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
 - (f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its

option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

- (g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.
- (h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.
- (i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Exhibit D

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT

WITH RIGHT OF FIRST REFUSAL

(same as subject agreement)

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT

WITH RIGHT OF FIRST REFUSAL

(975 Florence Lane Unit 8)

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“**Agreement**”) is entered into as of _____, 202[], by and between the City of Menlo Park a California municipal corporation (“**City**”), and _____, a California limited liability company (“**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**” in this Agreement.

RECITALS

- A. Pursuant to the terms of that certain BMR Agreement (“Regulatory Agreement”) between the City and Florence Lane Ventures , LLC, recorded on _____, 20 __, as Document No. _____ in the Official Records of San Mateo County (“Official Records”), that certain property described in Exhibit A to this Agreement (the “Property”) was designated as a moderate income unit, to be made available for sale only to moderate income households at a price not to exceed a moderate income housing costs for a period of fifty-five (55) years.
- B. Owner is a Moderate Income Household, and is purchasing the Property. As a condition of purchasing the Property, and in exchange for having the opportunity to acquire the Property at a sales price below market value for the property, Owner is required to enter into this Agreement to ensure the continued affordability of the Property, consistent with the Regulatory Agreement.
- C. This Agreement also provides the City a right of first refusal to purchase the Property given in consideration of the economic benefits to the Owner resulting from the purchase of the Property at a price below market value for the Property.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

1. OPERATION OF THE BMR UNIT.

- 2.1 Effective Date.** The effective date of this Agreement shall be the date that the Grant Deed conveying the Property to Owner is recorded in the Official Records. (the “**Effective Date.**”)
- 2.2 Affordability Period.** The Property, shall be subject to the requirements of this Agreement from the Effective Date until the 55th anniversary of such date. The duration of this requirement shall be known as the “**Affordability Period.**”
- 2.3 Maintenance.** Owner shall comply with every condition of the Project Approvals applicable to the Project and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.
- 2.4 Monitoring and Recordkeeping.** Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines, or, at the Owner’s election, applicable recordkeeping and monitoring requirements in updated Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the Property, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.
- 2.5 Non-Discrimination Covenants.** Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall any occupant of the Property or any person claiming under or through such occupant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

2.5.1. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.5.2. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.5.3. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.6 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF THE PROPERTY UNITS.

3.1 Sale to Moderate Income Households. The Property shall be sold in accordance with the BMR Ordinance and the Guidelines. The Property shall be affordable to eligible households which are moderate income as defined in Section 50093 of the California Health and Safety Code, as described in the Guidelines, which households meet all of the requirements set forth in the Guidelines, and are of the smallest household size eligible for the Property on the BMR waiting list maintained by the City on the date that the Sales Prices are set, as more particularly described below and in the Guidelines. The eligibility requirements for buyers of the Property, the selection process for buyers for the Property, the purchase process and sale procedures, the occupancy requirements for the Property and the process for resale of Property are all set forth in the Guidelines.

The Property shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for the duration of the Affordability Period, pursuant to the terms and conditions set forth in the Guidelines.

The Property shall be located in the Project as set forth in Exhibit B.

Any sale of the Property shall be subject to the setting of a sales price which shall be calculated according to the formula for calculating the sales price set forth in the Guidelines in effect at the time Owner notifies City that they wish to sell the Property (the “**Sales Price.**”) The Sales Price shall be set before the commencement of the sale process for the Property.

- 3.2 Term.** Any and all obligations or responsibilities of Owner under this Agreement with regard to the Property shall terminate upon the recording of the grant deed conveying the Property to a qualified third party purchaser or the City in accordance with the terms and provisions of Section 3 of this Agreement and this Agreement as a whole and the recording of the deed restrictions in compliance with the Guidelines against the Property.
- 3.3 Third Party Purchasers.** The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of the Property or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to the City for whose benefit this Agreement has been entered into. No third party purchaser of the Property or market rate unit, homeowners’ association or any other third party shall obtain any rights or standing to complain that the Property was not constructed, designed, sold or conveyed in accordance with this Agreement, or the Ordinance and the Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by the City, the acceptance of the interior specifications for the Property and the conveyance of the Property to qualified third parties shall conclusively indicate that Owner has complied with this Agreement and the Ordinance and the Guidelines.
- 3.4 Right of First Refusal.** Except as provided herein, Owner hereby grants and gives to the City of Menlo Park, or another governmental entity or tax-exempt nonprofit organization to whom City may assign the rights set forth in this Paragraph 10 (“**Assignee**”), a right to purchase the Premises solely for resale as a BMR unit pursuant to the terms of the City’s Below Market Rate Housing Program, under conditions set forth below. City, at its sole discretion, may also assign this right to an individual buyer who meets the City’s eligibility qualifications to participate in the City’s Below Market Rate Housing Program (“**Eligible Buyer**”). City shall select an Eligible Buyer from the BMR Purchase and Rental Interest List or the BMR Purchase Legacy List or, if neither list exist, City shall market the Premises and shall have the right to retain a realtor to locate Eligible Buyers. City reserves the right to reassign the right to another Eligible Buyer in the event the initial Eligible Buyer fails or is unable to complete the transaction. Notwithstanding the foregoing, no assignment or reassignment of this right shall extend any time limits for performance under this Agreement without the mutual, express and written agreement signed by both the Owner and any assignee.

4. CONDITIONS OF TRANSFER.

For purposes of this Agreement, “transfer” shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Premises, including, but not limited to, a fee simple interest, joint tenancy interest, or life estate. A “transfer” shall also include the recording of one or more deeds of trust against the Premises to secure one or more loans or to refinance an existing loan. Until such time as the City’s right of first refusal is exercised, waived, or expired, there shall be no transfer of the Premises to any person or entity except with the express written consent of City or its designee, which consent shall be consistent with the City’s goal of creating, preserving, maintaining, and protecting housing in Menlo Park for persons of low and moderate income. Any transfer of the Premises shall be subject to the conditions set forth in this Agreement, and any and all conditions contained in the Ordinance and the Guidelines, including any amendments thereto which may be adopted from time to time, as long as these amendments do not have a materially adverse affect on the interests of Owner.

4.1 Prohibited Transfer/Default. Any transfer which is not in substantial compliance with the above conditions shall be deemed a “**Prohibited Transfer**”. Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, City shall give written notice to the Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of the City within ten (10) days after the date of the notice, or within such further time as City determines is necessary to correct the violation, City may declare a default under this Agreement. Upon the declaration of a default, City may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

4.2 Permitted Transfer. Notwithstanding the foregoing, the following transfers are exempt from City’s right of first refusal and do not re-start the fifty-five (55) year deed restriction clock (each, a “**Permitted Transfer**”):

4.2.1. Transfer by devise or inheritance to Owner’s spouse;

4.2.2. 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);

4.2.3. Transfer of title to the Owner’s spouse as part of divorce or dissolution proceedings;

4.2.4. Transfer of title or an interest in the property to the Owner’s spouse in conjunction with marriage;

4.2.5. Transfer to Fannie Mae through foreclosure or its acceptance of a deed in lieu of foreclosure.

In the event of a Permitted Transfer, an instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

“This property is subject to the terms and provisions of that certain ‘Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property’. Transferee, on behalf of transferee, and transferee’s successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Agreement, and to include this covenant in any further transfer of the property.”

4.3 Conditional Permitted Transfers. Owner may transfer the Premises to a child or other relative by devise or inheritance provided that: a) Owner provides written notice to the City with the transferee’s name, contact information, and household income information and the City consents; b) the transferee household is an eligible, qualifying household under the BMR Guidelines at the time of the transfer; c) the transferee signs a new Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and Performance Deed of Trust and Security Agreement in a form acceptable to City and occupies the Premises. In the event that the transferee is not an eligible, qualifying household, the transferee may inherit the Premises but must offer the Premises for sale in accordance with Paragraph 11 below within ninety (90) days of the recording of the deed or probate order conveying title to the Premises to transferee. Failure to comply with the provisions of this Paragraph 5.C shall constitute a Prohibited Transfer.

5. OWNER OCCUPANCY.

Prospective purchasers of the Property must sign a written statement acknowledging their agreement that the Property must be occupied as the purchaser’s principal residence, that the Property may not be rented or leased, except as allowed under the Resale Restriction Agreement.

6. SENIOR LIEN HOLDER.

Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to any mortgage (“**First Deed of Trust**”) held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time owner purchased the Property (“**Senior Lien Holder**”). City and Owner acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Owner under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Premises. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of

the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Premises to low or moderate income households or otherwise restricting the Owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the Owner or a related entity of the Owner), receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Premises free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Premises pursuant to a deed in lieu of foreclosure, the lien of this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that (i) the City has been given written notice of a default under the First Deed of Trust, and (ii) the City shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the 60-day period provided in such notice sent to the City. Any and all deeds of trust recorded against the Premises, other than the First Deed of Trust held by the Senior Lien Holder and/or such Senior Lien Holder's successor or assignee of its interest, shall be subordinate and subject to the terms and provisions of this Agreement.

7. RESALE PROCEDURES

- 7.1 Notice of Offer to Sell.** Whenever the Owner no longer desires to own the Premises, Owner shall notify City of their intent to offer the property for sale in accordance with the terms of this Agreement. Such notice shall be in writing, and must be sent by certified mail through the United States Postal Service, addressed to the Community Development Director, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Owner's offer to sell may be withdrawn by Owner, provided that notice of withdrawal has been received by City or its designee, in writing, prior to acceptance by City or its designee.
- 7.2 Acceptance.** City, its designee or Assignee shall have sixty (60) days from the date of receipt of Owner's notice to exercise the right of first refusal to accept Owner's offer to sell the Premises. This acceptance shall be in writing, shall indicate that City believes the Premises are in salable condition in accordance with Paragraph 18, state the purchase price for the Premises as determined in Paragraph 14, and whether City is exercising the right of first refusal on its own behalf or has located an Eligible Buyer, and shall be sent by certified mail through the United States Postal Service, addressed to the Owner of record at the official address of the Premises. For purposes of fulfillment of the terms of this procedure, the notice of intent to sell the Premises shall be deemed to be an offer to sell, and the exercise of the right to purchase by the City or its designee or Assignee shall be deemed to be an acceptance of that offer. Acceptance by City or its designee or Assignee shall constitute a legally binding contract for the transfer of title, and once accepted, the offer to sell may not be withdrawn without the express, written consent of the party who accepted the offer. The Owner is responsible for all fees and expenses related to the sale of the unit, including but not limited to real estate commissions and inspections.

- 7.3 Escrow.** Within sixty (60) days of the date of acceptance, an escrow account shall be opened by the City or its designee or Assignee. At the closing, a title insurance company approved by City shall issue to the City, its designee, or Assignee, or the Eligible Buyer a CLTA owner's title insurance policy, in a form reasonably approved by City and subject only to such title exceptions as reasonably approved by City. Taxes and assessments shall be prorated as of the date of closing. Taxes must be paid current as of the closing date and all liens must be satisfied and removed from title unless City expressly agrees otherwise in writing. The City, its designee, or Assignee or the Eligible Buyer shall pay the cost of the title insurance. Closing shall utilize the form of escrow agreement customarily used by such title company for residential transactions with the City, modified to the extent necessary to conform to this transaction. If the Premises are sold to an Eligible Buyer, prior to the Closing, City and the Eligible Buyer shall deliver an executed Agreement and Deed Restrictions Regarding Resale Controls for Below Market Rate Property and a Performance Deed of Trust and Security Agreement in a form acceptable to City. The Eligible Buyer must also certify at Closing that he or she will occupy the Premises as his or her primary residence. At the Closing, the Owner shall convey title to the City, the Assignee, or the Eligible Buyer by grant deed.
- 7.4 Resale Restriction Agreement.** The initial buyer and each subsequent buyer of the Property shall execute and record a covenant, substantially in the form of Exhibit D, that restricts the future sale of moderate income households at the Sales Price for a period of fifty-five (55) years (the "Resale Restriction Agreement").
- 7.5 Owner's Obligation to Cooperate.** At all times commencing on the date that the Owner provides the notice set forth in Paragraph 11.A, Owner shall ensure that the Premises are clean and in good repair, and available to be shown to prospective Eligible Buyers. Owner shall cooperate with the City of Menlo Park and their respective officers, employees and representatives. Failure to comply with these conditions shall be deemed a material breach of Owner's obligations pursuant to the terms of this Agreement, and upon determination by the City that Owner has failed to comply with any of the above conditions, City shall notify Owner that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until Owner has complied with all of the conditions of this Agreement. Acts by Owner which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the Premises available for showing to prospective Eligible Buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the Premises, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the City may pursue any other remedies for breach based upon this paragraph.
- 7.6 Assignment.** City reserves the right, at any time during this process, to subsequently assign its right to purchase to an Eligible Buyer. In no case shall the time between Owner's receipt of City's acceptance of an offer to sell and the date of close of escrow exceed one hundred eighty (180) days, unless both parties

mutually agree, in writing, to extend that date, or if for any reason the time periods herein are tolled.

8. DEFAULT AND REMEDIES

- 8.1 Events of Default.** The following shall constitute an “**Event of Default**” by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 4 of this Agreement, the specific provision shall control.
- 8.2 Remedies.** The occurrence of any Event of Default under Section 4.1 shall give the City the right to proceed with an action in equity to require the Owner to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
- 8.3 Obligations Personal to Owner.** The liability of Owner under this Agreement to any person or entity is limited to Owner’s interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner’s obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner’s interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.
- 8.4 Remedies Cumulative.** No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and

each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

8.5 Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

8.6 Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of the Property, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

8.7 Cure Rights. Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by Owner’s mortgage lender, shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

9. GENERAL PROVISIONS

9.1 Below Market Rate Guidelines (“Guidelines”). This Agreement incorporates by reference the Guidelines as of the date the Owner submitted a complete Preliminary Application pursuant to Government Code section 65941.1 and, at the election of the Owner, any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

9.2 Time. Time is of the essence in this Agreement.

9.3 Notices. Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party as follows:

Owner: _____

XXXXXX

City: City of Menlo Park
701 Laurel Street
Menlo Park, California 94025-3483
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

- 9.4 Successors and Assigns.** This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.
- 9.5 Intended Beneficiaries.** The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.
- 9.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.
- 9.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.
- 9.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.
- 9.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.
- 9.10 Indemnification.** To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “Indemnitees”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges

and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 9.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 9.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

9.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference, and shall, at Owner’s expense, maintain in full force and effect insurance coverage as specified in Exhibit C.

9.12 Transfer and Encumbrance.

9.12.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “Transfer”) of the whole or any part of any Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

9.12.2. Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) transfers between entities owned or controlled by the Florence Lane Ventures, LLC.

9.12.3. Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement and/or a Property if all of the following requirements are met (provided however, the requirements of this Section 9.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 9.12.2).

(1) Proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(2) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(3) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(4) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the deputy Director unless the Deputy Director, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

9.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 9.13 shall not apply to Transfers described in clauses (i) and (ii) of Section 9.12.2.

9.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).

