



CITY COUNCIL SPECIAL AND REGULAR MEETING AGENDA

Tuesday, April 17, 2012
5:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

5:00 P.M. CLOSED SESSION (1st floor Council Conference Room, City Hall)

Public Comment on Closed Session item will be taken prior to adjourning to Closed Session

CL1. Conference with legal counsel pursuant to Government Code Section 54956.9 (c) regarding potential litigation: 1 case

7:00 P.M. REGULAR SESSION

ROLL CALL – Cline, Cohen, Fergusson, Keith, Ohtaki

PLEDGE OF ALLEGIANCE

REPORT FROM CLOSED SESSION

ANNOUNCEMENTS

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation: National Volunteer Week ([Attachment](#))

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

B1. Bicycle Commission quarterly report on the status of their 2-Year Work Plan

B2. Consider approval of a revision to the 2-Year Work Plan for the Housing Commission ([Staff report #12-064](#))

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

Under "Public Comment #1", the public may address the Council on any subject not listed on the agenda and items listed under the Consent Calendar. Each speaker may address the Council once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Council cannot act on items not listed on the agenda and, therefore, the Council cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. CONSENT CALENDAR

D1. Approve an extension of the agreement between the County of San Mateo and the City of Menlo Park to toll statutes of the limitations for claims regarding property tax administration fess ([Staff report #12-057](#))

D2. Approve the City of Menlo Park's response to the San Mateo County Civil Grand Jury report, 'The County, San Carlos and Cal Fire, a Missed Opportunity?' ([Staff report #12-062](#))

D3. Accept Council minutes for the meeting of March 27, 2012 and April 9, 2012 ([Attachment](#))

E. PUBLIC HEARING

- E1.** Adopt a resolution approving the sale of certain real property located behind properties fronting on the north side of Terminal Avenue, consisting of the Beechwood School property and vacant land between the school and Menlo Park Fire Protection District Station No. 77 and south of the Joint Powers Authority owned railroad right of way, and 297 Terminal Avenue to the California Family Foundation for \$1,255,000 and authorize the City Manager to execute all necessary documents to complete the sale ([Staff report #12-060](#))

F. REGULAR BUSINESS

- F1.** Approve a comment letter on Metropolitan Transportation Commission Memorandum of Understanding on High Speed Rail Early Investment Strategy for a Blended System on the Peninsula Corridor to be sent to Caltrain and SMCTA ([Staff report #12-061](#))
- F2.** Consider the Term Sheet for the Development Agreement for the Facebook East Campus located at 1601 Willow Road ([Staff report #12-63](#))
- F3.** Consider state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item:
(a) Consider placing AB 1455 for Council action on a City Council agenda ([Staff report #12-065](#))

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS

- I1.** Recology collection of garbage and recycling day changes ([Staff report #12-059](#))
- I2.** Review timeline regarding a November 2012 ballot measure to increase the Transient Occupancy Tax rate for the City of Menlo Park ([Staff report #12-058](#))

J. COUNCILMEMBER REPORTS

K. PUBLIC COMMENT #2 (Limited to 30 minutes)

Under "Public Comment #2", the public if unable to address the Council on non-agenda items during Public Comment #1, may do so at this time. Each person is limited to three minutes. Please clearly state your name and address or jurisdiction in which you live.

L. ADJOURNMENT

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at <http://www.menlopark.org> and can receive e-mail notification of agenda and staff report postings by subscribing to the "Home Delivery" service on the City's homepage. Agendas and staff reports may also be obtained by contacting the City Clerk at (650) 330-6620. Copies of the entire packet are available at the library for viewing and copying. (Posted: 04/12/2012)

At every Regular Meeting of the City Council/Community Development Agency Board, in addition to the Public Comment period where the public shall have the right to address the City Council on the Consent Calendar and 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 Mayor, either before or during the Council's consideration of the item.

At every Special Meeting of the City Council/Community Development Agency Board, 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 Mayor, either before or during consideration of the item.

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 for inspection at the Office of the City Clerk, Menlo Park City Hall, 701 Laurel Street, Menlo Park, CA 94025 during regular business hours. Members of the public may send communications to members of the City Council via the City Council's e-mail address at city.council@menlopark.org. These communications are public records and can be viewed by any one by clicking on the following link: <http://ccin.menlopark.org>

City Council meetings are televised live on Government Access Television Cable TV Channel 26. Meetings are re-broadcast on Channel 26 on Thursdays and Saturdays at 11:00 a.m. A DVD of each meeting is available for check out at the Menlo Park Library. Live and archived video stream of Council meetings can be accessed at http://menlopark.granicus.com/ViewPublisher.php?view_id=2.

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.

Proclamation

National Volunteer Week April 15 - 21, 2012

WHEREAS, National Volunteer Week provides the opportunity to recognize the dedicated service and contributions of volunteers and raise awareness of the benefits of volunteerism; and

WHEREAS, volunteerism strengthens communities, improves social conditions and enhances the overall quality of life for all citizens; and

WHEREAS, the City of Menlo Park has 177 volunteers providing services to the various City departments including the Library, Police and Community Services departments; and

WHEREAS, the talent, generosity and energy of volunteers continues to be one of the City of Menlo Park's most valuable resources; and

WHEREAS, the City of Menlo Park would be deprived of numerous programs, services and activities without the support and involvement of its volunteers; and

WHEREAS, the lives of volunteers are also impacted in a positive manner by increasing self-confidence, self-worth and physical well-being; and

WHEREAS, through the dedication and selflessness of volunteers stems the true strength of community and citizenship.

NOW, THEREFORE, BE IT RESOLVED that the Menlo Park City Council does hereby proclaim April 15 - 21, 2012 as Volunteer Week in Menlo Park and encourages all citizens to recognize, support and commend all volunteers, and to consider volunteering our own time and efforts as well.



Kirsten Keith, Mayor



ADMINISTRATIVE SERVICES

Council Meeting Date: April 17, 2012
Staff Report #: 12-064

Agenda Item #: B-2

COMMISSION REPORT: Consider approval of a revision to the 2-Year Work Plan for the Housing Commission

RECOMMENDATION

The Housing Commission recommends approval of a revision to their 2-Year Work Plan (Attachment A).

BACKGROUND

The City Council provides direction to staff by adopting Council Goals, taking formal actions, and by review and adoption of the budget. Council actions and directions ultimately lay the foundation for the work expected to be accomplished during that particular establish policy while laying frame by the staff and Advisory Bodies. The proposed Work Plans will be a useful tool for both the Commissions/Committees ("Advisory Body") and the Council to ensure that the Council's goals are met and Council's vision, mission and priorities are executed through clearly defined activities of the Commissions.

The Work Plans are an initiative of the City Clerk's Office and the result of feedback received from Advisory Bodies during the transition from project priorities to the 5-Year Capital Improvement Program (CIP) process. At that time comments were received concerning a gap between the scope of the Project Priorities and the 5-Year CIP. The Work Plans will improve the connectivity between the City Council and each Advisory Body by aligning the anticipated work product of the Advisory Body with the Council.

Council approved the Housing Commission's Work Plan on April 5, 2011, but with the elimination of the Housing Division, the Commission has revised their Plan to reflect the changing direction of the City's housing activities.

ANALYSIS

The primary changes to the Work Plan reflect the elimination of programs that result from the dissolution of the Community Development Agency. The Neighborhood Stabilization Program, the Rehabilitation Program, and the Emergency Repair Program will all end with the laying off of the housing staff. The Below Market Rate Program's administration will be outsourced. This leaves the Commission with a more advisory role, where the previous plan emphasized the promotion of the housing programs. The new plan lays out the Commission's role in the development of the Housing Element,

along with the need to promote collaboration with other housing advocates across the County, while continuing their role in the approval of BMR Agreements with housing and commercial developers.

IMPACT ON CITY RESOURCES

Approval of the Work Plans could be a positive impact on staff resources by having focused goals.

POLICY ISSUES

None.

ENVIRONMENTAL REVIEW

The proposed action does not require environmental review.

for Pamela Arriola, deputy
Margaret S. Roberts City Clerk

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS: A – Housing Commission Work Plan Revision



Housing Commission

Mission Statement

We are affordable housing advocates.

We make recommendations to the City Council on issues related to housing policy, implement Council policy decisions, and represent the City where needed on housing matters.

We are a conduit of information out to the community about affordable housing programs *and* a conduit of information back from the community regarding housing matters to the City Council.

Housing Commission
Work Plan for 2011-2013



**Housing Commission
2011-2012**

Commission Members Listing

Commissioner Yvonne Murray (Chair)

Commissioner Brigid Van Randall (Vice Chair)

Commissioner John Bautista

Commissioner Sally Cadigan

Commissioner Carolyn Clarke

Commissioner Anne Moser

Commissioner Julianna Dodick



**Housing Commission
Priority List**

The Housing Commission has identified the following priorities to focus on during 2011-2013:

1.	<p><u>BMR Housing</u></p> <ul style="list-style-type: none"> • Activities: <ul style="list-style-type: none"> ○ Monitor and review BMR funds and use. ○ Participate in and advise Council and/or Planning Commission on policy decisions related to BMR. • Trigger: Staff will bring items to the commission for consideration.
2.	<p><u>Housing Element</u> Commission lead: Sally Cadigan</p> <ul style="list-style-type: none"> • Activities: <ul style="list-style-type: none"> ○ Support development of a Housing Element. The development of a Housing Element is owned and driven by city staff. ○ Our responsibility is to represent the community in an advisory role. In addition, we are responsible for explaining to the community what this is, why it is needed, etc. • Timeframe: Funding in City Council budget for consultant to develop Housing Element in next fiscal year.
3.	<p><u>Housing Projects</u> Commission lead: Anne Moser</p> <ul style="list-style-type: none"> • Stay apprised of housing projects in Menlo Park (i.e. VA housing project, HIP, Habitat) • Action: Lead will include information on activities in update at monthly commission meetings.

<p>4.</p>	<p><u>Community Advocacy for Affordable Housing</u> Commission lead: Brigid Van Randall</p> <ul style="list-style-type: none"> • Develop awareness in community of the need for affordable housing. <ul style="list-style-type: none"> ○ Interpret who may fit the profile for BMR (i.e. your child's nanny, workers in Menlo Park, etc). This will require understanding the demographics profile of both current and potential BMR candidates. ○ Define what affordable housing means in Menlo Park. • Conduit of information out to the community and back from the community • Action: Commission is in a learning and investigation stage. We will come back to council in 60 days with a detailed proposal.
<p>5.</p>	<p><u>Collaborate with area Housing Agencies and Advocates</u></p> <ul style="list-style-type: none"> • Identify Housing Commission liaisons for area housing agencies and advocates. Liaison will report back regularly at commission meetings.



Commission Work Plan Guidelines Work Plan Worksheet

<p>Step 1</p> <p>Review purpose of Commission as defined by Menlo Park Council Policy CC-01-0004</p>	<p>Housing matters including housing supply and housing related problems; 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; Members serve with staff on a loan review committee for housing rehabilitation programs and a first time homebuyer loan program; Review and recommend to the 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; and Review and recommend on the Housing Element of the General Plan</p>
<p>Step 2</p> <p>Develop or review a Mission Statement that reflects that purpose</p> <p><i>Who we are, what we do, who we do it for, and why we do it!</i></p>	<p>We are affordable housing advocates.</p> <p>We make recommendations to the City Council on issues related to housing policy, implement Council policy decisions, and represent the City where needed on housing matters.</p> <p>We are a conduit of information out to the community about affordable housing programs and a conduit of information back from the community regarding housing matters to the City Council.</p>
<p>Step 3</p> <p>Discuss any priorities already established by Council</p>	<p>There are no Council priorities identified that specifically pertain to the Housing Commission.</p>

ATTACHMENT A

Step 4

Brainstorm goals, projects or priorities of the Commission	Benefit, if completed	Mandated by State/local law or by Council direction?	Required policy change at Council level?	Resources needed for completion? Staff or creation of subcommittees?	Estimated Completion Time	Measurement criteria How will we know how we are doing?
BMR Housing	<ul style="list-style-type: none"> Oversight of compliance with guidelines 	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> Staff time Commission meetings 	24 Months	<ul style="list-style-type: none"> Approved BMR Agreements
Housing Element	<ul style="list-style-type: none"> In compliance with State requirements 	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<ul style="list-style-type: none"> Funding Staff time 	24 Months	<ul style="list-style-type: none"> Housing Commission Approval Planning Commission Approval City Council Approval
Housing Projects	<ul style="list-style-type: none"> Continued awareness of upcoming projects in absence of Housing staff 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> Staff time (briefs from planning staff on pending projects) 	24 Months	<ul style="list-style-type: none"> Commission knowledge of projects
Community Advocacy for Affordable Housing	<ul style="list-style-type: none"> More awareness of the need to provide a range of housing opportunities 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> Subcommittee 	24 Months	<ul style="list-style-type: none"> More acceptance of affordable housing by the community
Collaborate with area Housing Agencies and Advocates	<ul style="list-style-type: none"> Access to more resources and ideas 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> Subcommittee 	24 Months	<ul style="list-style-type: none"> More communication with area housing advocates



ADMINISTRATIVE SERVICES

Council Meeting Date: April 17, 2012
Staff Report #: 12-057

Agenda Item #: D-1

CONSENT: Approve an Extension of the Agreement between the County of San Mateo and the City of Menlo Park to Toll Statutes of Limitations for Claims Regarding Property Tax Administration Fees

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City Manager to extend the existing Agreement between the County of San Mateo and the City of Menlo Park to Toll Statutes of Limitations for Claims Regarding Property Tax Administration Fees ("Tolling Agreement") from July 1, 2012 to July 1, 2013.

BACKGROUND

The County assesses and collects all property taxes in the County. It then allocates these taxes to the various government entities in the County – cities, school districts, special districts, the Educational Revenue Augmentation Fund ("ERAF"), and the County itself. The County is allowed to charge each entity that receives property taxes that entity's share of the costs the County incurs in assessing, collecting, and allocating these taxes.¹ This is called the Property Tax Administration Fee ("PTAF"). The amount of PTAF an entity is charged is directly proportional to the amount of property taxes the County collects for it. The PTAF is deducted from each entity's property tax allocation and is added to the County's property tax allocation. Schools and ERAF are not charged PTAF. Instead, the cost of collecting property taxes for schools and ERAF are borne by the County.

In the 2003-04 and the 2004-05 fiscal years, the Legislature implemented the "Triple Flip" and the "VLF Swap."² Under these two complex sales tax and Vehicle License Fee (VLF) diversions and backfills, the County increased the PTAF it charges to cities. Similar increases were charged by most counties in the State and several lawsuits were filed challenging the calculation of the County's costs for implementing the Triple Flip and the VLF Swap.³

¹ Rev. & Tax. Code § 95.3.

² Rev. & Tax. Code § 97.68 and 97.70.

³ Rev. & Tax. Code § 96.75.

City Attorneys for various cities in the County of San Mateo met with and hired Ben Fay, a municipal tax specialist from the firm of Jarvis, Fay & Doporto, to explore the issues. The essence of the dispute is a question of statutory interpretation. Mr. Fay negotiated with County Counsel for the County of San Mateo a tolling agreement for the City of Menlo Park's claims against the County for the excess property tax administration fees that the County began deducting from the City's property tax allocations beginning in the 2006-07 fiscal year, which for that fiscal year was \$21,000. The same tolling agreement was also offered to the cities of Brisbane, Colma, East Palo Alto, Foster City, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside. The tolling agreements would provide the cities and the County additional time to see how the other lawsuits around the State were resolved - in particular, to see whether there is a decision by a court of appeal. In this way, the cities and the County hoped to avoid costly litigation. The tolling agreement was set to expire on July 1, 2012.

DISCUSSION

The tolling agreement now currently covers fiscal years 2006-07 through 2009-10. The process of extending the tolling agreement to the 2010-11 tax year was not initiated because it appeared that the Supreme Court would likely rule on the *City of Alhambra v. County of Los Angeles* case, before such an extension would be needed. However, although the case has been fully briefed since last March, the Supreme Court has not yet set a date for oral argument. It therefore appears that an extension of the tolling agreement to include the 2010-11 tax year, as well as to extend the expiration date of the agreement, is needed. Mr. Fay has worked out a third addendum to the tolling agreement with the County Counsel's office; it is included as Attachment A to this report.

Next Steps

San Mateo County cities party to a tolling agreement have received copies of the addendums for their city councils to consider in April. Once Mr. Fay has received all of the signed agreements, he will forward them to the County by the middle of May, so they can be approved by the Board of Supervisors and signed before the end of June.

IMPACT ON CITY RESOURCES

There is no current impact on City resources because the County continues to deduct PTAF calculated in a manner consistent with the methodology established in 2006-07. At that time, PTAF for Menlo Park jumped from \$66,500 to \$78,400, and has increased to over \$100,000 in the current fiscal year. Should the matter ultimately be resolved in the City's favor, the PTAF will be recalculated, resulting in a reduction of PTAF for the years contested, and a refund to the City. Until the matter is resolved, the City and County could avoid costly litigation on this matter.

POLICY IMPLICATIONS

The tolling agreement will freeze the City's claims as they exist at the time of the execution of the agreement. It also freezes any claim the County may have against the City. The extended tolling agreement will last until July 1, 2013, or until one party terminates it with 45 days' notice. By July 1, 2013, cities should have direction from the courts on this matter.

ENVIRONMENTAL REVIEW

This is not a project under the California Environmental Quality Act; therefore, no environmental assessment is required.