OWNER:

[INSERT]

By: _____

Its:

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____

City Manager

ATTEST:

By: _____

City Clerk

List of Exhibits:

Exhibit A: 975 Florence Lane Property Description

Exhibit B: Property (Unit 8) Location

Exhibit C: Insurance Requirements

Exhibit D: Buyer's Occupancy and Resale Restriction Agreement with First Right of Refusal

EXHIBIT A
975 Florence Lane Property Description

EXHIBIT B – Property Location

EXHIBIT C
Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:
 - (a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.
 - (b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.
 - (c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.
 - (d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

- (e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.
- (f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, and as commercially available.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

- (a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
- (b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate. Subcontractors may maintain Products and Completed Operations with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
- (c) Commercial Automobile Liability: \$2,000,000 combined single limit.
- (d) Employer's Liability:
 - Bodily Injury by Accident - \$1,000,000 each accident.
 - Bodily Injury by Disease - \$1,000,000 policy limit.
 - Bodily Injury by Disease - \$1,000,000 each employee.
- (e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work. Subcontractors are required to carry coverage if their scope of work includes design services to the Project.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions: The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.
 - (d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
 - (e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
 - (f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its

option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

- (g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.
- (h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.
- (i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Exhibit D

BUYER'S OCCUPANCY AND RESALE RESTRICTION AGREEMENT

WITH RIGHT OF FIRST REFUSAL

(same as subject agreement)



STAFF REPORT

City Council Meeting Date: 10/10/2023
Staff Report Number: 23-228-CC

Regular Business: Review and authorize staff to submit the revised Housing Element for the 2023 to 2031 planning period to the California Department of Housing and Community Development

Recommendation

Staff recommends the City Council review and authorize staff to submit the revised 2023 to 2031 (6th Cycle) Housing Element to the California Department of Housing and Community Development (HCD). The Housing Element, which was adopted by the City Council Jan. 31, has been revised (Attachment A) in response to an Aug. 29 letter from HCD.

Policy Issues

State housing law requires that jurisdictions throughout California adequately plan to meet the housing needs of the community and future residents by regularly updating the jurisdiction's general plan housing element. The Regional Housing Needs Allocation (RHNA) identifies the specific number of housing units at each income level category that a jurisdiction must plan for from 2023 to 2031 to comply with State mandates. Additionally, the Affirmatively Furthering Fair Housing (AFFH) Act requires that all local public agencies facilitate deliberate action to explicitly address, combat, and relieve disparities resulting from past patterns of segregation to foster more inclusive communities.

Background

The city began its efforts to update the Housing Element and Safety Element, and prepare a new Environmental Justice Element in early 2021. The project has been a City Council priority, and the city has undertaken an extensive process of planning, public engagement and coordination with community members, stakeholders, city decision makers, and other governmental agencies to develop the 2023 to 2031 Housing Element. The Housing Element was developed to meet the city's assigned RHNA of 2,946 net new housing units across all income levels over an eight-year period and to create a foundation for the city's policies related to housing. In an effort to exceed the State's minimum requirements, the Housing Element included a wide range of housing-related programs and incorporated more net new units than required to provide ample opportunities for new housing development throughout the community, primarily in City Council Districts 2 through 5.

The City Council adopted the Housing Element Jan. 31 (Attachment B) and submitted it to HCD for review Feb. 8. On April 7, the City received a letter from HCD requesting additional changes to the document. Among the topics in the letter were requests for additional analysis of housing needs, resources and constraints; additional information to support the inclusion of sites in the inventory; and further evaluation of governmental constraints on housing development in the city. Following a June 27 City Council meeting to review and authorize staff to submit the revised Housing Element to HCD, staff finalized the document and submitted it to HCD for review June 30. On Aug. 29, the City received a letter from HCD (Attachment C)

requesting additional changes to the document, but on a narrower range of topics than the April 7 letter.

Analysis

During the process of revising the adopted Housing Element, the project team met with HCD staff on Sept. 12 to discuss potential responses to HCD's Aug. 29 comment letter. HCD staff shared examples of how to address comments from other jurisdictions' housing elements, and agreed to informally review select proposed revisions, which staff prepared and sent to HCD on Sept. 21. As of the date of this report, HCD is still conducting the informal review. Upon receiving feedback from HCD, staff intends to address any comments and make applicable revisions, and post the updated draft for a period of seven days on the City's website. Unless directed otherwise by the City Council, staff would then submit the document to HCD for formal review following the public review period.

Responses to HCD comments

The complete revised draft Housing Element with tracked change text edits since the June 30 document is included as Attachment A. The three major themes from the comments were focused on:

1. The analysis and actions to promote AFFH.
2. The inventory of land suitable and available for residential development.
3. The analysis of potential and actual government constraints.

A table of the 10 HCD comments and a summary response with references to applicable page numbers in the revised draft Housing Element is provided as Attachment D. The changes described in Attachment D do not include minor revisions in Attachment A, such as corrections to spelling and grammatical errors and new references to Housing Element chapters and programs for clarity and consistency.

Most of the changes in the revised document provide additional data, give more context about existing zoning and application processing procedures, and further enhance proposed programs with numeric metrics and specific actions to be conducted by the City during Housing Element implementation, where applicable.

The project team would like to highlight one proposed change to the site inventory capacity calculations used to demonstrate the ability of sites to meet the city's RHNA. Currently, the site inventory generally utilizes a density of 55 dwelling units per acre (du/ac) for each of the 68 opportunity sites, reflecting the potential for all sites to take advantage of the affordable housing overlay (AHO) to achieve the density of up to 55 du/ac, or in combination with state density bonus law up to 100 du/ac. (As per HCD guidance, the site inventory did not include the potential application of the state density bonus, and only considered the potential zoning densities and AHO bonuses offered by the city.) Upon further review of comment 9 in HCD's letter, staff is proposing a more conservative analysis. The Housing Element site inventory capacity calculations would be modified to use a density of 30 du/ac for sites outside the El Camino Real/Downtown Specific Plan (Specific Plan) area, except for those sites that have existing development proposals or known interest (such as the Veterans Affairs and Ravenswood City School District properties). The density of 30 du/ac reflects the maximum base density anticipated for the R-3 around downtown, commercial and mixed-use sites outside the Specific Plan area following Housing Element zoning modifications. An example modified site sheet is included as Attachment E. Within the Specific Plan area, 55 du/ac would continue to be used for the capacity calculations to reflect a base density of 40 units/acre to which the AHO would be applied for increased density. Despite maintaining a density of 55 du/ac to calculate Specific Plan parcels' capacity in the Housing Element, projects on those sites would realistically be able to achieve densities of up to 100 du/ac or more, depending on the Specific Plan subdistrict and the density bonuses applied.

Table 1 provides a comparison of the prior and proposed site capacity calculations. The table includes the

forecast number of units at each income level, the total number of units projected in combination with pipeline projects and future accessory dwelling unit (ADU) production, and the total number of units in comparison to the city’s RHNA requirements. With these changes, the site capacity calculations would continue to demonstrate the ability to meet the city’s RHNA and maintain a buffer of additional unit capacity beyond HCD’s requirements.

Table 1: Proposed change in Housing Element capacity by income level (in dwelling units)					
	Very low	Low	Moderate	Above moderate	Total
Original inventory methodology	967	986	881	0	2,834
Proposed inventory methodology	880	634	571	0	2,085
Pipeline projects (unchanged)	133	277	197	3,038	3,645
ADUs (unchanged)	26	25	26	8	85
Total with proposed methodology	1,039	936	794	3,046	5,815
Required RHNA	740	426	496	1,284	2,946
Difference between proposed methodology and RHNA	299	510	298	1,762	2,869

At this time, staff has not updated the capacity calculations in Attachment A. Unless the City Council directs otherwise, staff will revise the capacity calculations for the opportunity sites as described above, consistent with the example in Attachment E, and make associated changes to numbers throughout the document before submittal of the revised Housing Element to HCD.

Next steps

Following a required seven-day public review period and an assumed full 60-day HCD review period, it is anticipated that HCD would provide a response to the revisions in early December 2023. If tentative certification of the Housing Element is granted following HCD’s review, the Planning and Housing Commissions would make recommendations and the City Council would tentatively meet in January 2024 to consider re-adoption of the Housing Element.

Concurrent with the submittal of the revised draft Housing Element to HCD, the project team is finalizing actions related to the following zoning changes proposed as part of Housing Element implementation programs:

- H4.D (Modify the Affordable Housing Overlay (AHO)),
- H4.I (Create New Opportunities for Mixed-Use Development),
- H4.J (Increase Residential Density and Maximize Development Proposals),
- H4.L (Modify El Camino Real/Downtown Specific Plan), and
- H4.T (Residential Overlay).

The Planning Commission is tentatively scheduled to review and provide a recommendation to the City Council on the proposed zoning changes at their Oct. 23 meeting, with a tentative City Council date in November/early December.

Correspondence

Since the June 30 Housing Element submittal to HCD, staff has received 18 items of correspondence. In general, the emails and letters cover three main topics:

1. Requests in support or opposition of specific sites in the site inventory.
2. Feedback regarding the proposed zoning changes related to Housing Element implementation and support for increased residential densities.
3. Anticipation of needs and opportunities related to housing growth in the Menlo Park City School District.

The correspondence has been added to Appendix 1-1 of the Housing Element.

Impact on City Resources

As part of the fiscal year 2020-21 budget, the City Council appropriated nearly \$1.5 million from the general fund to support the Housing Element Update (including preparation of the subsequent environmental impact (SEIR)). On March 14, the City Council approved an amendment to the professional services agreement with M-Group, the City's Housing Element Update project consultant, in the amount of \$75,414, for an overall contract total of \$1,547,466. Staff is working with the consultant team to understand anticipated budget augmentations and contract modifications for continued support on the Housing Element and related components, such as the Environmental Justice Element, and anticipates bringing the information to the City Council for review at an upcoming meeting.

Environmental Review

The City Council adopted Resolution No. 6808 and certified the SEIR for the Housing Element Update project (i.e., Housing Element and Safety Element updates, a new Environmental Justice Element, and associated changes) Jan. 31. On Feb. 1, a Notice of Determination (NOD) was filed. The proposed changes to the Housing Element are primarily to clarify, specify, and enhance the content in the document adopted by the City Council Jan. 31 in response to comments from HCD, and are covered by the certified SEIR.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. A Weekly Digest article was also electronically distributed Oct. 2 to highlight the Oct. 10 City Council meeting to review draft revisions to the Housing Element. The Housing Element Update project webpage was updated to advertise the meeting and the City has posted about the meeting via the City's Facebook, Instagram and X (formally Twitter) platforms.

Attachments

- A. Hyperlink – Revised 2023 to 2031 General Plan Housing Element in response to Aug. 29 comments from HCD: menlopark.gov/files/sharedassets/public/v/2/community-development/documents/housing-element-annual-progress-reports/city-of-menlo-park-2023-2031-housing-element-updated-october-5-2023-track-change-version-3.pdf
- B. Hyperlink – Jan. 31 Adopted 2023 to 2031 General Plan Housing Element: menlopark.gov/files/sharedassets/public/community-development/documents/projects/housing-element-update/city-of-menlo-park-2023-2031-housing-element.pdf
- C. Hyperlink – Aug. 29 letter from HCD: menlopark.gov/files/sharedassets/public/v/1/community-development/documents/projects/housing-element-update/20230829-hcd-review-letter-for-revised-he.pdf

Staff Report #: 23-228-CC

- D. Summary of responses to Aug. 29 HCD letter
- E. Example site sheet using proposed capacity calculations

Report prepared by:
Tom Smith, Principal Planner

Report reviewed by:
Mary Wagner, Assistant City Attorney
Deanna Chow, Assistant Community Development Director

Summary of Responses to August 29, 2023 HCD Letter

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	1. <i>Promote AFFH</i>		
1	<p><u>Actions, Programs, Metrics, and Milestones:</u> The element was revised to include geographic targeting and some additional actions. However, given the disparities in access to opportunity between the east and west side of the City, the element still must include a significant and robust suite of actions to 1) promote housing mobility 2) increase new housing choices and affordability in higher opportunity or relatively higher-income areas 3) place-based strategies for community preservation and revitalization and 4) displacement protection. Additionally, given the stark contrast between different parts of the City in terms of income and access to opportunity, the element must be revised to include significant numeric metrics (beyond the Regional Housing Needs Allocation (RHNA)) focused on all four program areas noted above. For your information, quantified metrics should target beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed). HCD will follow-up under a separate cover with additional guidance.</p>	<p>Table 4-26 (Fair Housing Issue, Contributing Factors, and City Actions) has been modified to add specificity for geographic targeting (e.g., Belle Haven) and city actions linked with Housing Element programs and/or quantified metrics to support AFFH.</p> <p>A description of the community amenities program and funds, including benefits for the Belle Haven and Bayfront neighborhoods—areas that are identified as Underserved Communities in the city’s ongoing preparation of its first Environmental Justice Element—has been added. In Chapter 8, Program H5.J has been added to identify and support the preparation of Menlo Park’s first Environmental Justice Element. As stated in Program H5.J (Environmental Justice Element), the City will annually evaluate potential funding of environmental justice programs through utilization of community amenities funds and will implement at least one Environmental Justice Element program each year with emphasis on the highest priority programs. Examples may include sidewalks, lighting, and landscaping improvements; affordable ownership housing; anti-displacement programs; and open space and recreation enhancements.</p>	<p>Pages 4-87 through 4-95; 8-1; and 8-38</p>

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
		Table 4-26 identifies the factors that contribute to fair housing issues and sets forth specific city actions with metrics and milestones to address the issues; these actions, along with the programs in Chapter 8, constitute Menlo Park’s housing program strategy for implementation of the Housing Element. The city will report its progress in implementing its fair housing actions and all its Housing Element programs as part of Annual Progress Reports (APR).	
	<i>2. Inventory of land suitable and available for residential development</i>		
2	<p><u>Zoning for a Variety of Housing Types – Emergency Shelters:</u> The element explains parking requirements for emergency shelters complies with AB 139 (Statutes of 2020). However, AB 139 provides that parking requirements shouldn’t be more than what is necessary for staff working in the shelter. The City’s requirements exceed the number of spaces necessary for staff and as a result, the element should add or modify programs to address the constraint.</p> <p>In addition, Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD’s memo at</p>	The Emergency Shelters section of Chapter 5 has been revised to discuss an inconsistency between the city’s existing off-street parking requirements and what state law allows for shelters. In Chapter 8, Program H3.G has been modified to note that parking requirements for emergency shelters will be set at the number of spaces needed only to accommodate shelter staff.	Pages 5-12 through 5-14; 8-18



Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf .		
3	<u>Electronic Sites Inventory</u> : Although the City has submitted electronic sites inventory as described in the prior review, if any changes occur, the City should submit revisions as part of any future re-adoption or submittal. Please see HCD’s housing element webpage at https://www.hcd.ca.gov/planning-and-community-development/housing-elements for additional information.	Unless City Council directs otherwise, staff will submit a revised electronic sites inventory using the methodology described in the “Responses to HCD comments” subsection of the staff report, and change numbers throughout the Housing Element for consistency.	Various
4	<u>Programs</u> : As noted above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element must be revised, as follows: The element includes many complex and challenging strategies that are essential to the City’s approach in addressing its housing needs including identifying publicly-owned sites, large pipeline projects and complex nonvacant typologies. As a result, the element should include a program to evaluate the effectiveness of these approaches and commit to adjustments, as appropriate, to continue working toward the housing element’s goals and objectives. Specifically, the element could include a program to conduct an in-depth mid-term evaluation of identified sites and programs, including their effectiveness in addressing the RHNA, and commit	Program H1.H has been expanded to clarify that the mid-cycle review will evaluate progress on pipeline projects, nonvacant sites, zoning modifications, the AHO, and governmental constraints, and propose modifications to address any significant shortfalls and/or remaining governmental constraints.	Pages 8-7 through 8-8