Carol Augustine
Finance Director

ATTACHMENTS

Attachment A: Third addendum to the Agreement between the County of San Mateo and the City of Menlo Park to Toll Statutes of Limitations for Claims Regarding Property Tax Administration Fees

**THIRD ADDENDUM TO AGREEMENT BETWEEN
THE COUNTY OF SAN MATEO AND THE CITY OF MENLO PARK
TO TOLL STATUTES OF LIMITATIONS FOR CLAIMS
REGARDING PROPERTY TAX ADMINISTRATION FEES**

WHEREAS, the City of Menlo Park (the "City") and the County of San Mateo (the "County") (collectively the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fee (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-05;

WHEREAS, the City filed a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-07 and 2007-08 fiscal years;

WHEREAS, the Parties entered into a tolling agreement on February 18, 2009 (the "Tolling Agreement");

WHEREAS, the City subsequently filed claims with the County seeking refunds of the amount of PTAF that the City claims the County overcharged the City in the 2008-09 and 2009-10 fiscal years, and the County denied these claims;

WHEREAS, the County and the City agreed to and signed addenda to the Tolling Agreement that extended the Tolling Agreement to the City's claims for the 2008-09 and 2009-10 fiscal years. A copy of the Tolling Agreement and the addenda for the 2008-09 and 2009-10 fiscal years is attached hereto as Exhibit "A";

WHEREAS, the City has now filed a Claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2010-11 fiscal year (the "2010-11 Claim");

WHEREAS, the City and County are aware that other cities and counties in other areas of the State are involved in litigation concerning the calculation of the PTAF, and the Parties desire to avoid litigation in order to allow time to evaluate the law as it develops on this state-wide issue;

WHEREAS, the Parties now wish to bring the 2010-11 Claim within the scope of the Tolling Agreement;

WHEREAS, the Tolling Agreement is currently set to expire on July 1, 2012, and the Parties now wish to extend the expiration date of the Tolling Agreement by one year to July 1, 2013.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF for the 2010-11 fiscal year, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2010-11 fiscal year, which the City contends resulted in an under-allocation of property taxes to the City for the 2010-11 fiscal year.

2. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2010-11 fiscal year while this agreement is in effect.

3. The automatic expiration date of the tolling period as set forth in subdivision b of section 5 of the Tolling Agreement is extended by one year from July 1, 2012 to July 1, 2013. The provision for termination of the Tolling Agreement by notice of a party under subdivision a of section 5 of the Tolling Agreement remains in effect.

4. Notification to Benjamin P. Fay, as provided in section 8, subdivision a, of the Tolling Agreement shall be to the following address: Benjamin P. Fay, Jarvis, Fay, Doporto & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, CA 94607, (510) 238-1404 (fax).

5. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

6. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. The Parties anticipate that they may amend this Agreement to include claims brought by the City regarding the calculation of PTAF for future fiscal years.

7. The Parties hereby also incorporate sections 2, 3, 5, 8, 9, 10, and 11 of the Tolling Agreement into this Addendum (as modified by sections 3 and 4 above).

FOR THE COUNTY OF SAN MATEO

Dated: _____

By: _____

John Beiers

County Counsel of the County of San Mateo

FOR THE CITY OF MENLO PARK:

Dated: _____

By: _____

Alex D. McIntyre
City Manager for the City of Menlo Park

Approved as to form for the City of Menlo Park:

Dated: _____

By: _____

William L. McClure
City Attorney of the City of Menlo Park

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THE CITY OF MENLO PARK TO TOLL STATUTES OF LIMITATIONS FOR
CLAIMS REGARDING PROPERTY TAX ADMINISTRATION FEES**

WHEREAS, the City of Menlo Park (the "City") and the County of San Mateo (the "County") (collectively, the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fees (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-2005;

WHEREAS, conflicting legal opinions as to the calculation of the PTAF have been rendered by various state and local agencies and their counsel;

WHEREAS, the City filed a claim against the County on or about June 27, 2008, seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-2007 and 2007-2008 fiscal years and the County has not yet formally denied the claim;

WHEREAS, the County contends that it may have undercharged the City for the PTAF in the 2004-2005 and 2005-2006 fiscal years;

WHEREAS, the City and County are aware that other cities and counties in other areas of the State are involved, or may become involved, in litigation concerning the calculation of the PTAF;

WHEREAS, the Parties desire to avoid litigation in order to allow for additional time to evaluate the law as it develops on this state-wide issue;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2006-2007 and 2007-2008 fiscal years, which the City contends resulted in an under-allocation of property taxes to the City; and including, but not limited to, the applicable statutes of limitations for the County to file a complaint, petition, or administrative claim seeking an increase or reallocation to the County of the PTAF the County contends the County may have undercharged the City in the 2004-2005 and 2005-2006 fiscal years.

2. This tolling agreement does not revive any statute of limitations period or deadline that expired before the effective date of this tolling agreement. This tolling agreement applies solely to those claims that could be alleged as of the effective date of this tolling agreement in either (i) an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or a County or City ordinance or (ii) a lawsuit. The tolling agreement does not apply to any claims that could not be alleged as of the

effective date of this tolling agreement in an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or any County or City ordinance or in a lawsuit.

3. The purposes of this tolling agreement are to avoid litigation and to permit the Parties additional time to evaluate the law as it develops on this state-wide issue.

4. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 fiscal years while this agreement is in effect.

5. The tolling period for the City and the County extends from the effective date of this tolling agreement until the earlier of the following:

- a. The expiration of forty-five (45) days from the date one Party ("the terminating party") delivers to the other Party via certified mail and facsimile at the addresses and facsimile machine numbers set forth in Section 8 below, written notice that the terminating party desires to terminate this tolling agreement, and is in fact terminating this tolling agreement; or
- b. July 1, 2012.

6. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

7. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. The Parties anticipate that they are likely to amend this Agreement to include claims brought by the City regarding the calculation of PTAF for the 2008-2009 fiscal year and further fiscal years.

8. Notices under this agreement, including specifically notice under Section 5.a above, shall be given as follows:

- a. To the City, notice shall be given to both the City Attorney and to the attorney specially representing the City in this matter, Benjamin P. Fay, at the following addresses:

City Attorney
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025
 Fax: (650) 328-7935

Benjamin P. Fay
Jarvis, Fay, Doporto & Gibson, LLP
475 14th Street, Suite 260
Oakland, CA 94612
Fax: (510) 238-1404

- b. To the County, notice shall be given to the County Counsel at the following address:

Michael P. Murphy
County Counsel of the County of San Mateo
400 County Center, 6th Floor
Redwood City, CA 94063
Fax: (650) 363-4034

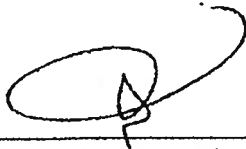
9. The Parties agree that this agreement shall be effective upon its execution by both Parties. The Parties further agree that the County will deny the City's claim on the date immediately preceding its execution of the Agreement.

10. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this agreement on behalf of the respective parties to this agreement.

11. This tolling agreement may be executed in counterparts, and each fully executed counterpart will be considered an original document.


FOR THE COUNTY OF SAN MATEO

Dated: 2/18/09

By: 
Michael P. Murphy
County Counsel of the County of San Mateo

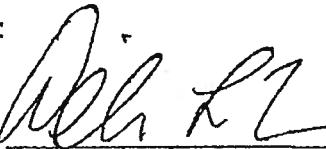
FOR THE CITY OF MENLO PARK:

Dated: 1-28-09

By: 
Glen Rojas
City Manager of the City of Menlo Park

Approved as to form for the City of Menlo Park:

Dated: 2-6-09

By: 
William L. McClure
City Attorney of the City of Menlo Park

**FIRST ADDENDUM TO AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND THE CITY OF MENLO PARK TO TOLL STATUTES OF LIMITATIONS FOR
CLAIMS REGARDING PROPERTY TAX ADMINISTRATION FEES**

WHEREAS, the City of Menlo Park (the "City") and the County of San Mateo (the "County") (collectively the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fee (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-2005;

WHEREAS, the City filed a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-2007 and 2007-2008 fiscal years;

WHEREAS the County denied the claim and the Parties entered into a tolling agreement, on February 18, 2009, a copy of which is attached hereto as Exhibit "A" (the "Tolling Agreement");

WHEREAS, the City has now submitted a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2008-2009 fiscal year (the "2008-2009 Claim");

WHEREAS, the Parties now wish to bring the 2008-2009 claim within the scope of the Tolling Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:


1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF for the 2008-2009 fiscal year, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2008-2009 fiscal year, which the City contends resulted in an under-allocation of property taxes to the City for the 2008-2009 fiscal year.
2. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2008-2009 fiscal year while this agreement is in effect.
3. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.
4. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in

writing and signed by the Parties. The Parties anticipate that they may amend this Agreement to include claims brought by the City regarding the calculation of PTAF for future fiscal years.

5. The Parties hereby also incorporate sections 2, 3, 5, 8, 9, 10, and 11 of the Tolling Agreement into this Addendum.

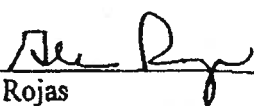
FOR THE COUNTY OF SAN MATEO

Dated: 12/16/09

By: 
Michael P. Murphy
County Counsel of the County of San Mateo

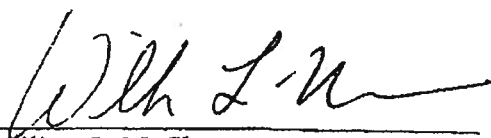
FOR THE CITY OF MENLO PARK:

Dated: 10-28-09

By: 
Glen Rojas
City Manager of the City of Menlo Park

Approved as to form for the City of Menlo Park:

Dated: 10-29-09

By: 
William L. McClure
City Attorney of the City of Menlo Park

**SECOND ADDENDUM TO AGREEMENT BETWEEN
THE COUNTY OF SAN MATEO AND THE CITY OF MENLO PARK
TO TOLL STATUTES OF LIMITATIONS FOR CLAIMS
REGARDING PROPERTY TAX ADMINISTRATION FEES**

WHEREAS, the City of Menlo Park (the "City") and the County of San Mateo (the "County") (collectively the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fee (the "PTAF") as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License Fee swap (Rev. & Tax Code § 97.70) that the County charges the City, pursuant to the Revenue and Taxation Code, beginning in the fiscal year 2004-05;

WHEREAS, the City filed a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2006-07 and 2007-08 fiscal years (the "2006-08 Claim");

WHEREAS, the Parties entered into a tolling agreement on February 18, 2009, a copy of which is attached hereto as Exhibit "A" (the "Tolling Agreement");

WHEREAS, the County denied the 2006-08 Claim on March 31, 2009;

WHEREAS, the City filed a claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2008-09 fiscal year (the "2008-09 Claim");

WHEREAS, the County denied the 2008-09 Claim on December 15, 2009;

WHEREAS, the County and the City agreed to an addendum to the Tolling Agreement, to bring the 2008-09 Claim within its scope, a copy of which is attached hereto as Exhibit "B" (the "First Addendum");

WHEREAS, the City has now filed a Claim with the County seeking a refund of the amount of PTAF that the City claims the County overcharged the City in the 2009-10 fiscal year (the "2009-10 Claim");

WHEREAS, the City and County are aware that other cities and counties in other areas of the State are involved, or may become involved, in litigation concerning the calculation of the PTAF;

WHEREAS, the Parties desire to avoid litigation in order to allow for additional time to evaluate the law as it develops on this state-wide issue;

WHEREAS, the Parties now wish to bring the 2009-10 Claim within the scope of the Tolling Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations for either party to file a claim, complaint, or petition against the other with respect to the calculation of the PTAF for the 2009-2010 fiscal year, including, but not limited to, the applicable statutes of limitations for the City to file a complaint or petition seeking a refund or reallocation to the City of the PTAF that the City contends the County overcharged the City for the 2009-10 fiscal year, which the City contends resulted in an under-allocation of property taxes to the City for the 2009-10 fiscal year.

2. The City and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF for the 2009-10 fiscal year while this agreement is in effect.

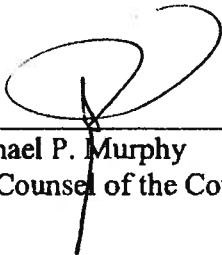
3. This agreement constitutes the entire understanding of the Parties with respect to the tolling of the City's and the County's claims as set forth in Section 1 above, and correctly states the rights, duties, and obligations of each Party as of the effective date of this agreement. Any prior understandings, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

4. Subsequent modifications of this agreement, including but not limited to the extension or amendment of the agreement, shall not be valid or effective unless set forth in writing and signed by the Parties. The Parties anticipate that they may amend this Agreement to include claims brought by the City regarding the calculation of PTAF for future fiscal years.

5. The Parties hereby also incorporate sections 2, 3, 5, 8, 9, 10, and 11 of the Tolling Agreement into this Addendum.

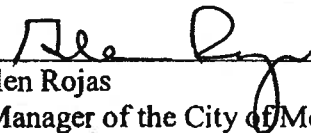
FOR THE COUNTY OF SAN MATEO

Dated: 1/20/2011

By: 
Michael P. Murphy
County Counsel of the County of San Mateo

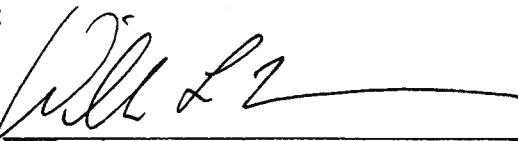
FOR THE CITY OF MENLO PARK:

Dated: 10-5-10

By: 
Glen Rojas
City Manager of the City of Menlo Park

Approved as to form for the City of Menlo Park:

Dated: Oct 5, 2010

By: 
William L. McClure
City Attorney of the City of Menlo Park



ADMINISTRATIVE SERVICES

Council Meeting Date: April 17, 2012
Staff Report #: 12-062

Agenda Item #: D-2

CONSENT ITEM: **Approve the City of Menlo Park's response to the San Mateo County Civil Grand Jury, "The County, San Carlos and Cal Fire, a Missed Opportunity?"**

RECOMMENDATION

Approve and submit the attached response to the San Mateo County Civil Grand Jury on "The County, San Carlos, and Cal Fire, A Missed Opportunity?"

BACKGROUND

The Civil Grand Jury, as described on their web site: "is a judicial body composed of 19 citizens. It is impaneled to act as an 'arm of the court,' as authorized by the State Constitution, to be a voice of the people and conscience of the community." The website further states: "Empowered by the state judicial system, the San Mateo County Civil Grand Jury submits meaningful solutions to a wide range of problems. The San Mateo County Civil Grand Jury is a volunteer, fact finding body with the potential to recommend constructive changes."

The Grand Jury investigates various departments and functions of local government as it chooses. It also reviews compliance with previous Civil Grand Jury recommendations. Some subjects to be investigated are brought about by letters from citizens regarding complaints of alleged mistreatment by officials, suspicion of misconduct or governmental inefficiencies.

The response to a Grand Jury investigation by City Council is expected within 90 days (May 15, 2012). The response should indicate it was approved by the City's governing body at a public meeting and should indicate for all findings whether the City:

1. Agrees with the finding; or,
2. Disagrees wholly or partially with the finding (including reasons for the disagreement).

Additionally, for each recommendation, cities are required to report:

1. Implementation of the recommendation (with a summary);
2. Plans for implementation (with a time frame);
3. Recommendations we believe require further analysis (with a time frame not to exceed six months); or
4. Recommendations that will not be implemented with an explanation.

ANALYSIS

Staff has reviewed the Grand Jury Report (Appendix A), and evaluated the response from the City of San Carlos, to formulate the attached cover letter and response (Appendix B). The response is relatively general. While the broad themes of regionalizing core services and effective use of tax payer dollars are germane to the City of Menlo Park, the specific example used for this Grand Jury report is not as relevant since fire services are provided by the Menlo Park Fire District. The District is independent of the City, reporting to a sovereign board of elected officials. As such, the City has no independent body of knowledge to analyze and evaluate the findings, conclusions and recommendations. Based on the facts as presented in the report, the findings, conclusions and recommendations seem to be reasonable. In reviewing the City of San Carlos response, there were a few disagreements regarding timing and sequencing of events stemming from their perspective of their participation in the process.

IMPACT ON CITY RESOURCES

Approving and submitting a response to the Grand Jury report has no direct impact on City resources.

POLICY IMPLICATIONS

The issues of consolidating fire departments to provide more cost effective regional services, changing work hours and work schedules for cost savings, and providing access to CAL FIRE for interested Cities appears to make sense based on the information presented.

ENVIRONMENTAL REVIEW

No environmental assessment is required.



Starla Jerome-Robinson
Assistant City Manager

ATTACHMENTS:

- Attachment A: Report of the 2011-12 San Mateo County Civil Grand Jury on "The County, San Carlos, and Cal Fire, A missed Opportunity?"
- Attachment B: City of Menlo Park Response to the 2011-12 San Mateo County Civil Grand Jury on "The County, San Carlos, and Cal Fire, A missed Opportunity?"
- Attachment C: The Response from the Andy Klein, Mayor of the City of San Carlos



Superior Court of California, County of San Mateo
Hall of Justice and Records
400 County Center
Redwood City, CA 94063-1655

COURT EXECUTIVE OFFICER
CLERK & JURY COMMISSIONER

(650) 599-1200
FAX (650) 363-4698
www.sanmateocourt.org

February 15, 2012

City Council
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: The County, San Carlos, and Cal Fire, A Missed Opportunity?

Dear Councilmembers:

The 2011-2012 Grand Jury filed a report on February 15, 2012 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Gerald J. Buchwald. Your agency's response is due no later than May 15, 2012. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to each Grand Jury recommendation, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.

- **Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Buchwald.**

**Hon. Gerald J. Buchwald
Judge of the Superior Court
Hall of Justice
400 County Center; 8th Floor
Redwood City, CA 94063-1655.**

2. Responses to be placed at the Grand Jury website.

- **Copy response and send by e-mail to: grandjury@sanmateocourt.org. (Insert agency name if it is not indicated at the top of your response.)**

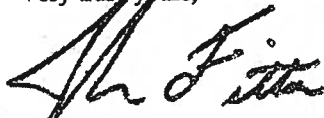
3. Responses to be placed with the clerk of your agency.

- **File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.**

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1200.

If you have any questions regarding these procedures, please do not hesitate to contact Paul Okada, Deputy County Counsel, at (650) 363-4761.

Very truly yours,



John C. Fitton
Court Executive Officer

JCF:ck
Enclosure

cc: Hon. Gerald J. Buchwald
Paul Okada

Information Copy: City Manager



The County, San Carlos and Cal Fire, A Missed Opportunity?

[Issue](#) | [Background](#) | [Findings](#) | [Conclusions](#) | [Recommendations](#) | [Responses](#) | [Attachments](#)

Issue

Were the taxpayers of San Mateo County well served when the potential extension of CAL FIRE services to San Carlos was blocked by the Committee on Finance and Operations of the Board of Supervisors?

Summary

After San Carlos decided to dissolve the joint Belmont-San Carlos Fire Department in April 2010, it initiated a search for a new provider of fire- protection services. In October, 2010, San Carlos issued an RFP (Request for Proposals) for fire services targeting local fire-service departments, including The California Department of Forestry and Fire Protection (CAL FIRE).

CAL FIRE currently provides fire services to the Coastside Fire Protection District which includes Half Moon Bay and other cities and, since 1962, to most of unincorporated San Mateo County. Its cost structure is the lowest of the non-volunteer fire departments serving the cities of San Mateo County due to the structure of its work schedule and lower employee salaries and benefits. CAL FIRE has an excellent reputation.

CAL FIRE appeared ready to release a proposal in response to the San Carlos RFP. However, instead of receiving the expected proposal from CAL FIRE, San Carlos received a fax from CAL FIRE stating that due, in part, to political and union pressures and fearful of having to defend against legal challenges, it would not be submitting the expected proposal. San Carlos then requested that the County allow San Carlos to subcontract for fire services with CAL FIRE through the County's CAL FIRE contract.

The San Carlos request was addressed by the Finance and Operations (F&O) Committee of the County's Board of Supervisors at two meetings, in January and February of 2011. Had San Carlos been added to the County's CAL FIRE contract, both the County and San Carlos could have fiscally benefited from the arrangement. However the F&O Committee declined to forward the potential agreement to the full Board of Supervisors for consideration.

During the course of its public deliberations, the F&O Committee did not address the fiscal benefits presented in the staff reports prepared for the two meetings. The contract between the County and Cal Fire is due to expire June 30, 2012.

The 2011-2012 San Mateo County Civil Grand Jury recommends to the County Board of Supervisors that it should (1) Renew its contract with CAL FIRE by June 30, 2012, unless there is a new, compelling, fiscal reason not to do so; (2) include a provision in any future contract negotiations that allows fiscally qualified cities to subcontract for CAL FIRE services through the County such that the County as well as the cities can benefit; (3) until the subcontract

provision is approved, allow fiscally qualified cities and fire districts in the County to subcontract services with CAL FIRE under the County's contract. The Grand Jury also recommends to San Mateo Cities and Fire Districts that CAL FIRE be considered as an alternative when assessing changes to local-agency fire protection and that local fire union representatives be included in community discussions concerning department consolidation, regionalization or replacement.

Background

San Carlos Dissolves the Belmont-San Carlos Fire Department

On April 12, 2010, San Carlos notified Belmont that it would be dissolving the Belmont-San Carlos Fire Department as of October 2011. The Fire Department had been jointly operated since 1979 (although it had been on the brink of a break up, previously, in 2004). San Carlos made the dissolution decision for three primary reasons. First, between 2005 and 2010, the cost for fire services to San Carlos had increased by about 30%. Second, the City of San Carlos was fiscally stressed (causing it to restructure its government and reduce staff numbers from 127 to 88). Third, under a complex cost-sharing formula, the San Carlos share for the fire services had gone from 47% to 53%, and efforts to renegotiate that formula with Belmont had failed. At the same time, San Carlos announced that it would freeze its current payments to the fire department at the 2009-2010 level of \$6.3 million and not pay its full 2011 share of \$7.1 million. Similarly, Belmont was to pay in at the 2009-10 level. The unpaid portion for both cities was to come from the Belmont-San Carlos Fire Department's cash reserves. The reserves would run out in October 2011, the dissolution date.

San Carlos Seeks a New Fire Service Provider

With the help of a consulting firm, San Carlos determined that to optimize service and minimize costs it should partner with, or outsource services to, an existing fire-service provider. In October 2010 San Carlos issued a formal Request for Proposals, specifically soliciting responses from the Menlo Park Fire District, North County Fire District, City of San Mateo, Redwood City and The California Department of Forestry and Fire Protection (CAL FIRE).

CAL FIRE is the State agency responsible for fire protection services in designated State Responsibility Areas that are generally rural. CAL FIRE also provides fire protection services under contracts to a number of cities, fire districts and counties in the State. These include San Mateo County for most of its unincorporated area and the Coastside Fire Protection District in San Mateo County (comprised of the City and unincorporated areas of Half Moon Bay, and the unincorporated communities of Miramar, El Granada, Princeton-by-the-Sea, Moss Beach and Montara). These contracts are revenue neutral to the State.

CAL FIRE Offers a Lower-Cost Fire-Fighting Model

Cal FIRE's cost structure is the lowest of the non-volunteer fire departments operating in San Mateo County. This results from the structure of its work schedule and its comparatively low employee salaries and benefits.

When hiring employees from existing fire-fighting units, the lower costs are not all immediately achieved. That is because CAL FIRE and the local jurisdiction generally agree to "red circle"

those employees, meaning their current annual salary levels are maintained until the salaries of other CAL FIRE employees catch up. However, some immediate savings are achieved due to scheduling differences. Unlike other fire departments in the County, CAL FIRE works on a 72-hour duty week, requiring a minimum of 7 persons to staff each engine with 3 people per day. All other fire departments operating in the County use a 56-hour model requiring at least 9 persons per engine for the same level of service. Although the 72-hour duty week model results in greater overtime pay, the overall cost is lower. (See, Table in Appendix 3, p.2)

The International Association of Fire Fighters (IAFF), Local 2400, which represents most of the fire fighters in San Mateo County, has opposed local government entities entering into contracts with CAL FIRE because it reduces the number of firefighters needed and the salary and benefits they receive.¹ (CAL FIRE firefighters are represented by IAFF, Local 2881.)

There are typically hundreds of qualified applicants for every fire-fighter job opening, regardless of which entity has the opening. Separately, a high regard for the performance of all fire-fighting units in the County, including those run by CAL FIRE, was expressed by those interviewed for this Report.

CAL FIRE Does Not Submit the Expected Proposal to San Carlos

When San Carlos issued its Request for Proposals, CAL FIRE was among the most active responders. From preliminary discussions, San Carlos city staff estimated that, by contracting with CAL FIRE, San Carlos would save between \$1.2 and \$2 million per year. However, in a facsimile dated November 18, 2010, four days before the proposal was due, the Acting Director of CAL FIRE informed San Carlos that it would not be submitting a proposal. The facsimile cited four reasons for its decision. The fourth reason stated, in part:

I have significant concerns regarding the socio-political aspects of CAL FIRE providing fire protection services to the City of San Carlos at this time. CAL FIRE has entered into many local government partnerships over the years. To be successful, it is imperative that there is support for these agreements amongst all the stakeholders, including public officials, local citizens and labor organizations. In the case of the City of San Carlos, there is concern from regional Legislative members and significant opposition from local labor organizations. Lacking support from these stakeholders, a proposed partnership could face legal challenges and be cast in a negative light by the media and the community. The potential for increased costs and staff time to address these issues would be borne by CAL FIRE. (See, Appendix A for full text of this facsimile.)

Subsequent Grand Jury interviews confirmed that the above-cited fourth reason was indeed the deciding factor for CAL FIRE. As a result of this facsimile from the Acting Director, direct negotiations between San Carlos and CAL FIRE were ended.

San Carlos next considered sub-contracting for fire services under the existing CAL FIRE contract with San Mateo County. From interviews, the Grand Jury learned that the Acting

¹ Source: an interview conducted by the Grand Jury with an official from Local 2400.

Director of CAL FIRE suggested this approach. It is on the interaction of San Carlos, CAL FIRE and the County that the Grand Jury has focused its report.

San Carlos Seeks a Proposal from CAL FIRE through the County

On January 15, 2011, the Finance and Operations Committee (the F&O Committee), a two member committee of the San Mateo Board of Supervisors composed of Carole Groom and Adrienne Tissier, met to consider the San Carlos request to contract fire protection services from CAL FIRE through the County. The Staff Report (Appendix B) for that meeting contained the following information:

- In fiscal 2010-2011, proceeds from the County Fire Fund were inadequate to cover operating costs for fire services in its unincorporated area. The County's General fund provided a subsidy of \$1.05 million to the Fire Fund budget.
- The County could save \$650,000 annually by extending its current contract with CAL FIRE to include San Carlos.
- Depending on which option San Carlos selected, the City could save between \$600,000 and \$2.5 million a year.²
- If the County were to allow CAL FIRE to sub-contract services to San Carlos through the County, the approval of the full Board of Supervisors would be required. The F&O Committee could forward the issue to the full Board at its upcoming January meeting.

According to the audio transcript of the January 15, 2011 F&O Committee meeting, two questions were raised and discussed:

1. What would the impact on CAL FIRE be given the state's budget problems and the Governor's remark, as cited by Supervisor Tissier, that CAL FIRE should get out of the urban fire-fighting business?
To this question, the CAL FIRE Unit Chief explained in the meeting that the Governor's remarks had no bearing on the cooperative agreements that CAL FIRE had with either San Mateo County or the Coastside Fire District.³
2. What regional efforts to consolidate fire-fighting services are underway in the County?

A discussion ensued in which members of the F&O Committee expressed support for regionalization. The "shared" Fire Chief for the San Mateo and Foster City Fire Departments, who was present at the meeting, volunteered that he would return in a month with a regionalization plan for five of the cities in the county: Foster City, San Mateo, Belmont, Redwood City and San Carlos. The Committee also requested its Staff to provide comparative

² Although San Carlos was paying about \$6.3 million from its general fund, the actual cost for fire services was \$7.1 million, which is \$800,000 more than cited in the Staff Report. It would, therefore, be more correct to say that the savings to San Carlos was between \$1.4 million and \$3.3 million annually. (The \$800,000 was coming from the Belmont-San Carlos fire department reserves, which were deliberately being drained.)

³ In his 2011-2012 Budget Summary, dated January 10, 2011, Governor Brown recommended the realignment of CAL FIRE services in State Responsibility Areas. The recommendation would not affect contracts such as the ones CAL FIRE has with Coastside, San Mateo County and other local entities in which the contract covers the cost. <http://2011-12.archives.ebudget.ca.gov/pdf/BudgetSummary/FullBudgetSummary.pdf> (Page 21)

cost data for a five-city approach.⁴ (As a result, Staff subsequently requested CAL FIRE to submit a proposal for coverage of the five cities.)

A follow-on F&O Committee meeting was scheduled for February 15, 2011 to allow time for the development of these proposals.

The F&O Committee reconvened on February 15, 2011. The Staff Report prepared for that meeting (*See*, Appendix C) indicated that if CAL FIRE were to provide the above mentioned five cities with fire services, the combined annual savings to those cities would be an estimated \$16.8 million. That includes salary reductions of existing fire personnel to the top-step level of the CAL FIRE salary scale, a 72-hour work week (versus the 56 hour work week that most city fire fighters are on), and closing one redundant station. The estimated annual savings would be \$6.9 million if “red circling” of current employees was utilized.

The Fire Chief for the San Mateo and Foster City Fire Departments did not present a five-city estimate as he had volunteered to do, nor did he appear at the meeting.

From the audio transcript of this meeting we learned that the supervisors:

1. Wanted to promote regionalization as a primary means to reduce the cost of fire protection services for the cities in the County.
2. Stated that the County should not be in the fire-service business and that, since the January 18, 2011 meeting, other cities have asked the County for permission to subcontract for CAL FIRE services through the County’s CAL FIRE contract.
3. Stated that CAL FIRE itself needs to get out of urban services, as they interpreted the Governor to have “said.”
4. Stated that the Belmont-San Carlos Fire Department should be extended for at least three more years to allow regionalization to proceed, although, as Supervisor Groom stated, that might take “15 to 20” years.
5. Stated that through mediation there was still an opportunity for the cities to reach an agreement on extending the joint fire department.

The two Supervisors extended an offer to pay for mediation services between Belmont and San Carlos and to otherwise let the issue drop by not forwarding the matter to the full Board. The Supervisors did not address the potential savings to the County, to the cities, or to San Carlos presented in the staff reports prepared for either the January 18 or February 15, 2011 meetings.

As anticipated by most of those interviewed, mediation failed. San Carlos Fire went on to contract with the Redwood City Fire Department for shared use of its command staff. While significant savings were achieved by San Carlos, the savings would have been greater if the City had been allowed to sub-contact with CAL FIRE under the County’s contract.

⁴ Audio Transcripts of Committee Meetings may be obtained from the Clerk of the Board of Supervisors.

Investigation

The San Mateo County Civil Grand Jury:

1. Read staff reports from the City of San Carlos and the County,
2. Watched a recording of the November 22, 2010 City of San Carlos Council meeting,
3. Listened to audio tapes of the County Finance and Operations Committee Meetings,
4. Read the Governors 2011-12 Budget Summary, press conference comments, and the Legislative Analyst's Office interpretation of CAL FIRE realignment.
5. Interviewed
 - San Carlos City Council and staff members,
 - County supervisors serving on the Finance and Operations Committee of the San Mateo County Board of Supervisors,
 - Representatives of the San Mateo County staff,
 - CAL FIRE staff,
 - A fire department chief in the County,
 - A city manager from the County City Managers Association,
 - A LAFCO (Local Agency Formation Commission) representative. and
 - A Member of the IAFF (International Association of Fire Firefighters) Local 2400.

Findings

The Grand Jury finds as follows:

1. CAL FIRE is a full-service rural, suburban and urban fire protection agency.
2. CAL FIRE is a fully integrated part of the County's fire protection system with 72 fire fighters working effectively with municipal fire departments and fire districts and utilizing the County's central dispatch system. The CAL FIRE coverage area includes most unincorporated portions of the County and the Coastside Fire District.
3. From interviews, the Grand Jury learned that there is broad agreement among officials and staff from the County and cities that CAL FIRE has provided effective fire protection services in the areas of San Mateo County it serves.
4. Differences between work shifts of CAL FIRE and municipal fire departments, and differences in the wage rates and benefits, allow CAL FIRE to offer comparatively less expensive fire services in the Bay Area.
5. CAL FIRE prices its services by applying a standard 11% overhead cost on top of direct costs.
6. San Mateo County has contracted with CAL FIRE for services to its unincorporated areas since 1962. The current contract expires on June 30, 2012.
7. As of October, 2011 the San Mateo County budget deficit stood at \$50 million.⁵
8. San Carlos requested that the County Board of Supervisors allow San Carlos to obtain fire protection services from CAL FIRE through the County's contract with CAL FIRE.

⁵ http://www.co.sanmateo.ca.us/Attachments/cmo/pdfs/Budget%20&%20Performance/SeptemberRevisions_2011.pdf

The issue came before the two-member Finance and Operations Committee (the F&O Committee) on January 18, and February 15, 2011.

9. From the County staff report of January 18, 2011, adjusted for a budgetary mistake, CAL FIRE could have saved San Carlos between approximately \$600,000 and \$2.5 million per year.⁶
10. From the County staff report of January 18, 2011, in addition to substantial savings for San Carlos, bringing San Carlos under the County contract with CAL FIRE could have saved the County an additional \$650,000 per year. Neither the savings to San Carlos or the County were discussed by the F&O Committee on January 18.
11. From the County staff report of February 15, 2011, "County Fire has a budget reduction target of \$218,877 for FY 2011/12 with the goal of eventually eliminating all \$1 million in general fund contributions." (See, Appendix C)
12. In response to a request from the F&O Committee, CAL FIRE prepared a cost estimate for delivery of fire protection to five County cities (Redwood City, San Carlos, Belmont, Foster City and San Mateo). According to the County staff report of February 15, 2011, the estimated aggregate cost savings to those five cities could be between \$1.7 million and \$16.8 million per year.
13. The CAL FIRE service cost estimates and potential savings for the County and the five County cities were not discussed by the Committee members at the February 15, 2011, F&O Committee meeting.
14. From the audio transcripts of both the January 18 and February 15, 2011 F&O Committee meetings, Supervisor Adrienne Tissier said that the Governor had called for CAL FIRE getting out of the urban fire-fighting business.
15. The Governor's January 10, 2011 recommendations on CAL FIRE realignment only applied to State Responsibility Areas and did not apply to contracts with local jurisdictions, such as its contracts with San Mateo County or the Coastside Fire District. There was no suggestion from the Governor that CAL FIRE should curtail delivery of urban fire protection services funded by counties or cities.
16. Also during the February 15, 2011 F&O Committee meeting, the Supervisors said that the County does not want to be in the fire-fighting business. The Supervisors further said they strongly supported regional fire-protection solutions in the County as a means to reduce redundant administrative and infrastructure costs to the cities.
17. The Supervisors recommended that Belmont and San Carlos enter into mediation to continue their joint fire department while regionalization alternatives could be explored. From interviews and meeting transcripts, most San Carlos and Belmont officials stated there was little chance for mediation to be successful.