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	to adjustments within a specified time period. Topics should include pipeline projects, nonvacant sites, rezoning, Affordable Housing Overlay zone and governmental constraints (e.g., parking, lot coverage, Floor Area Ratio (FAR), etc.,)		
5	<u>Shortfall of Adequate Sites (Program H4.K – Rezone for Lower-Income Shortfall):</u> HCD’s prior review found that this program must include several revisions related to appropriate statutory references, timelines and other provisions. While this Program was revised to address some of HCD’s prior review, it still must identify the shortfall by income group, acreage, allowable densities and commitment to appropriate development standards. Additionally, HCD’s prior review found that the element must clarify whether other programs are needed to meet the City’s RHNA and if so, it also needs to comply with the applicable rezone requirements under Government Code section 65583(c)). While the element clarified that Programs H4.I (Create New Opportunities for Mixed-Use Development) and H4.T (Residential Overlay) are needed to address a shortfall of sites and implement rezones, it did not revise these programs to comply with all applicable requirements.	<p>In Chapter 7, the analysis of sites in the site inventory that are the appropriate size and density to meet HCD requirements for lower-income units has been expanded, and a shortfall of 193 lower-income units with the current zoning in place has been described in terms of income group, acreage, and allowable densities. The zoning programs that will be implemented to address the shortfall are described and the resulting surplus of units and adequacy of the sites has been quantified. In making the revisions, staff closely followed an example of how to address the comment provided by HCD staff.</p> <p>In Chapter 8, Program H4.K has been updated to numerically describe the lower-income unit shortfall under current zoning and reference the zoning programs that will be implemented to address the shortfall.</p>	Pages 7-2 through 7-4; 8-28 through 8-29
6	<u>Federally-Owned Sites and School Sites:</u> HCD’s prior review found that the element must include sufficient analysis demonstrating the feasibility and likelihood of these sites redeveloping during the planning period. While the element now includes an analysis, it should also include a program committing to facilitating development on these sites	Chapter 7 has been updated with the most recent status of potential and known projects on federally-owned and school sites, namely the USGS site, the VA site, and the former Flood School site, indicating continued progress, any known timing, and anticipated likelihood of	Pages 7-20 through 7-21; 7-27; 8-32 through 8-33

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	<p>during the planning period. Specifically, the element should include a program with numerical objectives that ensures, if applicable, compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development on these sites and alternatives (e.g., identifying additional sites) if production does not actualize as identified in the inventory. Actions could include but are not limited to outreach with owners, facilitating communications developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.</p>	<p>development occurring during the Housing Element planning period (through 2031).</p> <p>A new program, H4.U, has been added to Chapter 8 clarifying and quantifying potential incentives and city actions that will lead to housing on the federally-owned and school sites in the site inventory, and a commitment to review progress on the sites as part of the mid-cycle evaluation from Program H1.H.</p>	
	<p><i>3. Analysis of potential and actual governmental constraints</i></p>		
7	<p><u>Land Use Controls:</u> HCD's prior review found that the element must analyze development standards in the R-3 zones and whether standards facilitate achieving maximum densities. The element briefly discussed that landscaping, parking, and FAR requirements could act as a constraint to development and included a program to evaluate and modify these requirements. However, the element must also include actions addressing lot coverage in R-3 zones as a constraint. Specifically, the element acknowledged that the City's current lot coverage requirements in these zones are generally lower than what's permissible in neighboring jurisdictions (p. 5-26). In addition, HCD finds that lot coverage for multifamily housing less than 50 percent is generally considered a constraint. The element must include or modify programs(s)</p>	<p>In Chapter 5, new text has been added acknowledging that HCD views lot coverage of less than 50 percent to be a constraint on multifamily development and references Program H4.J to address the constraint. Program H4.J in Chapter 8 has been revised to include actions to increase lot coverage to more than 50 percent in the city's R-3 and R-4 zoning districts.</p>	Page 5-28; 8-28

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	committing to increasing lot coverage requirements in these zones		
8	<u>State Density Bonus Law (SDBL)</u> : The element was revised to note that the City’s affordable housing overlay zone conflicts with SDBL and included a program to address this conflict. However, irrespective of the City’s overlay zone and as found in HCD’s prior review, this analysis must specifically address how the City complies with SDBL. As found in HCD’s prior review, the element could discuss the procedures, various levels of benefits (e.g., density, concessions and incentives, parking reductions), non-discretionary actions and burden of proof.	Chapter 5 has been updated with a new section titled “Existing Governmental Constraints – State Density Bonus Law.” The analysis notes inconsistencies with current state law and notes a new section of Program H4.D in Chapter 8 to modify Chapter 16.97 of the city’s Zoning Ordinance and state that no part of the chapter shall be read to oppose or otherwise interfere with State Density Bonus Law.	Pages 5-54 through 5-55; 8-25
9	<u>Affordable Housing Overlay Zone (AHOZ)</u> : HCD’s prior review found that the element must describe the City’s AHOZ including analyzing densities and development standards under this zone. The element was revised to briefly describe past projects that utilized this zone, available incentives, and compliance with SDBL (p. 5-19). The element also stated that when combined with other incentives such as SDBL, a project could potentially achieve 100 du/ac. However, this analysis still does not address HCD’s prior review. The element must specifically discuss and analyze the framework of the overlay zone including thresholds for a project to qualify for the additional density under this zone and any other applicable requirements. Further, HCD now understands that the City is utilizing the potential density available through the overlay zone to calculate realistic capacity for sites identified in prior planning periods, rezoned sites to	New text was added to Chapter 5 to provide more thorough descriptions of the AHO density bonuses, incentives, and thresholds, as well as potential updates to the AHO through Program H4.D. Site capacity calculations would be modified consistent with comment 3 above.	Pages 5-19 through 5-22

Comment Number	HCD Comment	Recommended Modification(s) to the Housing Element	Housing Element Tracked Changes Version Page Number Reference(s)
	<p>accommodate a shortfall, and potentially other types of sites. This information is supported by statements and assumptions on Table 7-7 (RHNA and Reuse Sites), Site-specific fact sheets (Appendix 7-5), sites inventory (Appendix 7-1). To utilize these capacity assumptions, the element must include evidence demonstrating the likelihood of developers taking advantage of the density bonus and circumstances where the density bonus will not be utilized. Based on a complete analysis, the element may need to rescale assumptions and include programs as appropriate</p>		
10	<p><u>Programs:</u> As noted above, the element does not include a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, HCD's prior review found that the element must clarify what parking requirements will be reduced and ensure updates will not result in any constraints to development. While the element was revised to specify that adjustments in standards will be to facilitate achieving maximum densities, Program H4.M (Update Parking Requirements and Design Standards) still should include specific information about reduction in parking requirements such as ensuring reductions will not constrain multifamily development and the number of spaces that will be considered (e.g., one space for smaller bedroom types).</p>	<p>In Chapter 8, Program H4.M has been updated to include a provision that reduced parking requirements shall not constrain multifamily residential development and no more than one parking space shall be required for smaller units.</p>	<p>Page 8-29</p>

Name: 728 Willow Road					Site #: 7
Locator Map:			Street View:		
					
Zoning: C4		APN: 062202210; 062202060; 062202050			
Housing Currently Allowed: No		Address: 728 Willow Avenue			
Existing Use: Parking Lot		Total Area: .43 ac.			
Council District: 2		School District: Menlo Park Elementary School District Menlo Park City School District			
Assessor Data			Development Typology Data		
Land Value: \$532,041		Within ½ Mile of Major Transit Stop: Yes			
Improvement Value: \$609,607		AFFH Score: 4			
Improvement-to-Total Value: .53		Redevelopment Category: Non-Residential Parcels with Complete Redevelopment (Half-Mile from Major Transit Stop)			
Year Built: None Given		Reuse Site: No			
Ownership: Privately Owned		Carveout: No		Developable Area: (A) .43 ac.	
HCD Density Data					
AHO Density: <u>55-30</u> du/ac			Assigned AHO Density: (B)		<u>55-30</u> du/ac
			Units at Assigned AHO Density: (A x B)		<u>2313</u>
Adjustment Factors					
Land Use Controls: (C)	Realistic Capacity: (D)	Infrastructure: (E)	Environmental: (F)	Typical Densities: (G)	Total Adjustment: (C x D x E x F x G)
95%	90%	100%	100%	95%	81%
HCD Credit					
Unit Allocation (A x B x C x D x E x F x G)		Lower: Very Low: 0 Low: 0		Above Moderate: 0	Total Units: <u>1911</u>
		Moderate: <u>1911</u>			

Key Findings
<p>Redevelopment Analysis: Allowing residential uses at relatively high density will incentivize parcel agglomeration and residential development on Site # 7. These parcels have a relatively low improvement value, and the uses could possibly be</p>

maintained in a mixed-use development underneath residential units. The existing use, single-story store, is relatively obsolete. It is not a substantial physical impediment to redevelopment into residential use with potential mixed use with commercial uses.

Jurisdiction's Past Experience Converting Uses:

The existing building footprints on site #7 are approximately 10,000 square feet off of Willow Road. There have been few redevelopments along Willow Road due to land use restrictions, but several conversions from retail into mixed-use including residential under 20,000sf:

- 133 Encinal Avenue (6,116 sf)
- 1300 El Camino Real (10,000 sf)
- 706 Santa Cruz Avenue (15,175 sf)

Region-wide Market Trends and Conditions:

Conversations with housing developers and reports from economic analysts demonstrate an increased demand for, and development of, residential uses along arterials and near major transit station. In focus group discussions, affordable housing developers stated they are concentrating their efforts on properties that are near transit and amenities and in areas rated as High Resource or above by the Tax Credit Allocation Committee such as this one.

The site is suitable for moderate income housing due to the mixed-use nature of the small site and the interest of employers and jurisdictions in developing workforce housing near employment hubs such as the Veterans Affairs hospital and Menlo Park's major employers in the Bayshore. This site is likely to develop with mostly moderate income units, taking these housing development trends into account.

Site Conditions

- Common ownership allows for parcel merger
- Located near Major Transit Stop

Regulatory or Other Incentives:

- Commercial zoning modifications
 - *Allowing residential use increases land value for parcels previously zoned only for non-residential use*
- Higher-density mixed use
 - *Allows for increase in density and Floor-to-Area Ratio (FAR) above what was allowed as an agglomeration of non-residential parcels*

Findings for Council:

- Allowance of higher-density residential along arterial roads in non-residential area
- Increased density allowances will increase financial feasibility of housing development
- Location is in area with large amounts of recent residential developer interest



STAFF REPORT

City Council

Meeting Date: 10/10/2023

Staff Report Number: 23-230-CC

Regular Business: Consider and adopt a resolution for a closure of a portion of Ryans Lane between Crane Street and Escondido Lane for outdoor dining opportunities and determine this action is categorically exempt under California Environmental Quality Act (CEQA) Guidelines §15301 for existing facilities

Recommendation

Staff recommends that the City Council adopt a resolution approving a street closure of a portion of Ryans Lane between Crane Street and Escondido Lane to vehicles to allow for outdoor dining during construction of the future restaurant at 772-780 Santa Cruz Ave. (Clark’s Oyster Bar), until March 31, 2024 (Attachment A).

Policy Issues

The City’s General Plan Circulation Element allows the City Council to consider street closures within the Main Street and Local Access “Alley” street classifications. The City Council should consider the proposed temporary street closure for consistency with General Plan Goal LU-5 (Strengthen Downtown and El Camino Real Corridor) and more specifically Policy LU-5.1 (El Camino Real/Downtown Specific Plan). Consistency with the Specific Plan should be considered in relation to the guiding principles to enhance public space and generate vibrancy, as well as the urban design framework for the Specific Plan that includes an “integrated corridor” and a “walking and connected community.”

The short-term street closure supports the City Council’s permanent outdoor dining program (“streetary” program) adopted at its Aug. 29 meeting. The street closure would allow for short-term streetary and outdoor dining opportunities. The City Council should consider the merits of the proposed short-term street closure of Ryans Lane. Staff believes that the proposed street closure would advance the City Council fiscal year 2023-24 priority of activating Downtown.

Background

The City Council’s actions to mitigate the economic impacts of COVID-19 on the local economy helped many businesses remain viable during the pandemic. The City Council adopted a number of urgency ordinances during the COVID-19 pandemic to implement street closures and outdoor dining programs to allow businesses to operate in a safe manner. Since the beginning of 2023, the City Council has implemented a number of actions related to outdoor dining and street closures downtown. Most recently on Aug., 15, the City Council amended the Circulation Element of the General Plan and the El Camino Real/Downtown Specific Plan to allow the City Council to consider temporary, long-term, or permanent street closures with certain street classifications. The City Council staff report and supporting materials are included in Attachment B. Related to this action, the City Council adopted a “Streetaries” outdoor dining ordinance (Attachment C) and approved a long-term street closure of the eastbound 600 block of Santa

Cruz Avenue (Attachment D) Aug. 29.

Analysis

Staff is proposing a partial street closure on a short-term basis at Ryans Lane to allow continued outdoor dining opportunities for neighboring restaurants (anticipated to be used by Carpaccio) and provide adequate access for construction at the adjacent building located at 772 -780 Santa Cruz Ave. Pursuant to Vehicle Code §21101(f), cities may prohibit entry to, or exit from, or both entry to and exit from, any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of the General Plan. The General Plan Circulation Element allows the City Council to consider whether to partially or fully close streets to vehicles, while potentially maintaining access for bicyclists and pedestrians within streets that are designated Main Street (i.e., Santa Cruz Avenue) and Local Access "Alley." Ryans Lane is considered a Local Access "Alley," and is eligible for a street closure.

The City Council closed Ryans Lane in 2020 to allow outdoor dining for Carpaccio (1120 Crane St.), which is located adjacent to the lane at the intersection with Crane Street. Ryans Lane provided an opportunity for outdoor dining that would not have otherwise been available to Carpaccio during the pandemic-related indoor dining restrictions since its location would not have allowed for a temporary outdoor use permit (TOUP) in Crane Street and any sidewalk seating would have been limited to a few seats. The current outdoor dining on Ryans Lane is located near Crane Street and extends approximately halfway toward Escondido Lane, terminating near the rear entrance and primary donation drop-off for the American Cancer Society Discovery Shop (748 Santa Cruz Ave.) Ryans Lane provides secondary access to existing businesses along Santa Cruz Avenue (e.g., American Cancer Society Discovery Shop, Bagel Street Café, Ruby Livingdesign) and the forthcoming Clark's Oyster Bar restaurant at 772-780 Santa Cruz Ave. that would occupy the former Ann's Coffee Shop and Menlo Park Gift Bazaar. The existing Ryans Lane street closure would reopen by around the end of October, unless the City Council approves a continued short-term street closure.

City staff have been working with Carpaccio and Clark's Oyster Bar to determine temporary and long-term opportunities for Ryans Lane. Clark's Oyster Bar anticipates beginning construction in early October and City staff have been working with its contractor on an encroachment permit and traffic control plan for demolition and future construction staging. The existing street closure, as designed, would create potential conflicts with the construction activities. At this time, staff identified a short-term opportunity for outdoor dining to continue for Carpaccio in a modified capacity, provided Carpaccio applies for a streetary permit, during construction for Clark's Oyster Bar. Clark's construction staging, including its debris box during demolition, would be located along Crane Street. This configuration would require temporary removal of parking along the south side of Crane Street and a temporary shift in the travel lanes. City staff determined this location, independent of the potential outdoor dining within Ryans Lane, was preferable as it limits temporary street closures of Crane Street, impacts to the sidewalk and roadway from equipment, and reduces the footprint of the construction staging.

Attachment A, Exhibit A includes the proposed layout of the short-term street closure and designated area of outdoor dining. To utilize the proposed street closure for outdoor dining, Carpaccio would need to bring the current dining area into compliance with the standards outlined below within 30 days and apply for a streetary permit. Any restaurant adjacent to the street closure would be able to apply for a streetary permit. The proposed Ryans Lane street closure would:

- Reduce the extent of the street closure and designated outdoor seating area to between Crane Street and the utility cabinet for the 772-780 Santa Cruz Ave. building. No outdoor dining is permitted outside of this designated outdoor dining area;

- Maintain a five foot wide pedestrian travel path from Crane Street into Ryans Lane. The path would be between the designated outdoor seating area and the 772-780 Santa Cruz Ave. building to allow access to the rear entrance to Clark's Oyster Bar and other businesses along Ryans Lane (the City would stripe the pedestrian travel path);
- The short-term street closure would be limited to approximately six months to coincide with Clark's Oyster Bar construction and shall terminate March 31, 2024, unless extended temporarily by the City Manager based on the status of Clark's construction or by the City Council as part of a long-term street closure;
- Any restaurant operating a streetery within the designated outdoor dining area would be required to utilize wheeled planters or other moveable barriers to delineate the outdoor dining space from the pedestrian access and the portion of Ryans Lane open to vehicles;
- In the event that Clark's Oyster Bar needs additional access for specific construction activities, any business utilizing the outdoor dining area for a streetery, would be required to temporarily relocate its seating and barriers, including the safety k-rail and similar barriers as necessary for construction access, and suspend outdoor dining activities.

The above requirements are included in the draft resolution in Attachment A. The short-term street closure would be available to any restaurant adjacent to the outdoor dining area; however, staff expect Carpaccio to apply for a streetery permit to operate within the designated area. Staff visited the current outdoor dining area and observed that wheels are not currently installed on all existing planters and busing station. If Carpaccio utilizes the designated outdoor dining area, any existing features that are not on wheels will need to be modified or removed.

The outdoor dining area would be confined to the area between Crane Street and the utility cabinet for the 772-780 Santa Cruz Ave. building; however, if Carpaccio utilizes the designated outdoor dining area, staff will evaluate access from its kitchen entrance to the outdoor dining (the kitchen door is located within the portion of Ryans Lane that would be accessible to vehicles). Staff's evaluation would consider safety for employees and may require Carpaccio identify a travel path within the street (to deter vehicles, trash containers, or other materials from blocking the pathway) and/or permitting Carpaccio to locate a single planter beyond its kitchen entrance, during dining service, to delineate the travel path from the kitchen while ensuring that the majority of Ryans Lane beyond the outdoor dining area is accessible to other businesses and users. Any physical barriers during service would need to be relocated after dining service is completed to ensure the street is accessible to all users during the majority of the day. This evaluation would occur within 30 days from adoption of the proposed resolution.

To utilize the modified designated outdoor dining area, Carpaccio is required to apply for a streetery permit by Dec. 31 (consistent with the streetery ordinance and regulations). Staff will continue to work with both Carpaccio and Clark's Oyster Bar to outline a possible plan for a long-term street closure and streetery that balances the desire for additional outdoor dining opportunities with the access needs of adjacent businesses (e.g., deliveries and trash/recycling to businesses with rear access from Ryans Lane). Based on input from each business, staff will potentially bring back a long-term street closure plan to the City Council for review before the expiration of the short-term street closure.

As a short alley between Crane and Chestnut Streets, Ryans Lane is not identified as an emergency response route in the General Plan. The proposed temporary street closure would not restrict emergency responders (Menlo Park Fire Protection District or Menlo Park Police Department) to the buildings in the vicinity of the short-term closure. The City has coordinated with the Menlo Park Fire Protection District and Menlo Park Police Department on the proposed short-term street closure. Further, the design of the short-

term street closure maintains secondary access to the rear entrance to the 772-780 Santa Cruz Ave. building and provides a travel path striped by the City for pedestrians to access the street beyond the closure.

Conclusion and next steps

The proposed street closure on Ryans Lane would continue to activate the downtown with enhanced outdoor dining options for an adjacent restaurant, while balancing the access needs for a new restaurant during construction and existing businesses with secondary access from Ryans Lane. The proposed street closure would help to promote the goals and policies of the General Plan Land Use and Circulation Elements and would also promote the guiding principles and be consistent with the urban design framework of the Specific Plan by providing additional areas for outdoor dining options to generate vibrancy, and create “distinct and connected areas.” The proposed street closure would not disrupt emergency response routes. Staff will continue to work with the two adjacent restaurants and, if appropriate, bring forward a long-term street closure for Ryans Lane before the expiration of the short-term street closure.

Impact on City Resources

Staff and city attorney time spent on preparing the proposed street closure are not reimbursable and are accommodated within the existing budgets of the planning division, city manager’s office and city attorney. Striping for the pedestrian path would be accommodated by Public Works maintenance budget.

Environmental Review

The proposed short-term street closure on Ryans Lane is categorically exempt under the CEQA Article 19, §15301 Existing Facilities - Class 1 since the street closures involve minor construction on a public street. No additional vehicle miles traveled or roadway capacity will be added as a result of implementation of the short-term street closures and related circulation changes.

Additionally, the City previously prepared and certified the ConnectMenlo Program environmental impact report (“ConnectMenlo EIR”) in November 2016 and certified the Housing Element Update Subsequent EIR (“SEIR”) in January 2023. Additionally, the City previously prepared and certified the Program Environmental Impact Report for adoption of the El Camino Real/Downtown Specific Plan (“Program EIR”) in June 2012.

The City has prepared an Addendum to the ConnectMenlo Program EIR and subsequent EIR (SEIR) (Attachment E) and an Addendum to the El Camino Real/Downtown Specific Plan Program EIR (Attachment F) in compliance with the CEQA that examined potential environmental impacts of the amendments to the General Plan and El Camino Real/Downtown Specific Plan that enable the City Council to consider street closures within specific street classifications, and found no substantial evidence to support requiring additional environmental review, in part given that the amendments would not increase the development potential identified in the plans or lead to any activity that might cause new or increased environmental effects, as discussed in more detail in the Addenda.

Public Notice

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

Attachments

- A. Resolution closing a portion of Ryans Lane between Crane Street and Escondido Lane
Exhibit A:
Proposed short term street closure design for Ryans Lane
- B. Hyperlink – Aug. 15 General Plan and Specific Plan amendments staff report:
menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230815-city-council-agenda-packet-w-pres.pdf#page=195
- C. Hyperlink – Aug. 15 Introduction of streetary ordinance:
menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230815-city-council-agenda-packet-w-pres.pdf#page=244
- D. Hyperlink – Aug. 29 Santa Cruz Avenue long-term street closure:
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=205
- E. Addendum to the ConnectMenlo certified program EIR and the Housing Element update certified subsequent EIR for the General Plan
- F. Addendum to the El Camino Real/Downtown Specific Plan certified program EIR

Report prepared by:
Kyle Perata, Planning Manager

Report reviewed by:
Deanna Chow, Assistant Community Development Director

RESOLUTION NO. XXXX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING A SHORT-TERM STREET CLOSURE OF RYANS LANE, FOR AN APPROXIMATELY 40-FOOT LONG PORTION BETWEEN CRANE AND ESCONDIDO LANE, TO VEHICLE TRAFFIC TO ALLOW FOR TEMPORARY OUTDOOR DINING OPPORTUNITIES FOR A RESTAURANT ADJACENT TO THE STREET CLOSURE**

WHEREAS, the City of Menlo Park adopted the El Camino Real/Downtown Specific Plan (“Specific Plan”) in June 2012 to guide development in the downtown and El Camino Real corridors, including parameters for circulation, public space, and parking; and

WHEREAS, in 2015, the City Council approved the Santa Cruz Street Café pilot program to allow merchants to convert street parking to parklets for outdoor uses; and

WHEREAS, during the COVID-19 pandemic, the City Council created the temporary outdoor use permit (TOUP) program and closed portions of Santa Cruz Avenue and Ryans Lane to facilitate expanded outdoor dining and outdoor sales for businesses impacted by the COVID-19 pandemic; and

WHEREAS, the TOUP program expired on February 28, 2023 and the City desires to create a permanent outdoor dining program; and

WHEREAS, the City Council held a study session on February 28, 2023 to discuss the proposed Streetaries Outdoor Dining (formerly TOUP) Program (“Streetaries”) and existing temporary street closures on the eastbound 600-Block of Santa Cruz Avenue (between Curtis Street and Doyle Street) and a portion of Ryans Lane (between Crane Street and Chestnut Street); and

WHEREAS, on February 28, 2023, the City Council determined that the closure of streets to vehicular traffic within certain City’s rights-of-way provides economic vitality to the City and businesses, creates community gathering spaces, contributes to the enjoyment of public spaces, and increases opportunity for more enjoyable pedestrian travel in the City; and

WHEREAS, the City Council desires to change the temporary closure of Ryans Lane to vehicle traffic into a short-term closure to allow for continued outdoor dining opportunities for an adjacent restaurant at 1120 Crane Street (Carpaccio) during construction of another adjacent restaurant (Clark’s Oyster Bar) at 772-780 Santa Cruz Avenue (Exhibit A); and

WHEREAS, an existing restaurant, Carpaccio located at 1120 Crane Street, has been using the temporary closure of Ryans Lane for outdoor dining since the closure; and

WHEREAS, a proposed restaurant, Clark’s Oyster Bar located at 772-780 Santa Cruz Avenue will begin construction in the fall of 2023 and require access to the rear entrance of the building and the rear utility cabinet intermittently; and

WHEREAS, the City desires to enact a short-term closure of Ryans Lane during Clark’s Oyster Bar construction to allow Carpaccio to continue to benefit from outdoor dining; and

WHEREAS, in conjunction with the short-term street closure, the City identified modifications to the existing temporary outdoor dining and street closure, including a reduced area, designated access, and temporary removal of the seating and barriers with appropriate notice, to ensure that each restaurant is able to utilize the space, as necessary, during construction; and

WHEREAS, the California Vehicle Code section 21101(f), identifies that cities may prohibit entry to, or exit from, or both entry to and exit from, any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the Circulation Element of the General Plan; and

WHEREAS, the City's General Plan Circulation Element allows for the City Council to consider whether to close streets designated as "Local Access (Alley)" within the City's circulation network on a temporary, long-term, or permanent basis, provided the street closures are consistent with the goals and policies of the General Plan; and

WHEREAS, the El Camino Real/Downtown Specific Plan allows the City Council to consider whether to close streets, on a temporary, long-term, or permanent basis, within the Downtown Specific Plan boundaries and to consider public space enhancements that are in line with the guiding principles and the urban design framework of the Specific Plan; and

WHEREAS, the proposed street closure of Ryans Lane is consistent with the General Plan Circulation Element and El Camino Real/Downtown Specific Plan; and

WHEREAS, the City, as lead agency, pursuant to the California Environmental Quality Act and the CEQA Guidelines ("CEQA") had previously prepared and certified the Program Environmental Impact Report for adoption of the Specific Plan ("Program EIR") in June 2012; and

WHEREAS, the City, as the lead agency, pursuant to the CEQA Guidelines previously prepared and certified the ConnectMenlo Program Environmental Impact Report ("ConnectMenlo EIR") in November 2016 and certified the Housing Element Update Subsequent EIR ("SEIR") in January 2023; and

WHEREAS, the City prepared Addenda to the ConnectMenlo EIR and to the Specific Plan Program EIR in compliance with CEQA that examined the environmental impacts of amendments to the General Plan Circulation Element and Specific Plan that were adopted by the City Council on August 15, 2023 and allow the City Council to consider temporary, long-term, and permanent street closures within the Local Access "Alley" and Main Street classifications, and found no substantial evidence to support requiring additional environmental review, in part given that the General Plan Circulation Element and Specific Plan amendments would not increase the development potential identified in the Specific Plan or lead to any activity that might cause new or increased environmental effects, as discussed in more detail in the Addendums; and

WHEREAS, the street closure of a portion of Ryans Lane is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines, as the street closures involve minor construction on a public street. No additional vehicle miles traveled or roadway capacity will be added as a result of implementation of the street closure and related circulation changes; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, at a duly and properly noticed public meeting held on October 10, 2023, the City Council fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents, the updated appraisal instructions, and community amenity implementing regulations, prior to taking action.

NOW, THEREFORE, THE MENLO PARK CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1: Recitals. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided, and finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

Section 2. CEQA Findings. The City Council of the City of Menlo Park does hereby make the following findings and recommendation:

1. The City Council finds that the street closure of a portion of Ryans Lane is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines, as the street closure involves minor construction on a public street. No additional vehicle miles traveled or roadway capacity will be added as a result of implementation of the street closure and related circulation changes

Section 3. Findings. The City Council of the City of Menlo Park does hereby make the following findings regarding short-term street closure of Ryans Lane between Crane Street and Escondido Lane to vehicle traffic, which short-term closure is more particularly depicted in Exhibit A:

1. The street closure of Ryans Lane to vehicles will allow for continued expanded outdoor dining opportunities for an existing restaurant adjacent to the closure.
2. The street closure is consistent with the General Plan Circulation Element.
3. The short-term street closure is consistent with the El Camino Real/Downtown Specific Plan, including the guiding principles and the urban design framework.
4. The street closure is consistent with California Vehicle Code section 21101(f).
5. The street closure is designed to allow for flexibility for each adjacent restaurant to access the space during the term of the closure.
6. The street closure is consistent with the City Council fiscal year 2023-24 priority of Activating Downtown/Economic Development.
7. The street closure may be revisited at the discretion of the City Council in the future and shall be revisited prior to occupancy of Clark's Oyster Bar restaurant at 772-780 Santa Cruz Avenue to determine whether the short-term street closure could be converted to a long-term street closure, including potential modifications to accommodate the access needs of all businesses with access from Ryans Lane.

Section 4. Closure of Ryans Lane between Crane Street and Escondido Lane to vehicle traffic.

Pursuant to California Vehicle Code section 21101(f) and in order to implement the Circulation Element of the City's General Plan, the City Council of the City of Menlo Park does hereby direct the City Manager to close, and prohibit entry to and exit from Ryans Lane between Crane

Street and Escondido Lane, which portion of the street is more specifically depicted in Exhibit A, attached hereto.

Section 5. Requirements and standards for closure and outdoor dining.

The closure of Ryans Lane shall adhere to the following standards and requirements, which where applicable shall be the responsibility of streetary permittee. The streetary permittee shall bring the current outdoor dining into compliance with the following requirements within 30 days of the adoption of this resolution.

1. The City Council delegates to the City Manager the authority to extend the street closure of Ryans Lane in the event that construction activities within the 772-780 Santa Cruz Avenue building for the Clark's restaurant are ongoing beyond March 31, 2024 and the City Manager determines that the extension would not conflict with construction or operations. The City Manager is authorized to determine the appropriate length of the extension, but in no case shall the closure extend beyond the estimated construction completion date based on input from Clark's restaurant, unless this resolution is amended by the City Council.
2. The street closure shall maintain a five-foot wide travel path adjacent to the rear of the building at 772-780 Santa Cruz Avenue to allow for pedestrian access to businesses with rear entrances along Ryans Lane.
3. Outdoor dining shall be confined to the area between Crane Street and the utility cabinet for the 772-780 Santa Cruz Avenue building.
4. Any restaurant operating a streetary within the designated outdoor dining area shall utilize portable planters (e.g. on wheels) or similar mobile barriers to delineate the outdoor dining area.
5. Any restaurant utilizing the designated outdoor dining area for a streetary shall temporarily suspend and/or relocate the seating and barriers to allow construction access for Clark's Oyster Bar at 772-780 Santa Cruz Avenue with a minimum of 72-hour notice. Clark's or its contractor shall provide notice to Carpaccio or any business using the street closure with a copy to the City. As necessary, the k-rail and similar barriers delineating the short-term street closure shall be relocated for construction access.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project Revisions, shall continue in full force and effect unless amended or modified by the City.