⁶ The Staff Report states that San Carlos was paying about \$6.3 million from its general fund. This is true, but the actual cost for fire services was \$7.1 million, which is \$800,000 more than cited in the Staff Report. It would, therefore, be more correct to say that the savings to San Carlos was between \$1.4 million and \$3.3 million.

18. From the letter of the CAL FIRE Acting Director, quoted above, and from interviews with officials from various cities and fire-protection agencies, there is reluctance to consider expanding CAL FIRE's role in San Mateo County because of opposition by the International Association of Firefighters, Local 2400.

Conclusions

The Grand Jury concludes as follows:

1. The County has been well served by CAL FIRE since 1962 and is well served today.
2. It is likely that any alternative to CAL FIRE's coverage of unincorporated areas would increase County costs and not provide materially better service.
3. CAL FIRE should be viewed as a viable alternative for fire protection services by the County and the cities when considering regionalization or outsourcing alternatives.
4. Given the large structural deficit facing the County, the Board of Supervisors needs to take all reasonable steps to reduce the cost of County services.
5. The F&O Committee missed an opportunity for the County to save as much as \$650,000 per year and San Carlos to save upwards of \$1.4 million per year by not forwarding the San Carlos CAL FIRE issue onto the full Board of Supervisors for its consideration.
6. The F&O Committee misinterpreted the Governor's statements regarding the appropriate role of CAL FIRE in municipal fire protection and should have sought clarification before concluding that CAL FIRE was not a viable alternative for cities in the County.
7. There is significant pressure from the local union to not consider CAL FIRE as an outsource alternative for municipal fire protection.
8. Given the potential savings and the need for fiscal relief, the County should be motivated to extend fire protection services through its contract with CAL FIRE to other cities in the County as part of a move toward regionalization.

Recommendations

The Grand Jury recommends to the County Board of Supervisors that it should:

1. Renew its contract with CAL FIRE by June 30, 2012, unless there is a new compelling fiscal reason to change.
2. During contract negotiations with CAL Fire, include a provision within the contract that would allow fiscally qualified cities to sub-contract for CAL FIRE services through the County such that the County as well as the cities can benefit.
3. Until the provision in Recommendation 2 is approved, allow fiscally qualified cities and fire districts in the County to sub-contract services with CAL FIRE under the County's contract.
4. View CAL FIRE as a potential component of the regionalization effort.

The Grand Jury further recommends to cities and special fire districts in San Mateo County:

1. When assessing alternative approaches to local fire protection, CAL FIRE should be considered as one alternative.
2. Include local fire union representatives in community discussions concerning department consolidation, regionalization or replacement; make financial considerations and differing expense models known to all concerned parties and citizens.

References

2011-2012 California Budget

<http://www.ebudget.ca.gov/>

San Carlos City Council Meeting and Staff Report, Nov. 22, 2010

<http://www.epackets.net/mtgviewer.aspx?meetid=1073&doctype=AGENDA>, item 7A

Quarterly Fire Department Report. - 20101117135849546.pdf

City Fire Department Consolidations/Mergers

Grand Jury 2009 Report

http://www.sanmateocourt.org/documents/grand_jury/2009/fire_dept.pdf

San Mateo County Fire Department Consolidation Project 108

Stanford Management Science And Engineering

January-March 2011

by Alex Carney, Peter Geoghegan, Garrett Gunther, Vy Nguyen

Appendix A: Fax from CAL FIRE to San Carlos, November 18, 2010

11/19/2010 09:56 5388954604

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PAGE 02/04

STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

P.O. Box 844248
SACRAMENTO, CA 95844-2450
(916) 833-7172
Website: www.fire.ca.gov



November 18, 2010

Mr. Brian Moura
Assistant City Manager
City of San Carlos
800 Elm Street
San Carlos, California 94070

Dear Mr. Moura,

I have received your letter dated October 25, 2010, requesting the Department of Forestry and Fire Protection (CAL FIRE) to provide a response to the City of San Carlos' Request for Proposals for the Delivery of Fire, Emergency Medical First Response and Related Emergency Services. As you know, CAL FIRE is involved in providing all-hazard emergency services throughout California, both as a state agency and in partnership with local governments. Within San Mateo County, those partnerships exist at both the county and fire protection district levels. CAL FIRE values our local government partnerships, as they result in the ability to provide a higher level of service to both the state and the local government jurisdiction.

As you may be aware, especially in these difficult budgetary times, CAL FIRE is judicious in its evaluation of potential agreements with local governments for fire protection services. As a state department, it is critical that any new contract be mutually beneficial to both parties. To evaluate this criterion, CAL FIRE prepares a Partnership Agreement Rating Form which evaluates fourteen separate objective points. By Public Resources Code requirement, this objective evaluation is considered with further, more subjective considerations before a decision to enter into a new agreement is made.

Based on both the objective and subjective evaluations, I am unable to submit a proposal at this time for the following reasons:

- The Joint Exercise of Powers Agreement between the City of San Carlos and the Belmont Fire Protection District is set to expire "on or before October 12, 2011." Therefore, it would be critical that any respondent to the Request for Proposal have the ability to engage in services to the City by that date. Due to the compressed timeframe, CAL FIRE would be unable to have a contract in place or the finalization of the transition of any Belmont-San Carlos Fire Department personnel completed by that date. Past experience indicates that this process could take up to eighteen months to complete, as CAL FIRE would need to coordinate with the City and obtain approvals from various state control agencies.
- Public Resources Code (PRC), Section 4142, requires that any proposed "agreement aligns with the department's basic mission, as described in (PRC) Sections 713 and 714," or specifically, supports the Department's protection of the State Responsibility Areas. In order to

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November 18, 2010

Mr. Brian Moura

Page Two

evaluate the appropriateness of an agreement, CAL FIRE utilizes the Partnership Agreement Rating Form, which provides an objective criteria evaluation of the area and its overall fire protection needs and evaluates the benefits of a local government partnership agreement with CAL FIRE. The evaluation of the proposed partnership with the City of San Carlos identified a marginally appropriate rating based on this objective criteria. The evaluation identified a minimal increased benefit to State Responsibility Area protection within the San Mateo-Santa Cruz Unit and an insufficient level of administrative, fire prevention and training support.

- City finances have been tenuous for an extended period of time. According to the City General Manager news release of the 2009 Year in Review, the City has faced budgetary reductions for eleven consecutive years. Although the City believes that sufficient cost reductions will occur from the outsourcing of its police and fire services, all indications point to a continued decline in housing prices, resulting in lower property tax revenues, and additional reductions in state funding due to decreasing state revenues. Additionally, since the City would be responsible for "red circle" costs and ongoing payments for previous workers' compensation claims, it is not clear to CAL FIRE that the savings anticipated from outsourcing these services would actually be realized.
- I have significant concerns regarding the socio-political aspects of CAL FIRE providing fire protection services to the City of San Carlos at this time. CAL FIRE has entered into many local government partnerships over the years. To be successful, it is imperative that there is support for these agreements amongst all the stakeholders, including public officials, local citizens and labor organizations. In the case of the City of San Carlos, there is concern from regional Legislative members and significant opposition from local labor organizations. Lacking support from these stakeholders, a proposed partnership could face legal challenges and be cast in a negative light by the media and the community. The potential for increased costs and staff time to address these issues would be borne by CAL FIRE. The potential cost and impacts to CAL FIRE outweigh the marginal benefit to the protection of State Responsibility Areas within the Unit.

Although I will not be submitting a response to your Request for Proposal, I do concur with the findings from the Tri-Data report as it relates to the benefits of a regional fire protection system. CAL FIRE is committed to being a partner in the development of a strategic, long term solution towards a regional fire protection system in San Mateo County. Regardless, CAL FIRE will continue to assist the City of San Carlos through participation in county-wide fire service organizations, regional training efforts and mutual aid support.

I value the level of support the City of San Carlos has provided to the Department. I am pleased with the cooperative relationship Chief John Ferreira has developed with City staff. I look forward to continuing these relationships into the future. Please do not hesitate to contact me or Chief John Ferreira with any questions.

Sincerely,



KEN PIMLOTT
Acting Director
California Department of Forestry and Fire Protection

November 18 2010
Mr. Brian Moura
Page Three

Cc: Ken McLean, Region Chief
Cesar Partida, Assistant Region Chief
John Ferreira, Unit Chief
Andy McMurry, Assistant Deputy Director
Loren Snel, Assistant Deputy Director

Appendix B: Staff Report for Finance and Operations Committee Meeting, January 18, 2011



TO: Finance and Operations Committee

FROM: Reyna Farrales, Deputy County Manager

SUBJECT: Finance and Operations Committee Special Meeting

TODAY'S DATE: January 12, 2011

NOTICE OF SPECIAL MEETING (GOVERNMENT CODE § 54956)

FINANCE AND OPERATIONS COMMITTEE

Please take notice that the Chair of the Finance and Operations Standing Committee, acting pursuant to the authority of Government Code §54956, hereby calls a special meeting of the Finance and Operations Committee, to take place on January 18, 2011 at 2:00 p.m. in the Board of Supervisors Conference Room located in the Hall of Justice, 400 County Center, First Floor, Redwood City, California.

The special meeting is for the purpose of discussing and transacting the following business:

1. *Call to order*
2. *Oral Communications and Public Comment*
3. *Fire Services – City of San Carlos - Attachment*
4. *January 25 Budget Workshop - Attachment*
5. *Approval of the Finance and Operations Meeting Schedule for 2011 - Attachment*
6. *Adjournment*

Pursuant to Government Code §54954.3, members of the public, to the extent required by law, will have the opportunity to directly address the Committee concerning the above mentioned business.

Dated: January 12, 2011

CAROLE GROOM
Chair, Finance and Operations Committee

Please note: Public meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodations, including auxiliary aids or services to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the Assistant Clerk of the Board of Supervisors at (650) 363-4634. Notification in advance of the meeting will enable the public agency to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.



**San Mateo County
Board of Supervisors
Finance and Operations Committee**

**Carole Groom, Chair
Adrienne Tissier, Vice-Chair**

**Regina Parralao, Deputy County Manager
John Belers, Chief Deputy County Counsel
400 County Center, Redwood City
650-363-4123**

TO: Finance and Operations Committee
FROM: David S. Boesch County Manager
Peggy Jensen, Deputy County Manager
SUBJECT: Fire Services Proposal – City of San Carlos
Meeting Date: Tuesday, January 18, 2011

The City of San Carlos has issued a request for proposals for emergency response and fire protection. The County could submit a proposal to include San Carlos in our current contract with CalFire. CalFire has indicated that such a proposal could include the following opportunities for the County and the City of San Carlos:

- County General Fund savings of up to \$300,000 from sharing command, fire marshal, training, Advanced Life Support (ALS) and administrative staff. Over the past five fiscal years, the General Fund has provided over \$3 million to the County Fire Fund. An additional \$1.05 million subsidy is needed this fiscal year to balance the Fire Fund budget. The subsidy does not include funds for vehicle or facility replacement, only operating costs.
- The County could save an additional \$350,000 by sharing and transferring two of the three CalFire staff from Station 18 (Cordilleras) to Station 16 in San Carlos. The two staff would operate a "quick attack" vehicle, which provides better service than a three-person engine in the San Carlos and unincorporated area hills.
- Any savings above the operations costs for the County CalFire contract could be put into a vehicle and facility reserve. Over \$1 million a year is needed to meet future fire vehicle and facility needs.
- This year, the City of San Carlos is paying \$6.3 million for fire service, including funds for 20 staff. CalFire uses a 72-hour a week shift schedule, which means they would only need 17 staff to provide the same level of service as San Carlos provides now with 20 staff. Also CalFire has a different pay scale. Preliminary numbers from CalFire indicate that they could offer San Carlos the following contract options:
 - \$3.8 million - 17 staff paid at the top step of the CalFire pay scale
 - \$4.3 million - 20 staff paid at the top step of the CalFire pay scale
 - \$5.03 million - 17 staff with total compensation frozen at the San Carlos pay scale
 - \$5.7 million - 20 staff with total compensation frozen at the San Carlos pay scale
 - Hazardous materials pay (HazMat) would be an additional \$19,800 a year for 11 staff at the CalFire pay scale or \$71,000 for 11 San Carlos staff with frozen compensation.

San Carlos has extended their proposal due date to February 7, 2011. The full Board could consider requesting a proposal from CalFire that adds San Carlos to the County CalFire contract at the January 25, 2011 Board meeting. CalFire has confirmed that if asked, they will provide a complete proposal by the due date.

Appendix C: Staff Report for Finance and Operations Committee Meeting, February 15, 2011

	San Mateo County Board of Supervisors Finance and Operations Committee	Carole Groom, Chair Adrienne Tisler, Vice-Chair
		Reyna Farrales, Deputy County Manager John Belers, Chief Deputy County Counsel 400 County Center, Redwood City 650-363-4123

TO: Finance and Operations Committee

FROM: Reyna Farrales, Deputy County Manager

SUBJECT: Finance and Operations Committee Special Meeting

TODAY'S DATE: February 10, 2011

NOTICE OF SPECIAL MEETING (GOVERNMENT CODE § 54956)

FINANCE AND OPERATIONS COMMITTEE

Please take notice that the Chair of the Finance and Operations Standing Committee, acting pursuant to the authority of Government Code §54956, hereby calls a special meeting of the Finance and Operations Committee, to take place on Tuesday, February 15, 2011 at 2:00 p.m. in the Board of Supervisors Chambers located in the Hall of Justice, 400 County Center, First Floor, Redwood City, California.

The special meeting is for the purpose of discussing and transacting the following business:

1. *Call to order*
2. *Oral Communications and Public Comment*
3. *Fire Services – City of San Carlos – Attachment*
4. *Adjournment*

Pursuant to Government Code §54954.3, members of the public, to the extent required by law, will have the opportunity to directly address the Committee concerning the above mentioned business.

Dated: February 10, 2011

CAROLE GROOM
Chair, Finance and Operations Committee

Please note: Public meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodations, including auxiliary aids or services to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the Assistant Clerk of the Board of Supervisors at (650) 363-4634. Notification in advance of the meeting will enable the public agency to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.



**San Mateo County
Board of Supervisors
Finance and Operations Committee**

**Carole Groom, Chair
Adrienne Tissier, Vice-Chair**

**Rayan Ferrales, Deputy County Manager
John Baker, Chief Deputy County Counsel
400 County Center, Redwood City
650-363-4123**

**Date: February 8, 2011
Meeting Date: February 15, 2011**

**TO: Supervisor Carole Groom
Supervisor Adrienne Tissier**

FROM: Peggy Jensen, Deputy County Manager

SUBJECT: Report Back on Regional Fire Service: CalFire Option

RECOMMENDATION:
Accept this report and provide direction to staff.

BACKGROUND:
On January 18, 2011, the Finance and Operations Committee considered extending the County Fire contract with CalFire to include the City of San Carlos. At that meeting, Chief Belville from the City of San Mateo said that the City of San Mateo, Redwood City and Foster City were exploring a regional fire service system that could also include Belmont and San Carlos. The Committee expressed interest in regionalization of fire services and indicated that the County operated stations adjacent to the region cities could be included in the concept. The Committee also requested comparative cost data for different regional approaches.

DISCUSSION:
Regional delivery of fire service is relatively common throughout California. San Mateo County, through our County Fire program, has had a regional service arrangement with CalFire for over 45 years. This arrangement has provided competent and cost-effective fire protection service to the unincorporated area through a model that maintains local control. The Coastside Fire Protection District and CalFire are another example of a local regional model as is the effort currently underway to consolidate the Foster City and City of San Mateo fire departments. The Menlo Park Fire Protection District is also a regional model.

In response to requests from the Committee, County Fire developed cost estimates for extending the County contract with CalFire to include all the cities identified by Chief Belville and the unincorporated area identified by the Committee. The cost estimates are based on the following facts:

- There are 18 fire stations in the five cities and the county unincorporated area east of Interstate 280 between San Mateo and Redwood City. The 18 stations house a total of 18 engines and 4 ladder trucks. County Fire staffs three of the engines through our contract with CalFire. The other 15 engines are staffed by the city fire departments as are the 4 ladder trucks. Currently, five different agencies provide management, supervision and administrative support for these stations. Depending on what happens in San Carlos, the total number of agencies may increase.

- In San Mateo County, a three-person crew supports each fire engine and a four-person crew supports a ladder truck. The city fire crews work a 56-hour week. CalFire uses a 72-hour workweek. The table below compares the staffing requirements for each staffing model by fire vehicle.

Apparatus	24/7 City Staff Per Vehicle	24/7 CalFire Staff Per Vehicle
3 Person Engine	9	7
4 Person Ladder Truck	12	9.5

As the table shows, the CalFire model requires fewer personnel to fully staff each piece of equipment than the city model. If the CalFire staffing model is applied to the 15 city engines and 4 trucks in the region, 40 fewer staff would be needed for 24/7 coverage.

- A regional approach would create opportunities to review administrative and management needs and station and apparatus distribution. It is anticipated that there would be opportunities to reduce costs in all of these areas, but the extent of the savings would depend on the level of services selected. However, those savings would be seen over time, as the impacts on service levels are evaluated.

Based on the information above and data available from the cities in the region, County Fire calculated the following costs for different regional service options that CalFire could offer the region. Note that the changes below are cumulative, so the lowest cost option includes all the changes noted above.

\$42.2 million	Total current cost of 18 stations
\$40.5 million	Move all stations to a 72-hour work week
\$37.3 million	Plus reduce total staff to number required for 72-hour work week
\$27.4 million	Plus, reduce city salaries to top step of CalFire salary scale
\$25.4 million	Plus, close one redundant station in region and convert one engine to a 2 person "quick attack" vehicle

The numbers presented above are best estimates of the potential total costs. If there is serious interest in pursuing a regional approach to fire services, staff would need to work closely with all interested partners to assess all options and carefully review all cost data. Also, we would need to bring the residents of CSA 1 into these discussions, as the engine company they fund should be incorporated into any regional plan.

Given the complexity of a truly regional approach, we estimate that it could take a year or possibly longer to work out the details. We should also note that Belmont officials recently voted to create their own city fire department and indicated they are not interested in a regional approach.

FISCAL IMPACT:

County Fire has a budget reduction target of \$218,877 for FY 2011/12 with the goal of eventually eliminating all \$1 million in general fund contributions. Although we assume there will be savings to the County from a regional approach to fire service, at this time we can neither calculate the amount or the timing of those savings. This is because we don't know how any savings would be allocated among the partner cities. Furthermore, the County is currently benefiting from the 72-hour workweek and the CalFire salary scale, so the savings to the county would not be as great as for the cities if CalFire was the service provider.

The only fiscal impact data that we can definitively provide is the projected savings from expanding the county service area to include San Carlos. The savings data was presented to your Committee at the January 18, 2011 meeting. The projected savings for FY 2011/12 includes \$300,000 from shared administrative costs and potentially another \$350,000 if the Cordilleras engine is moved to the San Carlos station on Alameda and staffed as a "quick attack" vehicle.

KIRSTEN KEITH
MAYOR

PETER OHTAKI
MAYOR PRO TEM

ANDREW COHEN
COUNCIL MEMBER

RICHARD CLINE
COUNCIL MEMEBR

KELLY FERGUSSON
COUNCIL MEMBER

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City Clerk
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FAX 650.328.7935

City Council
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City Manager's Office
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701 LAUREL STREET, MENLO PARK, CA 94025-3483
www.menlopark.org

April 17, 2012

Judge Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

**Re: San Mateo County Grand Jury Report Titled
"The County, San Carlos, and Cal Fire, A Missed Opportunity?"**

Dear Judge Bergeron,

The City of Menlo Park received the San Mateo County Grand Jury report titled "**The County, San Carlos, and Cal Fire, A Missed Opportunity (Report)?**" The Report contains 18 findings, 8 conclusions and 4 recommendations to the County Board of Supervisors and 6 Recommendations to cities and special fire districts.

This letter, approved by the City Council at their April 17, 2012 meeting, respectfully responds to the findings and recommendation contained in the Grand Jury's letter. As you are aware, Fire Services are provided by the Menlo Park Fire District to the citizens of Menlo Park. The District is autonomous, functioning independently under a separately elected Board of Directors. The City believes the Fire District to be an outstanding example by providing cost effective services at a regional level.

After a careful review of the Grand Jury letter, the City Council agrees with all of the findings based on the information supplied in the Report. In addition, based on the information supplied in the Report, we agree with the Conclusions. Finally, with respect to the Recommendations we agree with the specific findings. Further, we agree with the overarching intent of the report as we understand it, that all providers should be investigating models that would provide comparable services at a lower cost.

Thank you for the hard work and generous volunteer effort each of the Grand Jury members provide to our community

Sincerely,

Kirsten Keith,
Mayor
On behalf of the entire City Council

CITY OF SAN CARLOS

CITY COUNCIL

ANDY KLEIN, MAYOR
MATT GROCOTT, VICE MAYOR
RON COLLINS
BOB GRASSILLI
MATT GROCOTT



CITY COUNCIL

600 ELM STREET
SAN CARLOS, CALIFORNIA 94070-3018
TELEPHONE (650) 802-4219
FAX (650) 595-6719
WEB: <http://www.cityofsanarlos.org/>

March 13, 2012

Honorable Gerald J. Buchwald
Judge of the Superior Court
Hall of Justice
400 County Center; 8th floor
Redwood City, CA 94063-1655

Re: Civil Grand Jury Report – The County, San Carlos & Cal Fire: A Missed Opportunity?

Dear Judge Buchwald,

I am writing to you on behalf of the San Carlos City Council. This will serve as the City of San Carlos' formal response to the letter from the Superior Court communicating comments made by the Civil Grand Jury about Shared Fire Services entitled "The County, San Carlos & Cal Fire: A Missed Opportunity?" The City Council has reviewed this letter at a public meeting of the Council and has authorized that it be sent.

In the report from the Civil Grand Jury, a number of Findings, Conclusions and Recommendations are made. In addition, the City is offering more information on one of the Background discussions included in the report. Here is the City of San Carlos response to the Civil Grand Jury report on this matter:

Background

1. In the "Background" section of the report on page 2, the Grand Jury notes that San Carlos issued a formal Request for Proposal (RFP) for Fire & Emergency Services and specifically solicited responses from the Menlo Park Fire District, North County Fire District, City of San Mateo, City of Redwood City and Cal Fire.

Response: This is correct in part. It should be noted that the City of San Carlos also invited 4 entities to respond to the RFP for Fire & Emergency Services that are not mentioned in the report. The 4 additional entities that were invited to respond to the RFP are:

- City of Belmont
- American Emergency Services Corporation
- International Association of Firefighters (IAFF), Local 2400
- Rural/Metro Corporation

Findings

1. CAL FIRE is a full-service rural, suburban and urban fire protection agency.
Response: We agree with the finding.
2. CAL FIRE is a fully integrated part of the County's fire protection system with 72 fire fighters working effectively with municipal fire departments and fire districts and utilizing the County's central dispatch system. The CAL FIRE coverage area includes most unincorporated portions of the County and the Coastside Fire District.
Response: We agree with the finding.
3. From interviews, the Grand Jury learned that there is broad agreement among officials and staff from the County and cities that CAL FIRE has provided effective fire protection services in the areas of San Mateo County it serves.
Response: We agree with the finding.

The City notes that Paramedics and Firefighters at Cal Fire's Engine Company on Edmonds Road near Crestview Avenue (Fire Station # 18) have been the first responders for some San Carlos homes for over 10 years.

4. Differences between work shifts of CAL FIRE and municipal fire departments, and differences in the wage rates and benefits, allow CAL FIRE to offer comparatively less expensive fire services in the Bay Area.
Response: We agree with the finding.
5. CAL FIRE prices its services by applying a standard 11% overhead cost on top of direct costs.
Response: We agree with the finding.
6. San Mateo County has contracted with CAL FIRE for services to its unincorporated areas since 1962. The current contract expires on June 30, 2012.
Response: We agree with the finding.
7. As of October, 2011 the San Mateo County budget deficit stood at \$50 million.
Response: We agree with the finding.
8. San Carlos requested that the County Board of Supervisors allow San Carlos to obtain fire protection services from CAL FIRE through the County's contract with CAL FIRE. The issue came before the two-member Finance and Operations Committee (the F&O Committee) on January 18, and February 15, 2011.
Response: We agree with the finding.
9. From the County staff report of January 18, 2011, adjusted for a budgetary mistake, CAL FIRE could have saved San Carlos between approximately \$600,000 and \$2.5 million per year.
Response: We partially disagree with the finding.

While San Carlos received an "informal proposal" for Fire & Emergency Services from Cal Fire in early 2010, the City did not receive a copy of Cal Fire's response to the City's RFP.

Cal Fire hired a former Cal Fire Section Fire Chief (Dan Turner) to prepare a San Carlos RFP response and that response was part of a blue 3 ring binder (often called the "blue binder") that some Cal Fire officials have reviewed. (Mr. Turner was also the consultant used by Cal Fire to prepare their proposal for Fire Services that was ultimately adopted by the Coastside Fire Protection District).

The City of San Carlos has never received or viewed the Cal Fire RFP response to San Carlos in the blue binder. The City did receive some of the material developed by former Chief Turner for San Carlos and used this salary, benefit and cost data for Cal Fire in subsequent reports to the San Carlos City Council.

It is hard to analyze or speculate on what is and is not in the full Cal Fire proposal for San Carlos. Based on earlier proposals to the City (in 2005-07 and 2010), the data supplied by Chief Turner and the current San Mateo County Fire Department Budget (\$1.6 Million per Fire Station), a savings to San Carlos of \$1.2 Million per station or \$2.4 Million for both fire stations seems achievable.

Whether the slightly higher number of \$2.5 Million per year that is used in the Grand Jury report would be reachable in San Carlos if a Cal Fire proposal had been received – directly or through the County – would require further analysis and more detailed information from Cal Fire.

10. From the County staff report of January 18, 2011, in addition to substantial savings for San Carlos, bringing San Carlos under the County contract with CAL FIRE could have saved the County an additional \$650,000 per year. Neither the savings to San Carlos or the County were discussed by the F&O Committee on January 18.

Response: We agree with the finding.

The Deputy County Manager and Cal Fire shared the \$650,000 per year savings estimate for San Mateo County on numerous occasions with the City and County Officials and it appears in the County Staff Report mentioned in the Grand Jury report.

We agree that neither the savings to San Carlos nor the County was discussed by the F&O Committee meeting on January 18, 2011 even though it was the subject on that meeting agenda.

11. From the County staff report of February 15, 2011, "County Fire has a budget reduction target of \$218,877 for FY 2011/12 with the goal of eventually eliminating all \$1 million in general fund contributions." (See, Appendix C)

Response: We agree with the finding.

12. In response to a request from the F&O Committee, CAL FIRE prepared a cost estimate for delivery of fire protection to five County cities (Redwood City, San Carlos, Belmont, Foster City and San Mateo). According to the County staff report of February 15, 2011, the estimated aggregate cost savings to those five cities could be between \$1.7 million and \$16.8 million per year.

Response: We agree with the finding.

13. The CAL FIRE service cost estimates and potential savings for the County and the five County cities were not discussed by the Committee members at the February 15, 2011, F&O Committee meeting.

Response: We agree with the finding.

14. From the audio transcripts of both the January 18 and February 15, 2011 F&O Committee meetings, Supervisor Adrienne Tissier said that the Governor had called for CAL FIRE getting out of the urban fire-fighting business.

Response: We agree with the finding.

15. The Governor's January 10, 2011 recommendations on CAL FIRE realignment only applied to State Responsibility Areas and did not apply to contracts with local jurisdictions, such as its contracts with San Mateo County or the Coastside Fire District. There was no suggestion from the Governor that CAL FIRE should curtail delivery of urban fire protection services funded by counties or cities.

Response: We agree with the finding.

The City Staff researched this matter and determined that the assertion that the Governor had called for Cal Fire to "get out of the urban fire-fighting business" was incorrect.

16. Also during the February 15, 2011 F&O Committee meeting, the Supervisors said that the County does not want to be in the fire-fighting business. The Supervisors further said they strongly supported regional fire-protection solutions in the County as a means to reduce redundant administrative and infrastructure costs to the cities.

Response: We agree with the finding.

17. The Supervisors recommended that Belmont and San Carlos enter into mediation to continue their joint fire department while regionalization alternatives could be explored. From interviews and meeting transcripts, most San Carlos and Belmont officials stated there was little chance for mediation to be successful.

Response: We partially disagree with the finding.

During the February 15, 2011 F&O Committee meeting, Council Members present from San Carlos (Mayor Omar Ahmad, Vice Mayor Andy Klein and Council Member Randy Royce) and Belmont (Council Member Warren Lieberman) all voiced their support for using the offer of County funded mediation to explore Shared Fire Services options between San Carlos and Belmont. Later the same afternoon, Mayor Ahmad and Vice Mayor Klein called Supervisor Tissier to accept the County's offer of mediation on behalf of San Carlos. That offer was then placed on the next San Carlos City Council agenda and the County mediation offer was accepted by the San Carlos Council on a unanimous 5-0 vote. The San Carlos Council also provided Mayor Ahmad with direction on areas to explore during the upcoming mediation with Belmont.

The following month, the Belmont City Council agreed to the mediation on a split vote. During the Belmont City Council discussion in March and a subsequent news article in the San Mateo Daily Journal, there was doubt about the potential success of mediation expressed by Belmont Mayor Feierbach. So there was some doubt expressed publically by at least one member of the Belmont City Council – but it occurred after the F&O Committee meeting cited in the Grand Jury report.

In terms of what was said during the interviews that the Grand Jury held with “San Carlos and Belmont officials”, the City has no way of knowing what was said during those interviews as they are held in confidence. The City understands that what was said to the Grand Jury during these confidential interviews may be different than what was said at public meetings – such as the F&O Committee Meetings and the San Carlos and Belmont City Council Meetings noted above.

18. From the letter of the CAL FIRE Acting Director, quoted above, and from interviews with officials from various cities and fire-protection agencies, there is reluctance to consider expanding CAL FIRE's role in San Mateo County because of opposition by the International Association of Firefighters, Local 2400.

Response: We agree with the finding.

Mayor Ahmad and Vice Mayor Klein held meetings with the leadership of IAFF Local 2400 during this process. Both the Mayor and Vice Mayor noted that the union was very clear that a contract for Fire & Emergency Services for San Carlos (or any other City or Fire District in the County) with Cal Fire was “something we will not accept.”

Conclusions

1. The County has been well served by CAL FIRE since 1962 and is well served today.
Response: We agree with the finding.
2. It is likely that any alternative to CAL FIRE's coverage of unincorporated areas would increase County costs and not provide materially better service.

Response: We agree with the finding.

The City notes that the County is currently spending approximately \$1.6 Million per station for Fire & Emergency Services and San Carlos is spending approximately \$2.8 Million per station for comparable services in the current budget year.

3. CAL FIRE should be viewed as a viable alternative for fire protection services by the County and the cities when considering regionalization or outsourcing alternatives.
Response: We disagree with the finding.

This Grand Jury finding was specifically discussed and debated during the San Carlos City Council Meeting held on March 12, 2012. A majority of the City Council Members indicated by a straw poll vote of 3-2 that they do not believe that Cal Fire is a viable alternative for fire protection services by the County and the cities when considering regionalization or outsourcing alternatives.

4. Given the large structural deficit facing the County, the Board of Supervisors needs to take all reasonable steps to reduce the cost of County services.

Response: We agree with the finding.

5. The F&O Committee missed an opportunity for the County to save as much as \$650,000 per year and San Carlos to save upwards of \$1.4 million per year by not forwarding the San Carlos CAL FIRE issue onto the full Board of Supervisors for its consideration.

Response: We agree with the finding.

6. The F&O Committee misinterpreted the Governor's statements regarding the appropriate role of CAL FIRE in municipal fire protection and should have sought clarification before concluding that CAL FIRE was not a viable alternative for cities in the County.

Response: We agree with the finding.

7. There is significant pressure from the local union to not consider CAL FIRE as an outsource alternative for municipal fire protection.

Response: We agree with the finding.

8. Given the potential savings and the need for fiscal relief, the County should be motivated to extend fire protection services through its contract with CAL FIRE to other cities in the County as part of a move toward regionalization.

Response: We agree with the finding.

Recommendations

1. The County Board of Supervisors should renew its contract with CAL FIRE by June 30, 2012, unless there is a new compelling fiscal reason to change.

Response: We agree with the finding.

2. During contract negotiations with CAL Fire, the County Board of Supervisors should include a provision within the contract that would allow fiscally qualified cities to sub-contract for CAL FIRE services through the County such that the County as well as the cities can benefit.

Response: We partially disagree with the finding.

We agree that the County should allow interested cities, such as those mentioned in the Grand Jury Report, the opportunity to consider a sub-contract for Fire & Emergency Services with Cal Fire via a County Amendment as one option to consider.

However, we question the language about limiting this option to "fiscally qualified cities". During the San Carlos RFP process, Cal Fire inquired about the budget deficit in San Carlos and suggested that this might disqualify San Carlos from receiving a direct proposal from Cal Fire for Fire & Emergency Services. It was only after the City Staff was able to show Cal Fire that the San Carlos budget shortfall had been partially offset, that the Cal Fire Acting Director sent the letter in the Grand Jury report noting that an offer would not be made to San Carlos due to union and state legislator pressure.

A better approach would be for the County to offer a contract amendment to all interested cities and fire districts. Commitments regarding the method of payment can be made during the contract negotiation phase – rather than an initial refusal to work together as is suggested here.

3. Until the provision in Recommendation 2 is approved, the County Board of Supervisors should allow fiscally qualified cities and fire districts in the County to sub-contract services with CAL FIRE under the County's contract.

Response: We partially disagree with the finding.

The City would offer the same comments as our response to Recommendation # 2.

4. The County Board of Supervisors should view CAL FIRE as a potential component of the regionalization effort.

Response: We agree with the finding.

5. When assessing alternative approaches to local fire protection, CAL FIRE should be considered as one alternative by cities and special fire districts in San Mateo County.

Response: We agree with the finding.

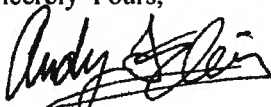
6. Include local fire union representatives in community discussions concerning department consolidation, regionalization or replacement. Make financial considerations and differing expense models known to all concerned parties and citizens.

Response: We agree with the finding.

As noted earlier, the City discussed the Fire & Emergency Services study, RFP and process with employees of the Belmont-San Carlos Fire Department and representatives of their Union (IAFF Local 2400). This included interviews with employees and union officials by the City's Fire & Emergency Services consultants (TriData) and meetings with the City Council and Senior City Management.

In terms of making financial information and differing expense models available to all parties, all of this information was made available to the public in several forms including the City Web Site's www.epackets.net portal for all City Council and Commission Meetings. The information includes meeting videos, agendas, minutes, staff reports and spreadsheets.

Sincerely Yours,



Andy Klein
Mayor

cc: City Council
City Manager
Assistant City Manager
City Attorney



**CITY COUNCIL
SPECIAL AND REGULAR MEETING
DRAFT MINUTES**

**Tuesday, March 27, 2012 at 6:15 p.m.
701 Laurel Street, Menlo Park, CA 94025
City Council Chambers**

Mayor Keith called the meeting to order at 6:20 p.m.