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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 tenth day of October, 2023, by the following votes:

AYES:

NOES:

ABSENT:

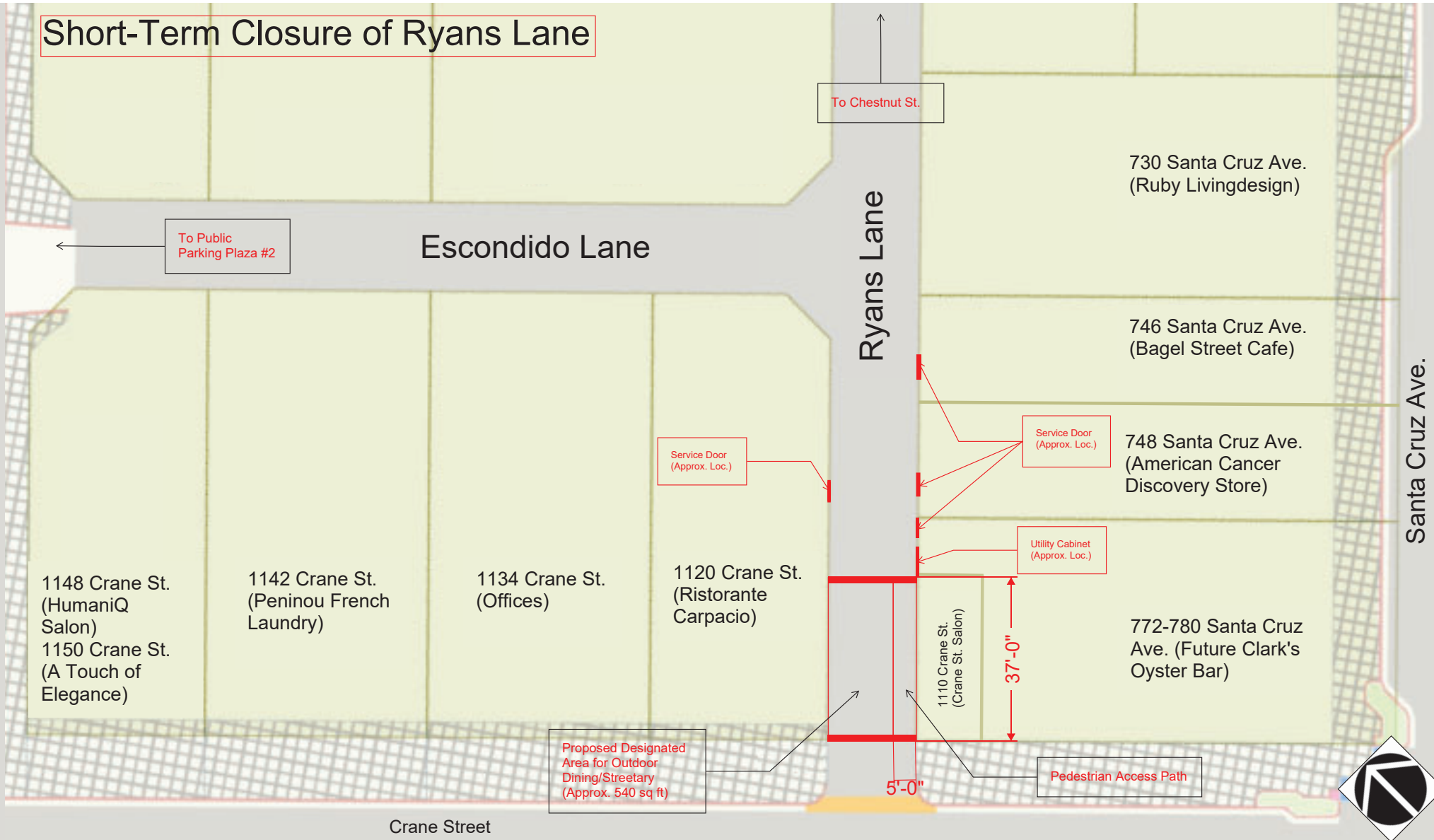
ABSTAIN:

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

Judi A. Herren, City Clerk

Exhibits

A. Ryans Lane short-term street closure plan



Addendum to ConnectMenlo General Plan Update Certified Final Environmental Impact Report and Housing Element Subsequent Environmental Impact Report

Lead Agency: City of Menlo Park

Telephone: (650) 330- 6702

Contact Person: Kyle Perata, Planning Manager

Project Title: General Plan Circulation Element Amendments

Project Location: City of Menlo Park, San Mateo County

ConnectMenlo General Plan Update

The City of Menlo Park (City) adopted an update to the Land Use and Circulation Elements of the General Plan in November 2016, referred to as ConnectMenlo (General Plan Update). The General Plan Update was the result of a multi-year comprehensive process with robust outreach. The General Plan Update focused land use changes in the Bayfront Area to foster a new mixed-use district that includes multi-family residential, mixed-use residential and commercial developments, office uses, and life sciences uses. The land use changes could result in net new development potential of up to 2.3 million square feet of non-residential uses, up to 4,500 residential units, and up to 400 hotel rooms. While land use changes were focused on the Bayfront Area, the associated Circulation Element Update was comprehensively updated city-wide. The General Plan serves as the City's comprehensive and long range guide to land use and infrastructure development in the City and includes goals, policies, and programs applicable to private and public development and improvements within the City.

ConnectMenlo General Plan Update Program Environmental Impact Report

On November 29, 2016, the City Council certified the ConnectMenlo Environmental Impact Report (Program EIR). According to the Program EIR, the General Plan does not propose specific private developments, but identified a total development potential throughout the entire city of approximately 4 million square feet of net new nonresidential development, up to 5,350 additional residential units, and up to 400 hotel rooms. The Bayfront Area includes the majority of that development potential with approximately 3.66 million square feet of non-residential development, 4,500 residential units (3,000 unrestricted residential units and 1,500 corporate-style residential units), and 400 hotel rooms. The General Plan Update includes public open space, bicycle and pedestrian improvements, and other circulation improvements. On January 31, 2023 the City Council

adopted the City of Menlo Park 6th Cycle Housing Element (Housing Element Update). The City Council certified a Subsequent EIR (SEIR) to the Program EIR that evaluated the increased housing development across the City to meet the City's 6th cycle regional housing needs allocation.

Proposed Project

At its meeting on February 28, 2023 the City Council held a study session on a draft ordinance to amend the City of Menlo Park Municipal Code to add Chapter 13.30 (Streetaries Outdoor Dining Areas) to Title 13 of the Municipal Code and Amendments to Sections 13.18.10 and 13.18.20 of Chapter 13.18 (Use of Public Right of Way) to enable the proposed streetary program. The City Council also reviewed and provided feedback on draft design standards and fees associated with the proposed streetary program. During the study session, the City Council also expressed an interest in making the temporary street closures for portions of Santa Cruz Avenue (between Curtis Street and Doyle Street) in the eastbound direction and Ryans Lane, between Crane Street and Escondido Lane, permanent. These closures currently restrict vehicle access. The conversion of the temporary street closures to permanent street closures would involve limited new construction as the temporary barriers are already in place. Additional street closures, as authorized by the proposed Circulation Element Amendments ("Amendments"), could require additional barricades, modifications to the existing outdoor dining parklets and streeteries, striping for bicycle/pedestrian movements, and additional wayfinding signage. The street closures would not involve substantial construction activities, ground disturbing activities, an increase in density (dwelling units), intensity (square footage), or building heights.

To allow for the proposed permanent closure of a portion of Santa Cruz Avenue and a portion of Ryans Lane and to allow for the City Council to more broadly consider additional street closures, Amendments to the General Plan Circulation Element attached hereto as Exhibit A and incorporated herein by this reference, are proposed. The proposed Amendments are generally as follows:

- Modify the text of the Main Street classification to allow for the City Council to consider partial or full street closures on a temporary, long term, or permanent basis.
- Add a Local Access Alley street classification to the Circulation Element that would also allow for the City Council to consider street closures of low volume local access public streets.

The City Council would consider potential street closures separately and each potential street closure would be considered for consistency with the General Plan Circulation Element Amendments.

These Amendments would allow the City Council discretion to review and determine whether to approve long-term or permanent closures of portions of Santa Cruz Avenue (in addition to the Central Plaza concept of the Specific Plan), and close public alleys (such as a portion of Ryans Lane) when it determines the alleys are not needed for

circulation purposes. The Planning Commission will review these Amendments to the General Plan Circulation Element and make a recommendation to the City Council, which can adopt the Amendments by resolution.

Potential Environmental Impacts

This is the first addendum to the certified Program EIR and certified SEIR prepared by the City. The Addendum evaluates whether the proposed General Plan Amendments require additional environmental review or can be considered for approval based on the certified Program EIR and certified SEIR prepared for the City's ConnectMenlo General Plan Update and Housing Element Update.

The proposed Amendments require only minor modifications to the Circulation Element which will allow the City Council to consider modifications to the City's circulation network (e.g. partial or full street closures) along Santa Cruz Avenue (classified as a Main Street) and Ryan's Lane (under proposed new Local Access "Alley" classification). The Amendments would be limited to circulation and would not allow any additional development potential (e.g. gross floor area, density) than was previously analyzed by the Program EIR and SEIR since no changes to the General Plan land use standards are proposed. The circulation Amendments would be limited to Santa Cruz Avenue (Main Street) and potentially all newly classified public Local Access (Alleys). The applicable alleys are located throughout the City; however, few of the existing Local Access streets meet the proposed Local Access (Alley) designation. Additionally, the Amendments will not increase the maximum allowable development capacity of the General Plan.

Amending the General Plan to allow the City Council to consider street closures could result in minor modifications to the City's circulation network. Santa Cruz Avenue is considered the City's "Main Street." However, within the downtown area parallel streets to the north and south of Santa Cruz Avenue (Oak Grove Avenue and Menlo Avenue) provide additional east-to-west connectivity through downtown, so that possible partial or full street closure of a portion of Santa Cruz Avenue, will not negatively affect the vehicle circulation network. The adjacent alternate routes can accommodate any minor increase in traffic, and no substantial increase in traffic noise or localized air pollution from intersection congestion on those roadways is expected that might affect commercial and residential uses along those streets. The alternate routes have been designed following "complete streets" policies supporting use by bicyclists, pedestrians, and vehicles. The potential limited increase in traffic would also not be expected to impact emergency responders (e.g. police and fire) response time. The potential closure of portions of Santa Cruz Avenue would not affect transit routes differently than the existing temporary closure, which SamTrans has been able to accommodate.

The proposed Local Access (Alley) street classification would also allow for the City Council to consider street closures of public alleys that meet the Local Access (Alley) classification criteria. Street closures on alleys could be allowed, subject to generally maintaining access to abutting properties for operations (e.g. deliveries, trash collection, etc.). Potential street closures within the Main Street or Local Access (Alley) street

classifications would be coordinated with the Menlo Park Police Department and Menlo Park Fire Protection District to ensure adequate access is maintained. Ryans Lane and the portion of Santa Cruz Avenue have been closed on a temporary basis since October 2020 and June 2020, respectively, and no negative effects have been observed, supporting these conclusions.

At the time of adoption of the General Plan Update and certification of the Program EIR, the transportation analysis considered level of service (LOS) in the impact analysis. The California Environmental Quality Act (CEQA) no longer utilizes LOS as the metric for identifying impacts in the transportation impact analysis and now uses vehicle miles traveled (VMT) as the metric for assessing impacts. The proposed Amendments to allow for street closures within the Main Street and Alley street classifications would not be expected to increase VMT, as use of the alternate routes to travel in and out or through the downtown will not add a measurable distance to the trip. Most street closures would be expected to be located in the downtown area of Menlo Park and most vehicle trips to downtown would be accommodated in the parking along other downtown streets or in parking plazas. While it is possible that any street closures could be designed to allow for partial vehicle circulation, this analysis assumes complete closure to vehicles.

The decision to amend the General Plan Circulation Element to allow for potential street closures within the Main Street (i.e. Santa Cruz Avenue) and Local Access (Alley) street classifications would not result in an increase in potential environmental effects related to transportation, circulation, or parking. The proposed Amendments are not expected to result in much if any demolition, ground disturbing, construction activities, or operation activities not contemplated in the General Plan Update and Housing Element Update and studied in the Program EIR and SEIR. No increase in potential environmental effects to air quality, biological resources, cultural resources (including tribal cultural resources), geology, soils, or seismicity, greenhouse gases emissions, hazards and hazardous materials, hydrology and water quality, noise, population and housing, and public services and recreation, utilities and service systems would result from implementation of the proposed General Plan Circulation Element Amendments. Additionally, the City, in compliance with Senate Bill 18, notified Native American Tribal Nations, identified by the Native American Heritage Commission, of the proposed Amendments to allow for the tribes to consult with the City on the proposed Amendments. The City did not receive any requests for consultation.

The decision to amend the General Plan would not result in aesthetic impacts or land use and planning effects not contemplated in the Program EIR and SEIR. The proposed Amendments are consistent with the guiding principles of the General Plan and consistent with components of the General Plan studied in the certified Program EIR and the certified SEIR for the Housing Element Update.

Thus, the Program EIR and the SEIR examined essentially the same project that is now being considered by the City through the plan Amendments. As a result, the Amendments would have no new impacts or more severe impacts than previously discussed and analyzed in the certified Program EIR and certified SEIR.

Findings: The proposed changes to the Circulation Element of the General Plan are considered minor and will have little or no new environmental effect. No new or more severe impacts have been identified beyond those examined in the previously certified Program EIR and SEIR. CEQA Guidelines Section 15162 provides that no subsequent environmental review document is needed after an EIR has been certified for a project unless the City determines on the basis of factual evidence that one of the following has occurred:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. 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 EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

There have been no substantial changes in the General Plan or its circumstances since certification of the Program EIR and the SEIR. Similarly, there is no substantial new information that could not have been known when the Program EIR and the SEIR were certified. Therefore, there are no grounds for requiring additional review under CEQA Guidelines section 15162 or for the City to undertake a subsequent EIR or negative declaration.

An addendum is the appropriate documentation for these Amendments because the changes are not substantial changes and do not require major revisions to the certified Program EIR or certified SEIR (CEQA Guidelines Section 15164). An addendum does not need to be circulated for public review. This addendum will be considered by the City

Council in conjunction with the Program EIR and SEIR when taking action on the proposed General Plan Amendments.

Third Addendum to El Camino Real/Downtown Specific Plan Certified Final Environmental Impact Report

Lead Agency: City of Menlo Park

Telephone: (650) 330- 6702

Contact Person: Kyle Perata, Planning Manager

Project Title: El Camino Real/Downtown Specific Plan Amendments

Project Location: City of Menlo Park, San Mateo County

El Camino Real/Downtown Specific Plan

The City of Menlo Park (City) developed the El Camino Real/Downtown Specific Plan (Specific Plan) to establish a framework for private and public improvements in the Specific Plan area (Figure 1). The Specific Plan addresses approximately 130 acres and focuses on the character and density of private infill development, the character and extent of enhanced public spaces, and circulation and connectivity improvements. The primary goal of the Specific Plan is to “enhance the community life, character and vitality through mixed use infill Projects sensitive to the small-town character of Menlo Park, an expanded public realm, and improved connections across El Camino Real.” The Specific Plan includes objectives, policies, development standards, and design guidelines intended to guide new private development and public space and transportation improvements in the Specific Plan area.

Specific Plan Program Environmental Impact Report

On June 5, 2012, the City Council certified the Menlo Park El Camino Real and Downtown Specific Plan Program Environmental Impact Report (Program EIR). According to the Program EIR, the Specific Plan does not propose specific private developments, but establishes a maximum development capacity of 474,000 square feet of non-residential development (inclusive of retail, hotel, and commercial development), and 680 new residential units. The Specific Plan includes public open space and streetscape improvements throughout the plan area.

Proposed Project

On February 28, 2023, the City Council held a study session on a draft ordinance to amend the City of Menlo Park Municipal Code to add Chapter 13.30 (Streetaries Outdoor Dining Areas) to Title 13 of the Municipal Code and Amendments to Sections 13.18.10

and 13.18.20 of Chapter 13.18 (Use of Public Right of Way) to enable the proposed streetary program. The City Council also reviewed and provided feedback on draft design standards and fees associated with the proposed streetary program. During the Study Session, the City Council also expressed an interest in making the temporary street closures for portions of Santa Cruz Avenue (between Curtis Street and Doyle Street) in the eastbound direction and Ryans Lane, between Crane Street and Escondido Lane, permanent. These closures currently restrict vehicle access while allowing for bicycle and pedestrian circulation. The conversion of the temporary street closures to permanent street closures would involve limited new construction as the temporary barriers are already in place. Additional street closures, as authorized by the proposed Specific Plan Amendments could require additional barricades, modifications to the existing outdoor dining parklets and streetaries, striping for bicycle/pedestrian movements, and additional wayfinding signage. The street closures would not involve substantial construction activities, ground disturbing activities, or an increase in density (dwelling units), intensity (square footage), or building heights.

To allow for the proposed permanent closure of a portion of Santa Cruz Avenue and a portion of Ryans Lane and to allow for the City Council to more broadly consider additional street closures downtown (in addition to the Central Plaza concept of the Specific Plan), Amendments to the Specific Plan attached hereto as Exhibit A and incorporated herein by this reference are proposed. The proposed Amendments are generally as follows:

- In Chapter C (Plan Principles, Framework and Program), incorporate text identifying that the City Council may also consider additional street closures, provided specific criteria are met.
- In Chapter D (Public Space), include text identifying that the City Council may also consider additional public improvements (e.g. street closures).
- In Chapter F (Circulation), add text clarifying that the City Council may consider additional public improvements, including modifications to the vehicle, pedestrian, and bicycle circulation network, provided specific criteria are met. Also clarify that parking reductions identified in the Specific Plan were estimates and may change based on public improvements.

The Planning Commission will review these Amendments to the Specific Plan and make a recommendation to the City Council, which can adopt the Amendments by resolution.

Potential Environmental Impacts

This is the third addendum to the certified Program EIR prepared by the City. Previously the City adopted the first Addendum to the Program EIR to enable Specific Plan changes associated with the Guild Theatre, and adopted a second Amendment to enable changes associated with the Springline Mixed-Use Development project (1300 El Camino Real). Both of those projects included increases in allowed gross floor area and floor area ratio in the Specific Plan's respective sub-districts, while maintaining the total development cap within the Specific Plan Area. The City prepared addendums to the certified Program EIR for each of the previous Specific Plan amendments. This addendum evaluates whether the proposed Specific Plan Amendments require additional environmental review or can

be considered for approval based on the Program EIR prepared for the City's Specific Plan.

The proposed Amendments require only minor modifications to the Specific Plan which will allow the City Council to consider modifications to the City's circulation network to allow for temporary, long-term, or permanent street closures on Santa Cruz Avenue and other locations within the Specific Plan area (in addition to the Central Plaza and other street closures already identified in the Specific Plan). The Amendments are limited to circulation and public space and would not allow any additional development potential (e.g., gross floor area, density) than was previously analyzed by the Program EIR since no changes to the Specific Plan land use standards are proposed. The Amendments would be limited to the Specific Plan Area and focused on the Downtown sub-area. Amendments to the General Plan Circulation Element are proposed that will be considered separately by the City Council to ensure consistency between the Specific Plan and General Plan. Additionally, the Amendments will not increase the maximum allowable development capacity under the Specific Plan.

Amending the Specific Plan to allow the City Council to consider street closures could result in minor modifications to the City's downtown circulation network. Santa Cruz Avenue is considered the City's "Main Street." However, within the downtown area parallel streets to the north and south of Santa Cruz Avenue (Oak Grove Avenue and Menlo Avenue) provide additional east-to-west connectivity through downtown, so that possible partial or full street closure of a portion of Santa Cruz Avenue will not negatively affect the vehicle circulation network. The adjacent alternate routes can accommodate any minor increase in traffic, and no substantially increase in traffic noise or localized air pollution from intersection congestion on those roadways is expected that might affect commercial and residential uses along those streets. The alternate routes have been designed following "complete streets" policies supporting use by bicyclists, pedestrians, and vehicles. The potential limited increase in traffic would also not be expected to impact emergency responders (e.g. police and fire) response time. The potential closure of portions of Santa Cruz Avenue would not affect transit routes differently than the existing temporary closure, which SamTrans has been able to accommodate. The proposed Specific Plan text Amendments would also allow for the City Council to consider other street closures within the Specific Plan Area. Any potential street closures downtown would be allowed, subject to maintaining access to abutting properties for operations (e.g. deliveries, trash collection) and would be coordinated with the Menlo Park Police Department and Menlo Park Fire Protection District to ensure adequate emergency access is maintained. The closure of Ryans Lane would not restrict access to the neighboring businesses for deliveries, trash collection, etc., nor would the closure restrict vehicle access to the nearby public parking plaza. Ryans Lane is also not a critical emergency response route. Ryans Lane and the portion of Santa Cruz Avenue have been closed on a temporary basis since June 2020 and October 2020, respectively, and no negative effects have been observed, supporting these conclusions.

At the time of adoption of the Specific Plan and certification of the Program EIR, the transportation analysis considered level of service (LOS) in the impact analysis. The California Environmental Quality Act (CEQA) no longer utilizes LOS as the metric for identifying impacts in the transportation impact analysis and now uses vehicle miles traveled (VMT) as the metric for assessing impacts. The proposed Amendments to allow for permanent street closures would not be expected to increase VMT, as use of the alternate routes to travel in and out or through the downtown will not add a measurable distance to the trip. Most vehicle trips to downtown would be accommodated in the parking along other downtown streets or in parking plazas. While it is possible that street closures could be designed to allow for partial vehicle circulation, this analysis assumes complete closure to vehicles.

There would be no increase in potential environmental effects related to transportation, circulation, or parking. The proposed Amendments are not expected to result in much if any demolition, ground disturbing, construction activities, or other construction or operation activities not contemplated in the Specific Plan and studied by the Program EIR. No increase in potential environmental effects to air quality, biological resources, cultural resources (including tribal cultural resources), geology, soils, or seismicity, greenhouse gases and climate change, hazardous materials and hazards, hydrology and water quality, noise, population and housing, and public services and utilities would result from implementation of the proposed plan Amendments. Additionally, the City, in compliance with Senate Bill 18, notified Native American Tribal Nations identified by the Native American Heritage Commission, of the proposed Amendments to allow for the tribes to consult with the City on the proposed Amendments. The City did not receive any requests for consultation.

The decision to amend the Specific Plan would not result in aesthetic impacts or land use and planning effects not contemplated in the Program EIR. The proposed Amendments are consistent with the vision and guiding principles of the Specific Plan and consistent with components of the Specific Plan studied in the certified Program EIR.

Thus, the Program EIR examined essentially the same project that is now being considered by the City through the plan Amendments. As a result, the Amendments would have no new impacts or more severe impacts than previously discussed and analyzed in the certified EIR.

Findings: The proposed changes to the Specific Plan are considered minor and will have little or no new environmental effect. No new or more severe impacts have been identified beyond those examined in the previously certified Program EIR. CEQA Guidelines Section 15162 provides that no subsequent environmental review document is needed after an EIR has been certified for a project unless the City determines on the basis of factual evidence that one of the following has occurred:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement

- of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
 3. 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 EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

There have been no substantial changes in the Specific Plan or its circumstances since certification of the Program EIR. Similarly, there is no substantial new information that could not have been known when the Program EIR was certified. Therefore, there are no grounds for requiring additional review under CEQA Guidelines section 15162 or for the City to undertake a subsequent EIR or negative declaration.

An addendum is the appropriate documentation for these Amendments because the changes are not substantial changes and do not require major revisions to the certified Program EIR (CEQA Guidelines Section 15164). An addendum does not need to be circulated for public review. This addendum will be considered by the City in conjunction with the Program EIR when taking action on the proposed Specific Plan Amendments.



PROPOSED RYANS LANE SHORT-TERM STREET CLOSURE

October 10, 2023 City Council Meeting
Staff Presentation

OVERVIEW

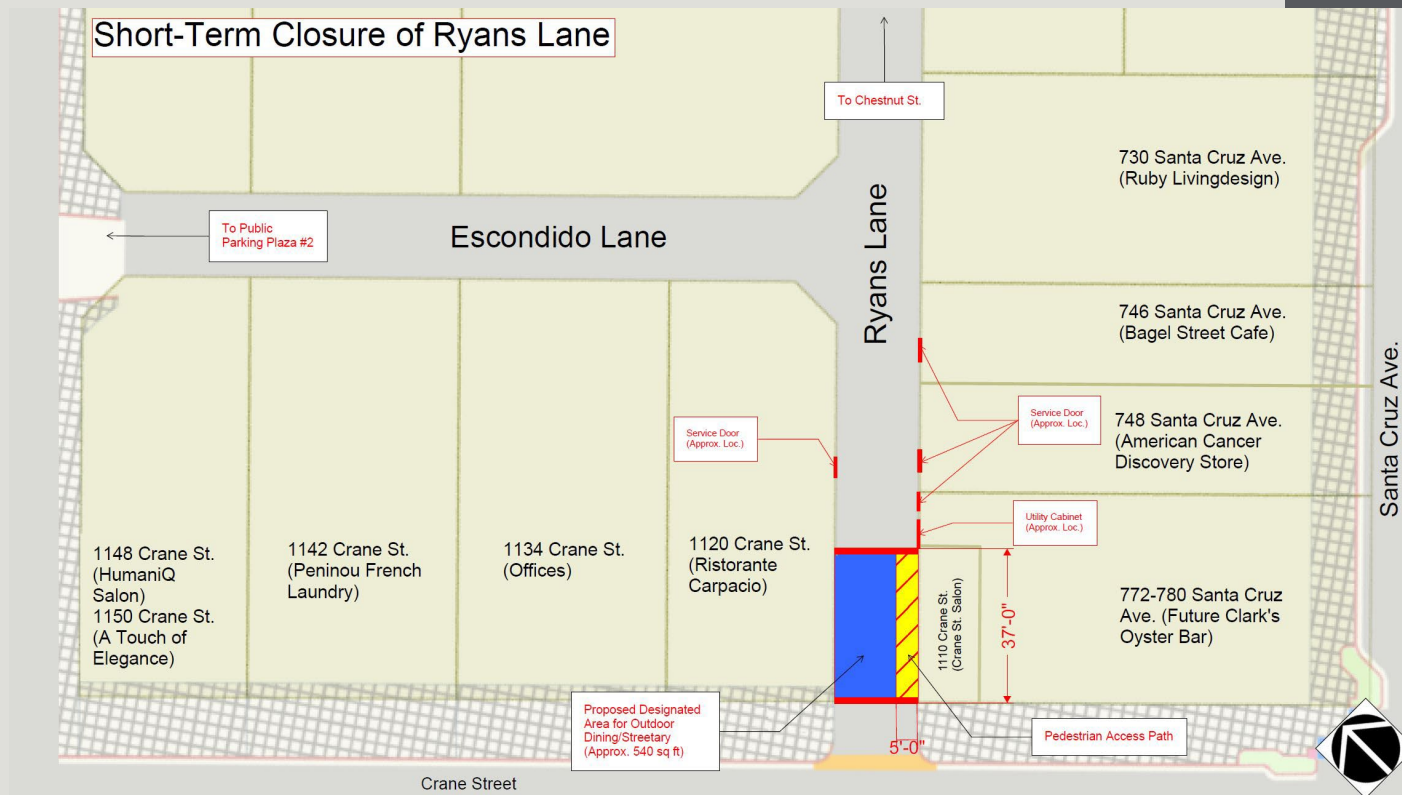
- Outdoor dining “streetary” program
- Recently amended Circulation Element and El Camino Real Downtown Specific Plan allow City Council to consider street closures
 - Main Street and Local Access “Alley” classifications
 - Amendments adopted on August 15
- Santa Cruz Avenue street closure
 - Approved August 29
 - 600 block closed to eastbound vehicle traffic

RYANS LANE STREET CLOSURE

- Short-term street closure would:
 - Close a portion of street between Crane Street and Escondido Lane
 - Designate an outdoor dining area
 - Include a 5-foot wide pathway, striped by the City, adjacent to the 772-780 Santa Cruz Ave. building
- Short term closure would expire March 31, 2024
 - City Manager may extend closure temporarily based on status of Clark's construction
- Potential future long-term street closure
 - Staff to continue to work with neighboring restaurants and businesses to identify a potential long-term closure

RYANS LANE STREET CLOSURE

Short-Term Closure of Ryans Lane



RECOMMENDED ACTIONS

- Adopt a resolution approving:
 - Short-term street closure of a portion of Ryans Lane (between Crane Street and Escondido Lane) to vehicles to allow for continued outdoor dining opportunities
- Draft resolution included in Attachment A



THANK YOU



STAFF REPORT

City Council

Meeting Date:

10/10/2023

Staff Report Number:

23-234-CC

Study Session:

Provide direction to staff on expending state award of \$2.25 million for communitywide electrification project

Recommendation

Provide direction on expending \$2.25 million awarded by the California Energy Commission (CEC) that could include allocating:

1. \$2.15 million to Peninsula Clean Energy (PCE) to electrify additional existing low-income single family homes in the Belle Haven neighborhood using the established Home Upgrade program, and consider expanding eligibility criteria to maximize participation levels in the neighborhood.
2. \$100,000 for building electrification workforce development.

Policy Issues

The City has a 2030 Climate Action Plan (CAP) with a bold goal to reach carbon neutrality by 2030. CAP strategy No. 1 is to electrify 95% of existing buildings by 2030. Climate action is a City Council priority for fiscal year 2023-2024. In August 2021, the City Council directed staff to identify partners for funding and financing programs for existing building electrification, including a specific low-income turnkey program.

Background

The California State Budget Act of 2022 (Assembly Bill 179) appropriated \$4.5 million to the City of Menlo Park for a citywide electrification project. The funds are allocated to the City by the CEC. On July 11, the City Council adopted a resolution authorizing the city manager to accept funds.

The first half of the funding was received last month (a total of \$2.25 million). The remaining funds will be distributed once the city submits a progress report. The funds must be spent by June 30, 2026.

The funds were originally requested by Menlo Spark through Senator Josh Becker's office to support low-income whole home electrification projects in the Belle Haven neighborhood.

In June, the Environmental Quality Commission (EQC) reviewed potential options for expending the funds, and unanimously advises the City Council to:

- Partner with PCE to be the program implementer/administrator
- Provide no cost home electrification for low income residents in District 1 (Belle Haven neighborhood)
 - Targeting single-family homeowners; and
 - Requiring at least two appliances per home transitioned to electric (at minimum include replacing gas-fired water heating and gas-fired space heating/cooling), and support homeowners with a roadmap to electrification
- Establish a goal to achieve a high volume of homes

- Enable a quick start program to get heating and cooling for high-need residents
- Provide seed funding for existing building electrification workforce development
- Provide portable resilience package (e.g., solar and battery) for power outages in District 1, residents with medical needs, and the elderly

As a result, PCE and city staff have discussed how best to implement the EQC's advice. Additional considerations may be needed in order to expend the funds by June 30, 2026 and are described in the analysis section.

Analysis

PCE partnership and Home Upgrade program

PCE is a nonprofit electricity provider and joint-powers government agency serving all of San Mateo County with elected officials serving on its board. The City of Menlo Park is a member agency. PCE procures greenhouse gas free electricity for its communities to combat climate change.

PCE administers a Home Upgrade program that provides low-income single-family homeowners with direct installation of one electrification measure and minor home repairs at no-cost. RHA Inc. was hired as the program implementer of the Home Upgrade program through a public procurement process in 2020.

In 2024, the program will be expanding to include whole home electrification instead of just one measure. The scale up of services for the program has resulted in PCE releasing a request for proposals (RFP) to select an implementation team made up of a program administrator and one or more installation contractors for the direct install service.

The EQC and staff advise the City Council to enter into an agreement with PCE to leverage its Home Upgrade program to electrify more homes in the Belle Haven neighborhood. PCE's program proposal and \$2.15 million budget breakdown (70% for electrification projects and 30% for customer management and administration) are included in Attachment A. As requested by Senator Josh Becker, who secured the funding, the Home Upgrade program will also require the payment of prevailing wages to provide services.

If the City Council would like to partner with PCE to administer \$2.15 million of the state funds, staff would return to the City Council in early 2024 with a formal agreement to consider. This aligns with the estimated rollout of PCE's expanded Home Upgrade program between March and June 2024.