Council Member Cohen is recused from the item and therefore not present for the Closed Session.

Council Member Fergusson arrived at 6:35 p.m.

There were no members of the public to speak on the item and the Council adjourned into Closed Session.

CL1. Pursuant to Government Code Section 54956.9 to conference with legal counsel regarding existing litigation; 2 cases:

(1) Town of Atherton, et al. v. California High Speed Rail Authority
Superior Court of California, County of Sacramento, Case No. 34-2008-80000022
(Atherton 1)

(2) Town of Atherton, et al. v. California High Speed Rail Authority
Superior Court of California, County of Sacramento, Case No. 34-2010-80000679
(Atherton 2)

Mayor Keith called the Study Session to order at 7:05 p.m. with all members present.

REPORT FROM CLOSED SESSION

ACTION: There was no reportable action from Closed Session.

ANNOUNCEMENTS

Nancy Nuckolls is retiring this Friday after 31 years with the City of Menlo Park. Nancy has held just about every job in the Community Services Department, most recently as Social Services Manager where she has been responsible for the City's child care programs and the senior center. Nancy has been instrumental in modernizing the City's on-line registration system, in updating the Community Services Department's business processes and in supporting staff to improve customer service while increasing cost recovery.

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation: National Library Week (*Attachment*)

The proclamation was presented to members of the Library Foundation Board and Friends of the Library.

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS: None

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

- Dick Angus, Menlo Park Historical Association, made a presentation of a book to City Manager Alex McIntyre.
- Terri Cochran, American Cancer Society, spoke regarding the upcoming Relay for Life event in Menlo Park on August 4-5, 2012.

D. CONSENT CALENDAR

ACTION: Motion and second (Fergusson/Cline) to approve the Consent Calendar with Council Member Ohtaki not voting on Item D3 (recused) and amended letters on Item D4 passes unanimously.

D1. Update on commission recruitment for 2012 and consider consolidating the 2012 Planning Commission vacancies by extending the term of one Planning Commissioner from April 30 to August 31, 2012 (Staff report #12-049)

D2. Adopt **Resolution No. 6055** authorizing the City Manager to accept the Highway Safety Improvement Program (HSIP) Cycle 4 Federal Grant in the amount of \$49,550 and execute Program Supplement Agreement No. N012 to administering agency-state agreement for Federal-Aid Project No. 04-5273, covering preliminary engineering, and authorize the City Manager to execute all other agreements to implement the installation of an in-pavement lighted crosswalk system at the intersection of Oak Grove Avenue and Merrill Street
(Staff report #12-051)

D3. Authorize the City Manager to enter into a Joint Use Agreement with the Menlo Park City School District for Hillview and Oak Knoll Schools and Nealon Park and Nealon Tennis Courts (Staff report #12-052)

NOTE: Council Member Ohtaki is recused from the item due to the proximity of his home and therefore did not vote on the item.

D4. Authorize Mayor Keith to send a letter to the San Mateo County Mosquito & Vector Control District requesting improved financial control and oversight (Staff report #12-050)
(Revised Letter)

D5. Adopt **Resolution No. 6056** increasing the City Manager's contract approval up to \$100,000 for contract City Attorney services for review of the El Camino Real/Downtown Specific Plan and appropriate \$50,000 from the General Fund (Staff report #12-055)

D6. Accept Council minutes for the meetings of March 6th and 13th (Attachment)

E. PUBLIC HEARINGS

E1. Adopt a resolution amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately or July 1, 2012 or as required by statute for the following departments: Community Development, Community Services, Library and Public Works (Staff report #12-048)

Staff presentation by John McGirr, Revenue and Claims Manager

The Public Hearing was opened at 7:22 p.m.

Public Comments

Michael Brandt, MCC Parents Group, spoke against the fee increases for the Menlo Children's Center (MCC) and asked what cost recovery rate is enough.

ACTION: Motion and second (Cline/Fergusson) to close the Public Hearing at 7:26 p.m. passes unanimously.

ACTION: Motion by Council Member Fergusson to adopt the fee schedule as submitted except cutting the percentage of the proposed increase in half for the MCC programs. With the lack of a second, the motion failed.

ACTION: Motion and second (Ohtaki/Cline) to adopt **Resolution No. 6057** amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately or July 1, 2012 or as required by statute for the following departments: Community Development, Community Services, Library and Public Works and directing staff to do a market study on MCC programs prior to next year's review of fees passes unanimously.

F. REGULAR BUSINESS

F1. Adopt a resolution approving a Memorandum of Understanding (MOU) between the City of Menlo Park and Service Employees International Union, Local 521 (SEIU) for the period beginning March 25, 2012 through October 31, 2013 (Staff report #12-047)

Staff presentation by Starla Jerome-Robinson, Assistant City Manager

ACTION: Motion and second (Cline/Cohen) to adopt **Resolution No. 6058** approving a Memorandum of Understanding (MOU) between the City of Menlo Park and Service Employees International Union, Local 521 (SEIU) for the period beginning March 25, 2012 through October 31, 2013 passes unanimously.

F2. Adopt a resolution of the City Council of the City of Menlo Park of its finding and intention to sell that certain real property located behind properties fronting on the north side of Terminal Avenue, consisting of the Beechwood School property and vacant land between the school and Menlo Park Fire Protection District Station No. 77 and south of the Joint Powers Authority owned railroad right Of way, and 297 Terminal Avenue to the California Family Foundation Pursuant to Government Code Section 37420 et seq.

(Staff report #12-054)

Staff presentation by Bill McClure, City Attorney

ACTION: Motion and second (Ohtaki/Cline) to adopt **Resolution No. 6059** approving the City Council's finding and intention to sell that certain real property located behind properties fronting on the north side of Terminal Avenue, consisting of the Beechwood School property and vacant land between the school and Menlo Park Fire Protection District Station No. 77 and south of the Joint Powers Authority owned railroad right Of way, and 297 Terminal Avenue to the California Family Foundation Pursuant to Government Code Section 37420 et seq. passes unanimously.

F3. Consider state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item: None

G. CITY MANAGER'S REPORT: None

H. WRITTEN COMMUNICATION: None

I. INFORMATIONAL ITEMS: None

J. COUNCILMEMBER REPORTS

Council Member Fergusson updated the Council regarding the potential of a San Francisco ballot initiative proposing to drain the Hetch Hetchy reservoir. (*Attachment*)

NOTE: Council Member Cohen and City Attorney McClure are recused from discussions on High Speed Rail (HSR) and left the meeting at 8:01 p.m.

Council Member Cline, on behalf of the HSR Subcommittee updated the Council on issues surrounding HSR and a Metropolitan Transportation Commission (MTC) hearing scheduled for tomorrow and comments submitted by the subcommittee. A request was made to add an item to the next City Council agenda for discussion.

K. PUBLIC COMMENT #2: None

L. ADJOURNMENT

The meeting was adjourned at 8:08 p.m.

Margaret S. Roberts, MMC
City Clerk

Minutes accepted at the Council meeting of



CITY COUNCIL SPECIAL MEETING DRAFT MINUTES

Monday, April 9, 2012 at 4:30pm
701 Laurel Street, Menlo Park, CA 94025
First Floor City Council Conference Room, City Hall

Mayor Pro Tem Ohtaki called the meeting to order at 4:41 p.m. Mayor Keith arrived at 4:44 p.m. Councilmember Cline arrived at 4:50 p.m.

CONSENT CALENDAR

A1. Approve proposed revision to City Council meeting schedule (*Staff report #12-056*)

This item was pulled from the Consent Calendar for public comment and discussion.

The following members of the public spoke regarding this item: Don Brawner, Patty Fry and Jack Morris

Action: Motion and second (Ohtaki/Fergusson) to adopt the proposed revision to the Council meeting schedule, and in addition reserve the date of June 19th for an additional Council meeting if needed, and that the staff reports for the Facebook and El Camino-Real/Downtown Specific Plan items be available to the public one week prior to the Planning Commission meetings on these items, passes unanimously.

CLOSED SESSION

The Closed Session convened at 5:23 p.m. Councilmember Cohen and City Attorney McClure are recused from item #1 and exited the Council conference room. Special Counsel Greg Rubens was present.

There was no public comment on the Closed Session items.

CL1. Conference with legal counsel pursuant to Government Code Section 54956.9 regarding existing litigation – 2 cases:

(1) Town of Atherton, et al. v. California High Speed Rail Authority

Superior Court of California, County of Sacramento, Case No. 34-2008-80000022 (Atherton 1)

(2) Town of Atherton, et al. v. California High Speed Rail Authority

Superior Court of California, County of Sacramento, Case No. 34-2010-80000679 (Atherton 2)

Action: Special Counsel Rubens reported in open session the Council's decision (4-0-1, Cohen recused) to appeal the Town of Atherton, et al. v. California High Speed Rail Authority (Case No. 34-2008-80000022) (Atherton 1)

At 6:00 p.m. Councilmember Cohen and City Attorney McClure returned to the Council conference room for item #2.

CL2. Conference with legal counsel pursuant to Government Code Section 54956.9(c) regarding potential litigation – 1 case

There was no reportable action on item #2.

ADJOURNMENT at 6:35 p.m.

Pam Aguilar, Deputy City Clerk



CITY ATTORNEY

Council Meeting Date: April 17, 2012
Staff Report #: 12-060

Agenda item #: E-1

PUBLIC HEARING: **Adoption of a Resolution Approving the Sale of Certain Real Property Located Behind Properties Fronting on the North Side of Terminal Avenue, Consisting of the Beechwood School Property and Vacant Land Between the School and Menlo Park Fire Protection District Station No. 77 and South of the Joint Powers Authority Owned Railroad Right Of Way, and 297 Terminal Avenue to the California Family Foundation for \$1,255,000 and Authorize the City Manager to Execute all Necessary Documents to Complete the Sale**

RECOMMENDATION

Staff recommends Council adopt the attached resolution (Attachment A) the sale of the City-owned property referred to as the "Terminal Avenue property" as well as property located at 297 Terminal Avenue to California Family Foundation for use by Beechwood School pursuant to Government Code Section 37420 et. seq. (Site Plan attached as Attachment B)

BACKGROUND

In July 2001, Peninsula Habitat for Humanity (Habitat) first contacted City staff about possible acquisition of a 1.5 acre property located behind the residences on the north side of Terminal Avenue, between Beechwood School and Menlo Park Fire District Station No. 77. In October of that year, Habitat purchased 297 Terminal Avenue to provide access to the landlocked property and in November, 2001 the Community Development Agency approved an Exclusive Negotiating Rights Agreement (ENRA) with Habitat for the Terminal Avenue property with renewals on April 23, 2002; May 20, 2003; and November 16, 2004.

The ENRA was allowed to lapse in 2007 when Habitat encountered financing difficulties that threatened the future of the project. As a part of its Below Market Rate (BMR) commitment, however, SummerHill Homes worked with City staff to dedicate its BMR in-lieu contribution to the Terminal Avenue project, including pre-construction and construction expenses. SummerHill also provided technical assistance to Habitat to help them address specific issues as they arose. In addition, the Community Development Agency undertook environmental remediation needed on the site at a cost

of approximately \$1.23 million (including consulting fees, staff time and construction contract) in order to permit its use for residential or school uses (completed in 2008). The clean-up of the site would have been required, regardless of the eventual use of the site, once the problem was identified.

Over the past several years, as the Habitat project took more definitive shape, there was general opposition to development of housing at the Terminal Avenue site from some members of the Belle Haven community. Some community opinion suggested that use of the site as an expansion opportunity for the Beechwood School would provide the most benefit to the area. In the late summer of 2010, Habitat requested that some conclusion be reached concerning future use of the site so that it could focus its efforts toward other opportunities if development of the Terminal Avenue site was not viable. Just prior to an October 2010 City Council Study Session on Housing, the Beechwood School, through a letter from Richard Jacobsen, Beechwood School Board Chair, expressed an interest in purchasing the entire site, assuming that a reasonable and fair market price could be determined. At the October 2010 Council meeting, representatives of the Belle Haven Neighborhood Association expressed their support for a housing project along Hamilton Avenue that could encompass between 30 to 35 units per acre based on the City's willingness to sell the Terminal site to Beechwood School for the purpose of expanding the school.

At the time, Council also appointed a sub-committee to work with the community and Habitat to try to come to some common ground concerning potential housing development on the site. The effort prompted a further collection of comments from the community at a later Council meeting reiterating their desire that the property be used for expansion of the Beechwood School, as well as a written request from Beechwood School that the City consider selling the entire site to the School for their planned expansion.

Beechwood School, through the California Family Foundation, has indicated that its interest in acquiring the property is to endow the long-term operation of the School and improve the Foundation's ability to successfully solicit funding commitments for future capital improvements for a permanent school at the location. Currently, the School operates out of temporary modular structures that the Foundation would like to replace with permanent buildings.

In 1986 the California Family Foundation entered into a three-year lease for their current site for \$1 per year. The Foundation installed the necessary infrastructure and improvements and began operating a kindergarten and first grade class in 1987, adding one grade level and other buildings each year through 1993. Since that time, the City has granted numerous extensions to the lease as well as expansions of the land area as needed. In addition to the school site, the Foundation owns additional housing units on Terminal Avenue that are currently leased through the Foundation's low-income housing program.

In an April 29, 2011 letter to the City Manager, Habitat informed the City that they were no longer considering development at the site and requested the City purchase the home at 297 Terminal Avenue that was purchased for access. The original ENRA required that if the development process terminated without resulting in an executed development agreement, the City agreed to purchase 297 Terminal Avenue for \$481,590 (Habitat's purchase price). In this correspondence, Habitat also expressed a continued interest in finding a viable project in Menlo Park that would provide an opportunity to address lower income housing needs of Menlo Park residents and workers. Staff plans to continue to pursue opportunities in the R-3 zoning district areas near downtown or close to the train station suitable for development of a small number of units. Funding earmarked for Habitat from the SummerHill/Lane Woods development (\$2,224,375) could be used toward such an effort and Habitat has expressed interest in any opportunities that can be identified, or the funds can be used for other affordable housing opportunities.

At a May 10, 2011 Study Session, Council approved moving forward with negotiations with Beechwood School for sale of the Terminal Avenue site. The initial step in the negotiation process included common understandings among City staff, the appraisal firm awarded the appraisal contract, and representatives from Beechwood School/California Family Foundation related to the assumptions to be included in the appraisal of the property. The appraisal was completed in August of 2011 and after some negotiations with representatives from Beechwood School/California Family Foundation, the parties determined that a fair value for the school site is \$915,000, with the fair market value of 297 Terminal Avenue of \$340,000, for a total fair market value/purchase price of \$1,255,000. [This reflects an increase over the appraised value of \$125,000 based on a revision of the assumptions in the appraisal.]

On July 19, 2011, Council approved the use of BMR funds for the purchase of 297 Terminal Avenue from Habitat and completed the purchase on December 14, 2011.

The City has completed a survey of the property and is preparing a parcel map and associated easements for the sale of the property to the California Family Foundation. In addition, the City is preparing a General Plan map amendment and a Zoning map amendment (rezoning) for the School Site and the Fire Station. The General Plan land use designation would change from Medium Density Residential to Low Density Residential for the School Site and Public Facilities for the Fire Station. The zoning would change from U (Unclassified) to Single Family Urban Residential (R-1-U) District for the School Site and Public Facilities (PF) District for the Fire Station. The General Plan Map Amendment and rezoning requires environmental review.

On March 28, 2012, pursuant to California Government Code Section 37420 et. seq., the City Council adopted a resolution finding that the public interest and convenience requires the sale of the City-owned property and stating its intention to sell the property to the California Family Foundation. The resolution set a public hearing for April 17, 2012, to hear any protests to the sale of the property, directed the giving of notice of the hearing, established the time for the City Council to take final action regarding the sale

of the property, and setting forth an accurate description of the property to be sold. At any time prior to final action, any interested person may protest the proposed sale. If no protests are received or the City Council overrules the protests by a four-fifths vote of its members, it may proceed with the sale.

ANALYSIS

Public interest and convenience require the sale of the property. Beechwood School would like to expand and build a permanent campus on the Terminal Avenue site which is adjacent to their current location. Community input strongly suggests that constructing a permanent facility for Beechwood School would be an appropriate use of the site and further an important neighborhood goal to improve education opportunities in the neighborhood. The school expressed formal interest in purchasing the site in late 2010.

The City Attorney has prepared a Purchase and Sale Agreement for the sale of the property consisting of the existing Beechwood School Site, the vacant land between Beechwood School and the Fire Station at 1467 Chilco Street, and 297 Terminal Avenue. (See Attachment C) The total purchase price payable to the City would be \$1,255,000. In order to complete the sale, the City will need to approve and record a parcel map to create the school site parcel; will need to amend the General Plan and rezone the school site parcel to R-1-U; and will need to create an easement for ingress, egress and parking for the school site across the Onetta Harris Community Center parking lot, and a parking lot maintenance agreement for the sharing of maintenance costs for the parking lot and access road. The Agreement includes an option for the City to repurchase the property for the price paid/received in the event a new school is not substantially completed within five years of the close of escrow. The City will also have a right of first refusal to repurchase the property if the property is proposed to be sold for use(s) other than a school primarily serving the Ravenswood Elementary School District, with the purchase price to be the lesser of (a) the price to be paid by a bona fide purchaser or (b) the then appraised value of the property using the sale assumptions used to establish the sales price to California Family Foundation, plus the value of improvements made to the site by the Foundation if the improvements are to be used by the City or a subsequent owner/user. The Foundation will have a 60 day due diligence period to satisfy itself regarding the condition of the property and approval of the parcel map, easements and parking maintenance agreement. Escrow will close within 15 days of approval of the parcel map and the rezoning of the property. It is estimated that escrow will close by the end of August or early September of 2012. The Agreement also provides that Beechwood will clean up the site within 45 days of the Effective Date with a credit against the purchase price and provides that if the City does not approve a use permit for the permanent school facility for the existing enrollment within three years of the Effective Date, Beechwood may require the City to repurchase the property for the same price paid by Beechwood.