Menlo Park Home Upgrade program

Without Menlo Park (state awarded) funding, PCE's 2024 Home Upgrade program is estimated to electrify 40 existing low-income owner-occupied single-family homes in the Belle Haven neighborhood. With an additional \$2.15 million from Menlo Park, the program could double the number of homes electrified, adding 40-60 homes. PCE is considering reserving its own funds for 40 whole-home upgrades in Menlo Park that would be used after Menlo Park's funding has been exhausted to ensure Menlo Park receives its fair portion of PCE program funds. These estimates assume comprehensive electrification of participating homes but that will ultimately depend on owner interest.

Eligible electrification measures for qualifying homes in Belle Haven would include:

1. Heat pump space heating and cooling
2. Heat pump water heater
3. Induction cooktop/stove
4. Electric dryer

5. Electrical remediation including new circuits, rewiring and panel upgrades, if needed
6. Minor energy efficiency and weatherization, if needed, such as air sealing
7. Resiliency measures for high-need customers, such as portable batteries
8. One hundred and twenty (120) or 240-volt electric vehicle (EV) outlet

Additional eligibility measures specific to Menlo Park may be possible, but would need to conform to PCE's established Home Upgrade program structure for efficient implementation and to minimize administration costs.

The primary focus of Menlo Park's Home Upgrade program will be in the Belle Haven neighborhood. Expending all the funds by June 30, 2026 in this neighborhood will be challenging as it relies on significantly high participation levels in a small geographic area.

Staff recommends that the City Council consider expanding PCE's Home Upgrade program eligibility criteria for the Belle Haven neighborhood to maximize participation levels and spend funds by June 30, 2026, such as:

1. Increasing eligibility income thresholds from 80% average median income (AMI) to 120% AMI
2. Allowing renter-occupied single-family homes to participate if property owners meet certain income qualification criteria

Increase Menlo Park's Home Upgrade eligibility criteria to from 80% to 120% AMI

Currently, PCE's Home Upgrade program provides services to homeowners with an income below 80% AMI (\$149,100 for a family of four). Staff recommends that the City Council consider increasing the eligibility criteria to allow households that are below 120% AMI (\$210,000 for a family of four) to participate. This can ensure maximum participation levels are reached in the Belle Haven neighborhood. It also aligns with other affordable home programs that the City administers, such as the below market rate (BMR) program that uses San Mateo County income limits (Attachment B).

The Home Upgrade over the last three years has an estimated 12% participation rate that is measured from initial successful contact of interested homeowners to completion of a project. It can take three to six months to complete a home electrification project.

Belle Haven has 1,018 single-family properties, and 751 are estimated to be owner-occupied. If every one of the homeowners was engaged with outreach, it is anticipated that 90 homes could be electrified at a 12% participation rate. However, this assumes the homeowners meet PCE's current income qualification requirements.

About half of the census blocks with single-family homes in the Belle Haven neighborhood have an average income level of \$156,188, which is above the 80% AMI threshold to qualify for PCE's Home Upgrade program. This data also includes both owner occupied and rental single family homes. Owner occupied income levels could potentially be higher than the census data average. Given the short period to expend the state funds, it would be practical to include households that qualify for other affordable housing programs, such as Menlo Park's BMR program. A prioritized list could be considered where lower income levels receive first priority.

Community organizations, individual commissioners, and community leaders in the Belle Haven neighborhood will be critical in supporting and facilitating high participation rates in the Home Upgrade program.

Allow renter-occupied single-family homes to participate

Currently, rental properties are not eligible for the Home Upgrade program. Including single-family rental homes can further address equity and environmental justice disparities by providing renters that do not have ability to alter the homes they occupy access to efficient equipment that can lower utility bills, provide central air conditioning in extreme heat, and better air quality within the home.

There is an estimated 267 single-family homes that are rentals in Belle Haven. Staff recommends that the City Council consider including single-family renter occupied homes where the property owner(s) must meet certain criteria that could include:

- For a single property owner or a property owned by a couple (married or domestic partners), the maximum annual income threshold for eligibility at or below 200% AMI (\$350,000)
- For properties owned by multiple parties, such as partnerships or LLCs, where the income is distributed among owners, the maximum annual income threshold for each individual owner could be set at 150% AMI (\$262,500).
- Ensuring electrification upgrades do not result in displacement.

PCE is currently not set up to perform income verification for rental properties, and may require the City or another third party to administer some or all aspects of income verification for single-family rentals. Staff would need to explore this further if the City Council would like to include this eligibility option.

Workforce development grant

The EQC recommended providing \$100,000 in seed funding for workforce development. Developing a specialized workforce in building electrification ensures that there are qualified professionals who can design, install, and maintain electric systems in buildings. Workforce development efforts can also prioritize underserved communities by enabling access to stable and well-paying careers in a growing industry.

There are nonprofit organizations that specialize in workforce development in the Bay Area. The City could create a grant program that would award up to \$100,000 for developing, enhancing or continuing to fund building electrification workforce development. The City has provided similar types of funding opportunities in the past. For example, the City offers the annual community funding grant to nonprofits organizations, and earlier this year the City released a notice of funding availability from the BMR housing funds for affordable housing projects.

If the City Council would like to pursue creating funding opportunities for building electrification workforce development, staff could provide recommendations to the EQC and the City Council on eligibility and program priorities to implement a grant program for up to \$100,000 in 2024.

Alternative Options

1. The City could develop and administer its own low-income electrification program or hire another nonprofit to administer a program. There would be staff resourcing impacts in developing a request for proposal to select an organization or firm to be the program implementer and require prioritizing staff resources to manage the contractor(s). Given that the funds need to be spent by June 30, 2026, there is limited time to pursue this option.
2. The City Council could increase or decrease the funding amount for building electrification workforce development.

Impact on City Resources

The City received \$2.25 million (first half of the CEC funds) to fund Menlo Park's community electrification

project. City administration, marketing, and promotion of the program are not included in the \$2.25 million expenditures. The City will continue to assign high priority to this project, and there sufficient capacity and budget for fiscal year 2023-24 to continue progress on this project.

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. PCE proposal
- B. San Mateo County income limits

Report prepared by:
Rebecca Lucky, Sustainability Manager



Menlo Park State Funds Electrification Proposal

Background

The state of California is awarding a \$4.5 million grant to the City of Menlo Park to support a city-wide electrification project. In June 2023, the City's Environmental Quality Commission (EQC) recommended partnering with Peninsula Clean Energy (PCE) as the program administrator to provide no-cost electrification for low-income single-family homeowners.

PCE is the not-for-profit official electricity provider and joint-powers agency serving all of San Mateo County, including Menlo Park, and the City of Los Banos. PCE makes significant investments in its communities to reduce greenhouse gas emissions, including investments for building electrification. To help residents electrify their homes, PCE currently offers rebates and 0% loans for heat pump water heaters and heat pump HVAC systems to any resident of its member communities; and runs an income-qualified direct-install electrification program which provides low-income single-family homeowners with one electrification measure and minor home repairs at no-cost.

PCE is currently designing its next iteration of building electrification programs. This includes launching a one-stop-shop website with robust information, a "concierge" hotline for technical questions and support, and an expanded single-family turnkey and direct-install electrification service available to income-qualified residents at no-cost and non-income-qualified customers at a low-cost. The latter would build off PCE's existing income-qualified direct-install offering but provide more substantive services by offering whole-home electrification at no-cost. These services are expected to launch in 2024 and PCE has released a request for proposals (RFP) to select an implementation team, made up of a program administrator and one or more installation contractors, for the turnkey and direct-install service.

As a result, PCE outlined a proposed approach to administer a portion of Menlo Park funds through an existing PCE's direct-install electrification program called Home Upgrade. The intention is to leverage the existing program structure and to deliver on Menlo Park's objectives, which are consistent with PCE's objectives as well. The City proposed allocating an initial \$2.15 million to PCE as the basis of the proposal which would be formalized through a contract with a mutually agreed scope of work.

Proposal

The additional funding would enable PCE to electrify more low-income single-family homes in Menlo Park than PCE's program would do on its own. The existing direct-install program has served 200 homes with one electrification measure in PCE entire territory, 13 (6.5%) of which have been in Menlo Park. In the next phase of its program, PCE estimates serving the equivalent of 650 whole home projects in its service territory over a three-year period. Residences in Menlo Park account for approximately 6% of all residences in PCE service territory. Assuming a similar ratio, the equivalent of approximately 40 of the 650 low-income homes electrified would be in Menlo Park without the proposed added funding. With the additional \$2.15 million state funding, PCE would expect to complete approximately 40 to 60 more whole home projects in Menlo Park. In order to track the homes electrified under PCE program funding versus the City's, PCE is considering reserving funds for 40 whole-home upgrades in Menlo Park that would be used after the state funding has been exhausted.

PCE will secure all available third party electrification incentives to maximize the number of homes that can be served. The program will offer partial or full electrification thus the total number of homes served may be higher. To more efficiently manage the program and deliver a streamlined customer experience, PCE proposes that the program delivery for all participants be the same, regardless of which funds (PCE's or the state's) are paying for each home's upgrades. This means that the customer journey and the services/measures offered would be the same, and the eligibility would be similar but slightly more expansive for the Menlo Park/state funds. The following describes the main program's eligibility criteria and measures for the program:

Eligibility criteria:

1. Single-family home up to four dwelling units in PCE service territory
 - a. For state funds, within Menlo Park's District 1, with option to expand to other Menlo Park districts in future phases of the program if program participation levels are low during after the first year of implementation.
2. Homeowner-occupied homes
 - a. For state funds, consider allowing renter-occupied homes with some to-be-determined eligibility criteria for property owner
3. Has gas water heating and/or space heating and willing to replace at least one of those with electric alternatives
4. Household income below 80% of the average median income
 - a. For state funds, up to 120% of the average median income

Eligible measures:

1. Heat pump space heating and cooling
2. Heat pump water heater
3. Induction cooktop/stove
4. Electric dryer
5. Electrical remediation including new circuits, rewiring, and panel upgrades, if needed
6. Minor energy efficiency and weatherization, if needed, such as air sealing
7. Resiliency measures for high-need customers, such as portable batteries
8. EV outlet

Reporting can be provided on a monthly basis to the City to ensure that participation targets are being met in order to expend state funds by June 30, 2026. Specific details can be provided upon entering into a formal agreement with PCE.

Budget

The estimated budget below reflects a \$2.15 million allocation only. More funds may be allocated to PCE at a later point. The budget below is an estimate and may be refined once PCE selects a third party implementation team through its RFP process. PCE used the following logic and assumptions for the estimates below:

1. **Installation budget:** Assuming an estimated average cost of \$37,000 for whole-home electrification, this funding is estimated to serve the equivalent of 40 to 60 whole home upgrades, depending on the amount of third party incentives captured. Tasks covered in this budget include:
 - a. All materials and labor necessary to complete the work

- b. Contractor home assessments as required
 - c. Preparing and applying for building permits
 - d. Supporting quality assurance and addressing warranty issues
 - e. Attending regular meetings with implementer/administrator
 - f. Scheduling visits with homeowner
 - g. Invoicing
2. **Customer management budget:** Direct-install low-income programs require high-touch customer support. Tasks included in this budget, which would be managed by the third party implementation team selected through RFP, include:
- a. Pre-screening customers via a phone call
 - b. Managing all customer communications for the program in all stages of the program, including responding to new customer inquiries and case management for existing customers in the pipeline
 - c. Enrolling customers by collecting necessary documentation and collecting participation forms signature
 - d. Doing a complete home assessment of the home, mostly in person but sometimes via video call
 - e. Analyzing the home's energy usage to determine electrification feasibility
 - f. Producing scope of work for each home based on a variety of factors including energy usage data, appliance age and conditions, customer preferences, and program budget
 - g. Oversight of contractors including reviewing their invoices and working with them to resolve any customer issues
 - h. Field staff and quality assurance, including site visits to approximately 10% of homes
 - i. Applying for third party rebates available for the project to reduce PCE's net cost
 - j. Managing all budget tracking and invoicing for the program, including paying contractors and creating reports for PCE
 - k. Administrative tasks such as check in calls, monthly reporting, budget reporting, performing analysis or evaluation summary reports asked for by PCE
3. **PCE overhead:** overhead cost to PCE that would come with overseeing these additional funds, including:
- a. Contracting with Menlo Park
 - b. Support any program design specific to the Menlo Park funds (e.g. renters)
 - c. Act as the contract manager with the third party implementer
 - d. Support any specific reporting needed for the grant
 - e. Marketing support for Menlo Park

Category	Estimated amount (\$)	Percentage of total (%)
Installation budget	\$1,505,000	70%
Customer management	\$602,000	28%
PCE overhead	\$43,000	2%
Total	\$2,150,000	100%

2023 San Mateo County Income Limits

as determined by HUD - effective June 6, 2023

revised 06/29/2023

For HUD-funded programs, use the Federal Income Schedule. For State or locally-funded programs, you may use the State Income Schedule. For programs funded with both federal and state funds, use the more stringent income levels.

Please verify the income and rent figures in use for specific programs.

San Mateo County Income Limits (based on Federal Income Limits for SMC)

Effective 6/6/2023 - Area median Income **\$175,000** (based on household of 4)

Income Category	Income Limits by Family Size (\$)							
	1	2	3	4	5	6	7	8
Acutely Low (15% AMI)	\$ 18,400	\$ 21,000	\$ 23,650	\$ 26,250	\$ 28,350	\$ 30,450	\$ 32,550	\$ 34,650
Extremely Low (30% AMI) *	\$ 39,150	\$ 44,750	\$ 50,350	\$ 55,900	\$ 60,400	\$ 64,850	\$ 69,350	\$ 73,800
Very Low (50% AMI) *	\$ 65,250	\$ 74,600	\$ 83,900	\$ 93,200	\$100,700	\$108,150	\$115,600	\$ 123,050
Low (80% AMI) *	\$ 104,400	\$119,300	\$134,200	\$149,100	\$161,050	\$173,000	\$184,900	\$ 196,850
Median (100% AMI)	\$ 122,500	\$140,000	\$157,500	\$175,000	\$189,000	\$203,000	\$217,000	\$ 231,000
Moderate (120% AMI)	\$ 147,000	\$168,000	\$189,000	\$210,000	\$226,800	\$243,600	\$260,400	\$ 277,200

NOTES

* 2023 State Income limits provided by State of California Department of Housing and Community Development

2023 San Mateo County Income Limits

as determined by HUD, State of CA HCD, and County of San Mateo

Income limits effective 06/06/2023

Please verify the income and rent figures in use for specific programs.

HUD-defined Area Median Income \$175,000 (based on household of 4). State defined median \$175,000 (household of 4) due to hold harmless policy.

Income Category	Income Limits by Family Size (\$)								NOTES
	1	2	3	4	5	6	7	8	
Acutely Low (15% AMI)	\$ 18,400	\$ 21,000	\$ 23,650	\$ 26,250	\$ 28,350	\$ 30,450	\$ 32,550	\$ 34,650	
Very Low (50% AMI) *	\$ 65,250	\$ 74,600	\$ 83,900	\$ 93,200	\$ 100,700	\$ 108,150	\$ 115,600	\$ 123,050	
HERA Special VLI (50% AMI) ***	\$ 88,200	\$ 100,800	\$ 113,400	\$ 125,940	\$ 136,020	\$ 146,100	\$ 156,180	\$ 166,260	See Note regarding HERA for FY2023*** See Note regarding HERA for FY2023***
Low (80% AMI) *	\$ 104,400	\$ 119,300	\$ 134,200	\$ 149,100	\$ 161,050	\$ 173,000	\$ 184,900	\$ 196,850	

Income Category	SRO **	Maximum Affordable Rent Payment (\$)					
		Studio	1-BR	2-BR	3-BR	4-BR	
Extremely Low *		\$ 975	\$ 1,045	\$ 1,254	\$ 1,449	\$ 1,617	
Very Low *		\$ 1,626	\$ 1,742	\$ 2,091	\$ 2,415	\$ 2,695	
Low HOME Limit*		\$ 1,631	\$ 1,748	\$ 2,097	\$ 2,423	\$ 2,703	effective 6/15/2023; 2023 HOME Limit
High HOME Limit (65%)*		\$ 2,101	\$ 2,253	\$ 2,704	\$ 3,116	\$ 3,456	effective 6/15/2023; 2023 HOME Limit
HERA Special VLI (50% AMI) ***		\$ 1,837	\$ 1,968	\$ 2,362	\$ 2,728	\$ 3,043	
HERA Special Limit (60% AMI) ***		\$ 2,205	\$ 2,362	\$ 2,835	\$ 3,274	\$ 3,652	
Low**		\$ 2,602	\$ 2,788	\$ 3,346	\$ 3,865	\$ 4,312	CA Tax Credit Rent limits for Low and Median Income Group
HUD Fair Market Rent (FMR)		\$ 2,156	\$ 2,665	\$ 3,188	\$ 3,912	\$ 4,283	HUD-published Fair Market Rents
Median **		\$ 3,252	\$ 3,484	\$ 4,182	\$ 4,830	\$ 5,390	CA Tax Credit Rent limits for Low and Median Income Group

NOTES

* Income figures provided by HUD for following San Mateo County federal entitlement programs: CDBG, HOME, ESG.