Protests, if any, to the sale of the property to the California Family Foundation will be heard at the public hearing held by the City Council on April 17, 2012, at 7:00 p.m. in

the City Council Chambers located at 701 Laurel Street, Menlo Park, California or as soon thereafter as the matter may be heard. The City Council will take final action on the sale of the property after the close of the public hearing.

IMPACT ON CITY RESOURCES

The expired Exclusive Negotiating Rights Agreement (ENRA) for the Terminal site states that the Agency would agree to purchase 297 Terminal Avenue for \$481,590, if the process terminated without resulting in an executed Disposition and Development Agreement (DDA). The purchase was approved by the Council in July of 2011. Since the purchase price for the purchase of 297 Terminal Avenue came from the BMR Fund, those funds would be repaid from the sale proceeds. The balance of the sales proceeds would go to the General Fund.

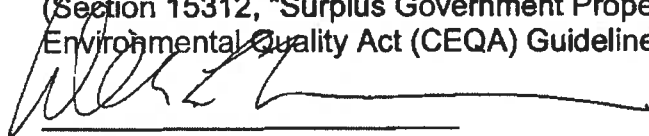
The City previously estimated total costs of \$45,000 for subdivision, property appraisal, legal services and staff time for the sale of the property. To date, the Agency and City have expended or committed approximately \$30,000 of that total.

POLICY ANALYSIS

The City Council previously directed the City Attorney to negotiate the sale of the property to California Family Foundation for the Beechwood School. This action is consistent with the Council's previous direction.

ENVIRONMENTAL REVIEW

The sale of surplus governmental property is categorically exempt under Class 12 (Section 15312, "Surplus Government Property Sales") of the current California Environmental Quality Act (CEQA) Guidelines.



William L. McClure
City Attorney

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A: Resolution Approving the Sale of Certain Real Property Located Behind Properties Fronting on the North Side of Terminal Avenue, Consisting of the Beechwood School Property and Vacant Land Between the School and Menlo Park Fire Protection District Station No. 77 and South of the Joint Powers Authority Owned Railroad Right Of Way, and 297 Terminal Avenue to the California Family Foundation for \$1,255,000 and Authorize the City Manager to Execute all Necessary Documents to Complete the Sale
- B: Site Plan showing Beechwood School site and 297 Terminal Avenue parcel
- C: Agreement for the Purchase and Sale of Property

RESOLUTION NO.

RESOLUTION APPROVING THE SALE OF CERTAIN REAL PROPERTY LOCATED BEHIND PROPERTIES FRONTING ON THE NORTH SIDE OF TERMINAL AVENUE, CONSISTING OF THE BEECHWOOD SCHOOL PROPERTY AND VACANT LAND BETWEEN THE SCHOOL AND MENLO PARK FIRE PROTECTION DISTRICT STATION NO. 77 AND SOUTH OF THE JOINT POWERS AUTHORITY OWNED RAILROAD RIGHT OF WAY, AND 297 TERMINAL AVENUE TO THE CALIFORNIA FAMILY FOUNDATION FOR \$1,255,000 AND AUTHORIZE THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS TO COMPLETE THE SALE

WHEREAS, the City of Menlo Park ("City") is the owner of that certain real property located behind properties fronting on the north side of Terminal Avenue, consisting of the Beechwood School property and vacant land between the School and Menlo Park Fire Protection District Station No. 77 and south of the Joint Powers Authority owned railroad right of way, and 297 Terminal Avenue ("Property"); and

WHEREAS, the City desires to sell the Property to the California Family Foundation for purposes of a building a permanent campus on the Property for the Beechwood School; and

WHEREAS, California Government Code Sections 37420 through 37430 authorize the City to dispose of City-owned property; and

WHEREAS, pursuant to California Government Code Section 37421 the City Council adopted a resolution finding that the public interest and convenience require the sale of City-owned property, stating the City's intention to sell the property, and setting a time for hearing protests to the sale of the property, providing for publication of notice of the hearing, fixing the time when the City Council would take final action regarding the sale of the property; and

WHEREAS, the City published notice of the hearing as required by law and conducted a public hearing on April 17, 2012, to hear any protests regarding the proposed sale of the property to California Family Foundation.

NOW, THEREFORE, 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.

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park as follows:

1. The public interest and convenience require the sale of the of the Property, consisting of approximately 2.88 acres of land between the Onetta Harris Community Center parking lot at one end and the property leased to the Menlo Park Fire Protection District for the existing fire station at 1467 Chilco Street at the other end, consisting of the existing Beechwood School site and adjacent vacant land commonly known as 50 Terminal Avenue (portions of APN 055-260-170 and 055-280-020) and the real property located at 297 Terminal Avenue (APN 055-331-130) as more particularly described and shown on the Exhibits to the Purchase and Sale Agreement presented to the City Council.

2. [IF APPLICABLE] The City Council overrules any protests regarding the sale of the Property to California Family Foundation on the terms and conditions contained in the Purchase and Sale Agreement presented to the City Council.

3. The City Council finds that the proposed sale of the Property to California Family Foundation for use as a school is consistent with the City's General Plan.

4. The City Council approves the Purchase and Sale Agreement attached to the Staff Report for this matter and authorizes the City Manager to execute such Agreement on behalf of the City and to take any and all actions and execute any and all additional documents as may be necessary to consummate the sale of the Property to California Family Foundation.

I, Margaret S. Roberts, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a meeting by said Council on this 17th day of April, 2012, by the following vote:

AYES:

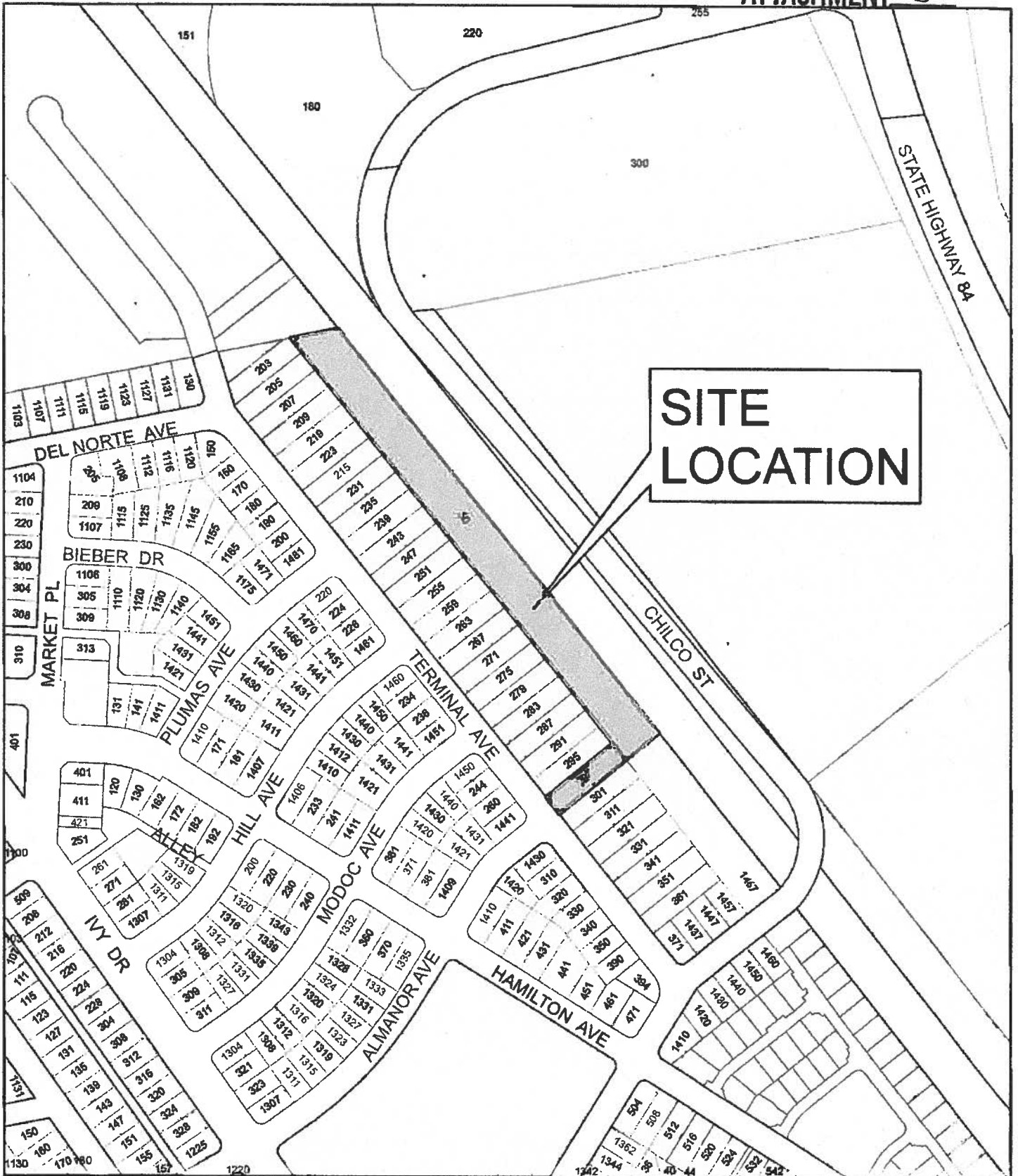
NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___th day of April, 2012.

Margaret S. Roberts, MMC
City Clerk



CITY OF MENLO PARK

LOCATION MAP

BEECHWOOD SCHOOL SITE

DRAWN: KTP CHECKED: KTP DATE: 4/17/12 SCALE: 1" = 300' SHEET: 1



AGREEMENT
FOR THE PURCHASE AND SALE OF PROPERTY

This Agreement for the Purchase and Sale of Property ("Agreement") is entered into by and between the California Family Foundation, a 501(c)(3) operating foundation ("Buyer"), and the City of Menlo Park, a California Municipal Corporation ("Seller"), dated for reference purposes only as of April 17, 2012. The term "Effective Date" as provided herein shall mean the date that this Agreement is fully executed by both Buyer and Seller. Buyer and Seller are collectively referred to herein as "Parties."

Buyer shall purchase from Seller and Seller shall sell to Buyer, for the Purchase Price on the terms and conditions contained in this Agreement, an approximately 2.88 acre portion of a larger 3.77 acre parcel of real property located in the County of San Mateo, in the City of Menlo Park, California, in the Belle Haven Neighborhood, consisting of land between the Onetta Harris Community Center parking lot at one end and the property leased to the Menlo Park Fire Protection District for the existing fire station at 1467 Chilco Street at the other end, consisting of the existing Beechwood School site and adjacent vacant land commonly known as 50 Terminal Avenue (portions of APN 055-260-170 and 055-280-020), as more particularly described and shown on Exhibit A attached hereto ("School Site"), and the real property located at 297 Terminal Avenue (APN 055-331-130) as more particularly described on Exhibit B attached hereto ("Single Family Lot"). The two properties are referred to collectively herein as "Property".

1. PURCHASE PRICE AND FINANCIAL TERMS. The purchase price for the School Site is Nine Hundred Fifteen Thousand Dollars (\$915,000). The purchase price for the Single Family Lot is Three Hundred Forty Thousand Dollars (\$340,000). In total, the purchase price ("Purchase Price") for the Property is One Million Two Hundred Fifty-Five Thousand Dollars (\$1,255,000), payable in cash as follows:

1.1. Within three business days after the Effective Date, Buyer will deposit Fifty Thousand Dollars (\$50,000.00) ("Initial Deposit"), in cash, with First American Title Company, Attn: Anne Kaz ("Escrow Holder"). Escrow Holder shall place said funds, and all subsequent deposits from Buyer, into an interest-bearing account (to be designated in writing by Buyer), with interest to accrue in escrow for the benefit of the Buyer. The Initial Deposit shall become non-refundable upon Buyer's delivery of the Approval Notice (defined in Paragraph 2.7 below), except for a failure of a condition of closing in favor of Buyer or except for a default under the terms of this Agreement by Seller or except as otherwise provided in this Agreement.

1.2. Buyer shall deposit an additional Seventy Five Thousand Dollars (\$75,000.00) ("Additional Deposit") with Escrow Holder within three business days of the expiration of the Due Diligence Period, described in Paragraph 2 below, if Buyer provides Seller and Escrow Holder the Approval Notice on or before the expiration of the Due Diligence Period. If Buyer provides its Approval Notice, the Additional Deposit shall be non-refundable, except for (a) a failure of a condition of closing in favor of Buyer; or (b) a default under the terms of this Agreement by Seller; or (c) as otherwise provided in this

Agreement. The Initial Deposit and the Additional Deposit and all interest accrued thereon shall be referred to herein as the "Total Deposit".

1.3. The balance of the Purchase Price, minus the Total Deposit will be deposited by Buyer, in cash, into escrow with Escrow Holder (together with funds to cover Buyer's closing costs) in sufficient time so that the escrow will close upon transfer of title to Buyer.

2. DUE DILIGENCE PERIOD. Buyer shall have until 5:00 P.M. (PST), on the date that is sixty (60) days from the Effective Date, ("Due Diligence Period") in which to satisfy itself of the physical condition and economic viability of the Property and any other matters as described in Paragraphs 2 and 3.

2.1. Buyer shall have access to all existing records of Seller regarding the Property (collectively, "Due Diligence Materials"). Buyer may make copies of any such records, at Buyer's expense. Seller shall provide Buyer with access to copies of any Due Diligence Materials, including copies of any other records and materials regarding the Property that may be requested by Buyer to the extent such other records and materials are in the possession or control of the Seller; provided Buyer's rights to such additional books and records shall not include attorney-client privileged materials. Seller does not make any representation or warranty as to the accuracy or completeness of any such records, or of any other documents or disclosures supplied to Buyer.

2.2. Buyer may, at Buyer's expense, make or cause to be made any physical inspection(s) of the Property which Buyer desires to make, including without limitation: surveys, and inspections by contractors, engineers, architects, soils engineers, toxics investigators, and/or other experts retained by Buyer. Seller shall not unreasonably withhold, condition or delay its consent to such inspection(s) and Seller shall provide its consent (or the denial of consent together with the reason for such denial) within two business days after request by Buyer. Such inspections may include without limitation: soil; geologic condition; possible safety matters; possible environmental hazards; location of property lines; size/square footage of the Property; and water and other utility use restrictions. Seller shall permit said inspections during normal business hours upon receiving reasonable advance notice from Buyer. If this Agreement terminates for reasons other than Seller's default, then upon Seller's request, Buyer agrees to provide Seller promptly with a copy of all inspection reports obtained by Buyer from third party consultants (other than attorneys). Seller shall have no obligation to correct any defect or problem that is revealed or suspected as a result of any such inspections. Except as otherwise provided, Buyer shall indemnify and hold Seller and Seller's Property free of any liability occurring during or as a result of inspections by Buyer or Buyer's agents, including, without limitation, mechanics liens. Buyer will repair any damage to the Property caused by Buyer or Buyer's agents in connection with such inspections. The foregoing repair and release obligations do not apply to (a) any loss, liability cost or expense to the extent arising from or related to the acts or omissions of Seller, or Seller's agents, contractors or subcontractors, (b) any loss, cost or expense to Buyer, or diminution in value in the Property arising from or relating to matters discovered by Buyer or Buyer's agents during investigation of the Property, including, without limitation, violations of applicable law, (c) any defects in the Property discovered by Buyer or Buyer's agents, (d) the discovery, release or spread of any Hazardous Substances, as defined below, electromagnetic fields, mold and/or other

biological substances discovered (but not deposited) in, on or under the Property by Buyer or Buyer's agents; and (e) Buyer's discovery of any pre-existing condition of the Property.

2.3. Buyer is encouraged to investigate all Federal, State and local laws, regulations and notices regarding the Property, including without limitation flood hazard matters, seismic/earthquake hazard matters and other environmental issues. Seller makes no representations regarding these subjects.

2.4. If Buyer elects not to obtain any inspection(s) or not to make any investigation(s) specified in this Paragraph 2, then Buyer hereby releases Seller from all claims, demands, and liabilities which in any manner pertain to matters which may or could have been disclosed by such inspection(s) and/or investigation(s).

2.5. It is understood that both Parties will incur expenses to carry out their obligations hereunder (including, without limitation, Buyer's cost of inspections) and that there is a risk that this transaction will not be completed. In such event, neither Party will have a claim against the other Party for reimbursement of any such expenses, except as provided herein.