** CA Tax Credit Rent Limits for Low and Median Income Group

For San Mateo County, the Housing & Economic Recovery Act of 2008 (HERA) & the HUD 2010 HOME hold-harmless provision permit multifamily tax subsidy projects (MTSPs) & HOME projects placed in service before 1/1/2009 to continue to use HOME/tax credit/tax exempt bond rents based on the highest income levels that project ever operated under. Once these units are placed in service, the rents will not adjust downward should HUD establish lower incomes/rents in any subsequent year. Marketing of vacant units should be targeted to the current year's income schedule. However, HUD's Section 8 income limits are larger than those defined by Section 3009(a)(E)(ii) of the Housing and Economic Recovery Act of 2008 (Public Law 110-289). Therefore, for FY2018 no special income limits are necessary.

*+ SROs with -0- or 1 of the following - sanitary or food preparation facility in unit; if 5+ SRO HOME-assisted units, then at least 20% of units to be occupied by persons with incomes up to 50% AMI.

OTHER NOTES (generic)

1 Maximum affordable rent based on 30% of monthly income and all utilities paid by landlord unless further adjusted by HUD. Utility allowances for tenant-paid utilities may be established by Housing Authority of County of San Mateo Section 8 Program.

High HOME Limit rent set at **lower of**: (a) 30% of 60% AML, or (b) FMR (HUD Fair Market Rent).

For 2011, the FMR for Studio is the lower rent.

2 Rent Calculations - The following is the assumed family size for each unit: Studio:1 person 1-BR:1.5 persons 2-BR:3 3-BR: 4.5 4-BR:6

3 Table below provides rent guidance on appropriate income schedule to use:

Placed in Service Date	Maximum Inc. Limits Schedule
On or before 12/31/2008	2018 HERA Special
1/1/2009 to 5/13/2010	2009
5/14/2010 - 5/31/2011	2012
6/1/2011 - 11/30/2011	2012
12/01/2011 - 11/30/2012	2012
12/01/2012 - 12/17/2013	2013
12/18/2013 - 03/05/2015	2014
03/06/2015 - 03/27/16	2015
03/28/2016 - 4/14/2017	2016
04/14/2017 to 3/31/18	2017
4/01/2018 - 3/31/2019 to present	2018
4/01/2019 to 4/01/2020	2019
4/01/2020 to 4/01/2021	2020
4/01/2021 to 4/17/2022	2021
4/18/2022 to 5/14/2023	2022
5/15/2023 to present	2023

Rent schedules at https://www.huduser.gov/portal/pdrdatas_landing.html for additional information as well as the various income schedules. Please also refer to <https://www.treasurer.ca.gov/ctcac/2023/supplemental.asp>



**DIRECTION ON EXPENDING STATE AWARD FOR
COMMUNITYWIDE ELECTRIFICATION PROJECT**

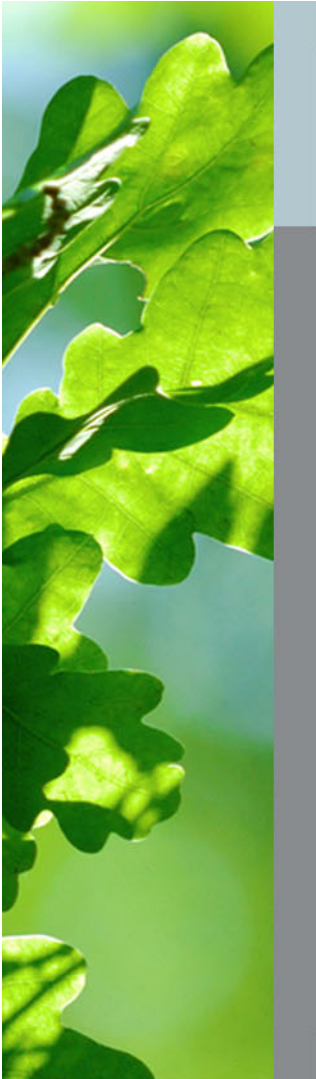
Rebecca Lucky, Sustainability Manager





RECOMMENDATION

- Provide direction on expending \$2.25 million awarded by the California Energy Commission (CEC)
- Consider partnering with Peninsula Clean Energy (PCE) to allocate \$2.15 million to its Home Upgrade Program for electrification projects in the Belle Haven neighborhood
- Consider allocating \$100,000 for building electrification workforce development



BACKGROUND

- Supports meeting Climate Action Plan (CAP) strategy No.1 to electrify existing buildings by 2030
- Aligns with previous City Council direction in 2021 to identify partners for funding and financing programs for existing building electrification, including a specific low-income turnkey program
- State funds for a turnkey program were requested by Menlo Spark through Senator Josh Becker office
- State appropriated \$4.5 million to the City of Menlo Park



BACKGROUND CONTINUED

- The first half of the funds (\$2.25 million) received last month
- Remaining funds will be disbursed once the City submits a progress report
- The full \$4.5 million must be expended by June 30, 2026



ENVIRONMENTAL QUALITY COMMISSION ADVICE



- Partner with PCE to be the program implementer/administrator
 - Provide no cost home electrification for low income residents in District 1 (Belle Haven neighborhood)
 - Target single-family homeowners; and
 - Require at least two appliances per home transitioned to electric (at minimum include replacing gas-fired water heating and gas-fired space heating/cooling)
- Support homeowners with a roadmap to electrification
- Establish a goal to achieve a high volume of homes
- Enable a quick start program to get heating and cooling for high-need residents
- Provide seed funding for existing building electrification workforce development
- Provide portable resilience package (e.g., solar and battery) for power outages in District 1, residents with medical needs, and the elderly



PCE PARTNERSHIP

- PCE currently implements a Home Upgrade program
 - Available to low-income single-family homeowners in PCE's territory
 - Provides one electrification measure at no cost
 - Provides minor home repairs at no cost
- Program will be expanded next year to include whole home electrification
- The program is anticipated to electrify 40 homes in Menlo Park



MENLO PARK HOME UPGRADE PROGRAM

- Providing \$2.15 million to PCE's Home Upgrade program would electrify 40 to 60 homes more homes in Menlo Park (targeting the Belle Haven neighborhood)
- PCE is considering tracking funding sources to differentiate funds used under PCE's program and Menlo Park's specific program



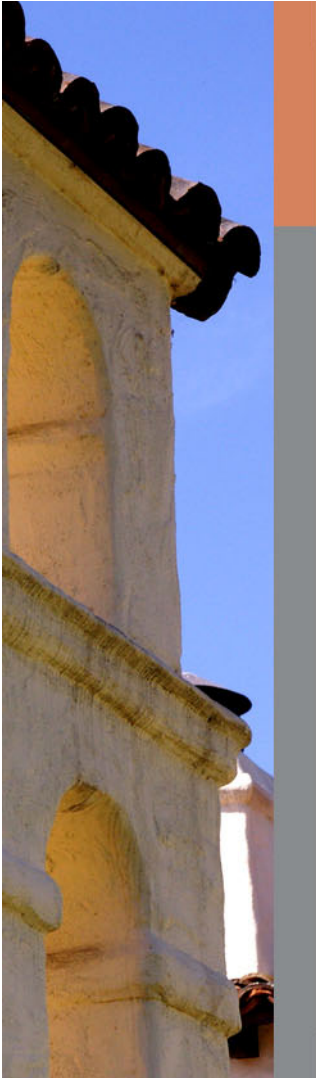
ELIGIBLE ELECTRIFICATION MEASURES

- Heat pump space heating and cooling
- Heat pump water heater
- Induction cooktop/stove
- Electric dryer
- Electrical remediation including new circuits, rewiring and panel upgrades, if needed.
- Minor energy efficiency and weatherization, if needed, such as air sealing
- Resiliency measures for high-need customers, such as portable batteries
- One hundred and twenty (120) or 240-volt electric vehicle (EV) outlet



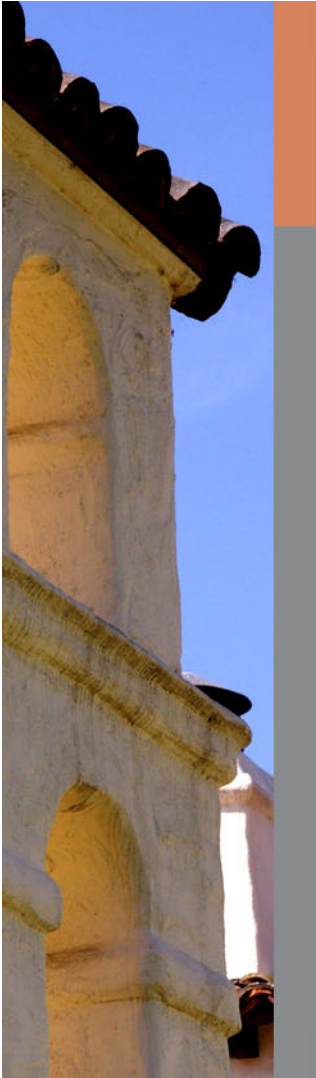
CONSIDER PROGRAM ENHANCEMENTS

- Short time frame and small geographic area creates challenge to needed participation level. Consider two enhancements:
 1. Increase income eligibility from 80% average median income (AMI) to 120% AMI (like the City's below market rate housing program)
 - Census data shows a significant amount of single-family homes may not qualify for the program using 80% AMI
 2. Include renter-occupied single family homes if property owners meet certain income qualifications and ensure upgrades do not cause displacement
 - 200% AMI for single/couple; 150% AMI for each individual among multiple owners



WORKFORCE DEVELOPMENT GRANT

- Developing a specialized workforce has been identified as another part of the roadmap to successfully electrify existing buildings
- The City Council could consider administering a grant program that would fund workforce development of up to \$100,000



RECOMMENDATION

- Provide direction on expending \$2.25 million awarded by the California Energy Commission (CEC)
- Consider partnering with Peninsula Clean Energy (PCE) to allocate \$2.15 million to its Home Upgrade Program for electrification projects in the Belle Haven neighborhood
- Consider allocating \$100,000 for building electrification workforce development



THANK YOU



STAFF REPORT

City Council

Meeting Date: 10/10/2023

Staff Report Number: 23-232-CC

Informational Item: City Council agenda topics: October – Nov. 7, 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 Nov. 7. 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: October – Nov. 7, 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	Adopt a resolution to amend the salary schedule	ASD	Regular	Adopt resolution
2	Adopt a resolution to amend the Master Fee Schedule	ASD	Regular/ Public Hearing	Adopt resolution
3	Closed session: labor	CA	Closed Session	No action
4	Amend BMR guidelines regarding resale of ownership units	CDD	Consent	Adopt resolution
5	Annual conflict of interest code update (2023)	CMO	Consent	Adopt resolution
6	Agreement with XXX to operate a weekly farmers market at Ivy Plaza as a pilot and appropriate funds	CMO	Regular	Contract award or amend
7	City Council procedure manual update	CMO	Study Session	Direction to staff
8	Presentation: Environmental Quality Commission update	CMO	Presentaiton	No action
9	Proclamation: National Native American Heritage Month	CMO	Proclamation	No action
10	Proclamation: United Against Hate Week	CMO	Proclamation	No action
11	First read and intro of zoning ordinance amendments to facilitate existing building electrification	CMO, CDD	Public Hearing	First read/intro ordinance
12	Second read and adopt zoning ordinance amendments to facilitate existing building electrification	CMO, CDD	Consent	Second read/adopt ordinance
13	Adopt a resolution for Menlo Park Community Campus (MPCC) parking management plan	CMO, PW	Regular	Adopt resolution
14	Staffing considerations to support Menlo Park Community Campus (MPCC) operations	LCS	Regular	Adopt resolution
15	Police department quarterly update – Q3 July 2023 - September 2023	PD	Informational	Receive and file
16	Accept the Stormwater Master Plan	PW	Consent	Approve
17	Five-year resurfacing plan	PW	Study Session	Direction to staff
18	Proclamation: Ruby Bridges Walk to School Day	PW	Proclamation	No action
19	Vision Zero Action Plan feedback	PW	Study Session	Direction to staff
20	Vision Zero Action Plan update	PW	Informational	No action



STAFF REPORT

City Council
Meeting Date: 10/10/2023
Staff Report Number: 23-229-CC

Informational Item: Transmittal of city attorney billing

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

In accordance with the City Council informational requests, this staff report transmits information to the public.

Background

On Feb. 23, 2021, the City Council approved an agreement with Burke Williams Sorenson, LLP (BWS) for city attorney services.

Analysis

As requested by the City Council, the city attorney has prepared monthly summaries of billing activity (costs/fees) for legal services that could be shared with the public. This staff report transmits the summary for the month of August 2023.

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. Billing summary – August 2023

Report prepared by:
Justin I.C. Murphy, City Manager

AUGUST 2023 CITY LEGAL SERVICES - Burke, Williams & Sorensen, LLP

Description	Fees	Costs	Total Billed
GENERAL MUNICIPAL MATTERS	\$47,740.00		\$47,740.00
REAL ESTATE, COMPLEX HOUSING, CEQA, NEPA	\$14,807.00		\$14,807.00
HOUSING ELEMENT	\$9,985.50		\$9,985.50
CONSTRUCTION AND COMPLEX PUBLIC WORKS	\$6,671.00		\$6,671.00
MENLO UPTOWN	\$388.00		\$388.00
123 INDEPENDENCE	\$10,379.00		\$10,379.00
FACEBOOK DA	\$6,752.50		\$6,752.50
WILLOW VILLAGE	\$348.00		\$348.00
1350 ADAMS COURT	\$1,843.00		\$1,843.00
1105-1165 O'BRIEN DRIVE	\$11,300.50		\$11,300.50
MPMW AND FEES ADVICE	\$661.50		\$661.50
SRI CAMPUS	\$17,266.00		\$17,266.00
1005 O'BRIEN	\$1,891.50		\$1,891.50
UUT CLAIM/LITIGATION	\$5,827.50		\$5,827.50
PUBLIC RECORDS ACT	\$9,322.50		\$9,322.50
CITY COUNCIL	\$2,255.00		\$2,255.00
980-1030 O'BRIEN	\$8,087.50		\$8,087.50
KUNZE DOG LAWSUIT	\$441.00		\$441.00
1305 HOOVER	\$261.00		\$261.00
80 WILLOW	\$291.00		\$291.00
CLAIMS AND JPIA LITIGATION	\$2,420.00		\$2,420.00
975 FLORENCE	\$2,436.00		\$2,436.00
CITY LEGAL EXPENSES PAID BY CITY			\$102,567.00
CITY LEGAL EXPENSES PAID BY DEVELOPERS			\$58,808.00
TOTAL			\$161,375.00