2.6. Seller is selling, and Buyer is acquiring, the Property "AS-IS" in its current physical condition, without any representations or warranties, express or implied, except as otherwise set forth in this Agreement, as to the nature or condition of or title to the Property, including without limitation, any representations or warranties concerning the physical condition or value of the Property, the suitability of the Property for Buyer's intended use, the ability to obtain permits for the intended use, the presence or absence of any latent or patent condition, hazardous or otherwise, the presence or absence of any asbestos containing material, the presence or absence of any molds, fungi, spores, pollens, and/or any other botanical substances and/or allergens, toxic or otherwise, thereon or therein, or any other matters affecting the Property. Buyer accepts the Property in its existing "AS-IS" condition and shall not require Seller to improve, alter, maintain, or repair the Property or any part thereof, except to operate and maintain it in its current condition up to the Close of Escrow. Buyer also acknowledges that the Purchase Price reflects and takes into account that the Property is being sold "AS-IS" subject to the terms and provisions of this Agreement. Except as otherwise set forth in this Agreement, Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied representations, statements, agreements, warranties, guaranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives, whether oral or written. Buyer acknowledges and agrees that all materials, data and information delivered by Seller, or any agent of Seller, to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that any reliance on or use of such materials, data or information by Buyer, except as otherwise set forth in this Agreement, shall be at the sole risk of Buyer. Except as otherwise set forth in this Agreement, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its agents to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that except as to a breach of Seller's obligations, representations or warranties set forth in this Agreement or any closing document signed or provided by Seller, neither Seller, nor any representative of Seller, nor the person or entity which prepared any report or reports

delivered by Seller to Buyer, shall have any liability to Buyer for any inaccuracy in, or omission from, any such reports unless such inaccuracy or omission is due to Seller's or such person's or entity's willful misconduct, fraud or misrepresentation. Except to the extent of Seller's representations or warranties set forth in this Agreement or closing document signed by Seller, Buyer shall rely solely upon its own, independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller. Buyer further acknowledges that Seller has provided or will have provided Buyer with the opportunity to fully inspect the Property prior to the Closing Date. Upon closing, except to the extent of Seller's representations and warranties in this Agreement or closing document signed by Seller, Buyer assumes all risk that adverse physical and environmental conditions may not have been revealed by Buyer's investigations, and Buyer, upon closing, except to the extent of Seller's representations or warranties set forth in this Agreement, shall be deemed to have waived, relinquished and released Seller (and its elective or appointive boards, officers, and employees and agents of any and all of them) (collectively "Released Parties") from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorney's fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against the Released Parties at any time by reason of or arising out of any latent or patent defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or other matters regarding the Property. Notwithstanding anything to the contrary contained herein, the foregoing release does not apply to (a) any breach of the terms of this Agreement by Seller, (b) any claims arising out of the presence of any Hazardous Materials in, on, under or about the Property caused by Seller, or (c) any claims by third parties unaffiliated with Buyer, or its affiliates for matters that occurred prior to the Closing Date. Buyer waives and relinquishes any right or benefit that it has or may have under California Civil Code Section 1542, which states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Notwithstanding the foregoing, the limitations set forth in this Paragraph 2.6 and the release shall also not apply to any willful misconduct or fraud on the part of Seller, or physical injuries to persons or property occurring prior to the Close of Escrow. The terms and provisions of this Paragraph 2.6 shall survive the Close of Escrow.

We have read and understand the foregoing and agree to each and every provision thereof.

Seller's Initials (____)

Buyer's Initials (____)

2.7. It is the intention of the Parties that Buyer will have full and complete opportunity during the Due Diligence Period to satisfy itself that the physical condition and economic viability of the Property, in its present condition, are acceptable to Buyer. Buyer may approve its due diligence and inspections on the Property (at Buyer's sole and absolute discretion) only by giving written notice thereof to Seller and Escrow Holder prior to the

expiration of the Due Diligence Period ("Approval Notice"). If Buyer does not approve its due diligence and inspections in the manner described above by providing the Approval Notice on or before the expiration of the Due Diligence Period, then Buyer shall be deemed to have disapproved its due diligence and inspections and this Agreement shall terminate, Buyer's Total Deposit shall be returned to Buyer, and the Parties thereafter will be free of any obligation to each other hereunder.

3. CONDITION OF TITLE. Seller shall cause to be delivered to Buyer a Preliminary Report issued by First American Title Company ("Preliminary Report"). Seller is in the process of completing a survey of the School Site and a parcel map to subdivide the property of which the School Site is a part ("Parcel Map") and at the Closing the School Site shall be properly subdivided as a separate legal parcel and zoned for use as R-1-U.

3.1. Buyer shall have until 10 days prior to the expiration of the Due Diligence Period to disapprove any exceptions to title which are shown on the Preliminary Report and to object to the Parcel Map (collectively, "Disapproved Exceptions") and to deliver to Seller notice of Buyer's disapproval describing the Disapproved Exceptions ("Disapproval Notice"). All monetary liens shall be deemed to constitute Disapproved Exceptions and Buyer shall not be required to include monetary liens in any Disapproval Notice. The failure of Buyer to deliver said Disapproval Notice within said time shall constitute approval by Buyer of all exceptions to title shown on the Preliminary Report and approval of the Parcel Map.

Within five days after Seller's receipt of a Disapproval Notice, Seller shall notify Buyer whether or not Seller intends to remove the Disapproved Exceptions; provided, however, that Seller shall be required to remove all monetary liens. If Seller notifies Buyer of an intention to eliminate the Disapproved Exceptions, Seller shall do so on or before the Close of Escrow. If Seller notifies Buyer that Seller will not remove one or more of the Disapproved Exceptions, Buyer, by notifying Seller within five days after receipt of Seller's response to the Disapproval Notice, may elect to terminate this Agreement and have the Escrow Holder return to Buyer the Buyer's Total Deposit and all accrued interest in its sole and absolute discretion. The failure of Buyer to deliver notice of said termination within said time and/or the issuance of Buyer's Approval Notice in accordance with Paragraph 2.7 shall constitute Buyer's acceptance of said exceptions.

In the event there are any new title exceptions discovered after the expiration of the Due Diligence Period but prior to the Close of Escrow, Buyer shall have five business days from receipt of notification of any new exception within which to provide Seller with a new Disapproval Notice. Seller shall have three business days from receipt of such new Disapproval Notice to notify Buyer whether it intends to remove such new title exception; provided, however, that Seller shall be required to remove all monetary liens. If Seller notifies Buyer of an intention to eliminate the new title exception, Seller shall do so on or before the Close of Escrow. If Seller notifies Buyer that Seller will not remove the new title exception(s), Buyer, by notifying Seller within three business days after receipt of Seller's notice, may elect to terminate this Agreement and have the Escrow Holder return to Buyer the Buyer's Total Deposit minus the Independent Consideration and all accrued interest in Buyer's sole and absolute discretion. The failure of Buyer to deliver notice of said termination within said time shall constitute Buyer's acceptance of said new title

exception(s). The Close of Escrow and Closing Date shall be extended to allow Buyer and Seller the time to make the elections described above and afford the parties at least 10 days to thereafter proceed to the Close of Escrow, subject to satisfaction of all other requirements and conditions in this Agreement for the Close of Escrow.

3.2. The Escrow Holder shall issue, as a condition to Buyer's obligation to close escrow, at Buyer's expense, an ALTA standard coverage owner's title insurance policy at the Close of Escrow insuring fee title in Buyer in the amount of the Purchase Price, subject only to: (a) a lien for real property taxes, bonds, and/or assessments not then delinquent for the current fiscal year, (b) matters of the Property's title not disapproved by Buyer in accordance with Paragraph 3.1, and (c) such endorsements as Buyer shall require in Buyer's Disapproval Notice. Buyer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance at Buyer's cost. The owner's policy of title insurance required by Buyer shall be referred to as the "Owner's Policy." It is a condition to the Closing Date that the Title Company issue or unconditionally commit to issue the Owner's Policy to Buyer. If this condition is not satisfied, Buyer shall be entitled to a full refund of the Total Deposit.

3.3. On the Closing Date, Seller shall convey title to the Property to Buyer by grant deed in the Title Company's standard form ("Deed"). Seller shall deliver the Deed to Escrow Holder no later than one business day prior to the Closing Date.

4. CLOSE OF ESCROW, PRORATIONS, AND EXPENSES. Provided that all conditions to closing are satisfied or waived in writing by the party benefiting thereby, this transaction shall close on the date on which the deed transferring title to Buyer is recorded ("Close of Escrow"). The Close of Escrow shall occur on that date ("Closing Date") after the expiration of the Due Diligence Period and 15 days from the date of the approval of the Parcel Map to create the School Site and the School Site shall be properly subdivided as a separate legal parcel (by Seller), and Seller obtains approval of the rezoning of the School Site from Unclassified (U) to R-1-U; provided however, in no event shall recording occur until the foregoing is completed.

Real property taxes, if any, shall be prorated by Escrow Holder as of the Close of Escrow, based upon the latest Assessor's information available and on the actual number of days in the fiscal tax half-year concerned. Buyer understands that the Property will be reassessed upon change of ownership. Supplemental tax bills for the sale of the Property to Buyer will be sent to Buyer, which are likely to reflect an increase in taxes based on the Property value. Any tax bills issued after Close of Escrow for periods of time before Close of Escrow shall be paid by Seller to Buyer within 10 days of invoice to Seller, which obligation shall survive the Close of Escrow and not be merged with the Deed.

Seller shall pay (a) the County documentary transfer taxes, if any, payable in connection with the transfer of the Property, (b) all document recording charges; (c) all costs associated with the Parcel Map and rezoning the School Site, including CEQA compliance; and (d) one-half of Escrow Holder's fees. Buyer shall pay (a) one-half of the Escrow Holder's fee; (b) the premium for obtaining an ALTA Policy; (c) the cost of all endorsements to Buyer's title policy; and (d) Buyer's share of pro-rations as determined in accordance with this Agreement. Unless otherwise specified in this Agreement, Buyer or Seller shall pay all

other pro-rations and closing expenses in accordance with the local custom in San Mateo County. Each Party will pay its own legal fees relating to the preparation and approval of this Agreement.

If any of the aforesaid pro-rations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible.

5. POSSESSION. Physical possession of the Property shall be delivered to Buyer upon the Close of Escrow.

6. RISK OF LOSS. Risk of loss to the Property shall be borne by Seller until title has been conveyed to Buyer. Upon the Effective Date and thereafter, Seller shall maintain and manage the Property through Close of Escrow in the same condition and repair as the Property was in on the Effective Date, reasonable wear and tear excepted.

7. CONDEMNATION.

7.1. If between the Effective Date and the Close of Escrow any condemnation or eminent domain proceedings are commenced or threatened that might result in the taking of any part of the Property or the taking or impairing any access right to the Property, Buyer may either, in its sole and absolute discretion:

7.1.1. Terminate this Agreement by written notice to Seller and have the Escrow Holder return to Buyer the Total Deposit minus the Independent Compensation; or

7.1.2. Proceed with the Close of Escrow and have Seller assign without recourse to Buyer all of Seller's right and title to, and interest in, any award made for the condemnation or eminent domain action.

7.2. Immediately after Seller receives notice of the commencement or threatened commencement of any eminent domain or condemnation proceedings, Seller shall notify Buyer in writing. Buyer shall then notify Seller, within 10 days of Buyer's receipt of Seller's notice, whether or not Buyer elects to terminate this Agreement. The Close of Escrow shall be delayed, if necessary, to allow Buyer to make the election. If Buyer fails to make the election to terminate this Agreement within 10 days, Buyer shall be deemed to have elected to proceed with the Close of Escrow.

8. REPRESENTATIONS AND WARRANTIES.

8.1. By Seller. As a material inducement for Buyer's entry into and performance of this Agreement, Seller warrants and represents that the facts set forth in this Paragraph are true and correct as of the date hereof and shall be true and correct as of the Close of Escrow and which shall survive the Close of Escrow and not be merged with the Deed. Seller makes no other representation or warranty, except as set forth in this Agreement or as set forth in any certificate or closing document signed by Seller.

8.1.1. Seller is a municipal corporation duly organized, validly existing and in good standing under California law.

8.1.2. Seller has full right and authority to enter into and perform its obligations under this Agreement and each person signing this Agreement for Seller has full right and authority to do so and to perform every act and to execute and deliver every document necessary to consummate the transactions contemplated by this Agreement.

8.1.3. To Seller's knowledge, neither the execution of this Agreement nor the performance by Seller of its obligations under this Agreement will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment, or order to which Seller is a party now in effect from any court or governmental body.

8.1.4. To Seller's knowledge, Seller is not a party to any pending action, suit, proceeding, or investigation, at law or in equity or otherwise, in, for, or by any court or governmental board, commission, agency, department, or officer arising from or relating to this transaction, the Property, or to the past or present operations and activities of Seller upon or relating to the Property, nor to Seller's knowledge is any of the foregoing threatened. Seller has received no notice that it is currently a party to any pending action, suit, proceeding, or investigation, at law or in equity or otherwise, in, for, or by any court or governmental board, commission, agency, department, or officer arising from or relating to this transaction, the Property, or to the past or present operations and activities of Seller upon or relating to the Property.

8.1.5. To Seller's knowledge, there are (a) no condemnation, environmental, zoning or other land-use regulation proceedings involving the Property either instituted or planned to be instituted, which would detrimentally affect the use, operation or value of the Property and (b) no environmental conditions involving the Property which would detrimentally affect the use, operation or value of the Property; provided, however, there are plans to establish a Dumbarton commuter rail service on the adjacent rail line in the future. Seller shall notify Buyer promptly of any such proceedings of which Seller becomes aware.

If Buyer receives written notice from Seller pursuant to this Paragraph prior to the Close of Escrow which contains anything that materially changes the representations and warranties contained in this Agreement (material being something that affects Buyer's underwriting in the valuation of the Property or adversely affects Buyer's ownership or operation of the Property), or if Buyer otherwise becomes aware that any of Seller's representations and warranties contained herein are not true and correct prior to the Close of Escrow, then Buyer may elect either to: (a) proceed to the Close of Escrow with knowledge of the facts or information, in which event Seller shall have no liability to Buyer with respect to these changes; or (b) terminate this Agreement by giving written notice thereof to Seller and Escrow Holder, whereupon the Total Deposit and all interest accrued thereon shall be immediately paid to Buyer and Seller shall reimburse Buyer for Buyer's actual out of pocket expenses relating to this transaction not to exceed \$10,000.

8.2 By Buyer. As a material inducement for Seller's entry into and performance of this Agreement, Buyer warrants and represents that the facts set forth in this Paragraph are true and correct as of the date hereof and shall be true and correct as of the Close of Escrow.

8.2.1 Buyer is duly organized, validly existing and in good standing under the state of its formation, and is authorized to do business in the State of California.

8.2.2 (a) Buyer has full right and authority to enter into and perform this Agreement; (b) each person signing this Agreement for Buyer is authorized to so sign; (c) the execution, consent or acknowledgment of no other party is necessary in order to validate Buyer's entry into and performance of this Agreement; (d) Buyer's entry into and performance of this Agreement do not violate any agreement binding on Buyer; and (e) this Agreement is a legal, valid, binding and enforceable obligation of Buyer.

9. LIQUIDATED DAMAGES. IF BUYER FAILS TO COMPLETE THE TRANSACTION SET FORTH IN THIS AGREEMENT DUE SOLELY TO BUYER'S DEFAULT WHICH DEFAULT CONTINUES AFTER NOTICE TO BUYER AND THE EXPIRATION OF A FIVE BUSINESS DAY CURE PERIOD, SELLER SHALL BE FREE TO SELL THE PROPERTY TO OTHERS AND THE PARTIES AGREE THAT SELLER SHALL RETAIN BUYER'S TOTAL DEPOSIT WITH ACCRUED INTEREST AS LIQUIDATED DAMAGES AS ITS SOLE AND EXCLUSIVE REMEDY, WHICH THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM OF: (A) THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED, AND (B) THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE. NOTHING HEREIN SHALL BE DEEMED TO RELEASE BUYER FROM ITS OBLIGATION TO RESTORE THE PROPERTY IN THE EVENT OF ANY DAMAGE DURING ITS DUE DILIGENCE INSPECTIONS AND/OR TO RELEASE BUYER FROM ANY INDEMNITY OBLIGATION CREATED BY THIS AGREEMENT. THIS PARAGRAPH SHALL ONLY APPLY IF BOTH PARTIES HAVE INITIALED BELOW.

BUYER'S INITIALS: _____ SELLER'S INITIALS: _____

10. SELLER DEFAULT. If the sale of the Property fails to close on account of a default by Seller hereunder, Buyer shall be entitled to exercise either of the following as its sole and exclusive remedy on account of such default: (a) receive a return of the Buyer's Total Deposit and Seller shall reimburse Buyer for Buyer's actual out of pocket expenses relating to this transaction not to exceed the sum of \$10,000, or (b) file suit for specific performance of Seller's obligations hereunder, provided any suit for specific performance shall be filed no later than 60 days of the date that Seller was required to Close Escrow; in

no event shall the Seller be liable for any monetary damages on account of the default except for Buyer's actual out of pocket expenses relating to this transaction not to exceed the sum of \$10,000.

BUYER'S INITIALS: _____ SELLER'S INITIALS: _____

11. WAIVER OF TRIAL BY JURY. To the greatest extent permitted by law, Buyer and Seller hereby expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding relating to, directly or indirectly, or concerning this Agreement or the conduct, omission, action, obligation, duty, right, benefit, privilege or liability of a party hereunder to the full extent permitted by law. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by Buyer and Seller, with and upon the advice of competent counsel. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. Buyer and Seller further certify and represent to each other that no party, representative or agent of Buyer or Seller (including, but not limited to, their respective counsel) has represented, expressly or otherwise to Buyer or Seller or to any agent or representative of Buyer or Seller (including, but not limited to, their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to any future amendments, supplements or modifications of the Agreement.

BUYER'S INITIALS: _____ SELLER'S INITIALS: _____

12. FOREIGN INVESTOR DISCLOSURE. Seller and Buyer agree to execute and deliver any instrument, affidavit, or statement, and to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax Act ("FIRPTA") and regulations promulgated there under. Seller shall also execute and deliver to escrow at least one business day prior to the Closing Date the California form 593-C Real Estate Withholding Certification reflecting an exception to any withholding of sale proceeds.

13. MISCELLANEOUS.

13.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties. Buyer may not assign this Agreement to a third party without Seller's prior written approval except as provided below. Notwithstanding the foregoing, Buyer may, without Seller's consent, assign this Agreement to an entity in which Buyer, or any entity in which Buyer or any member, partner or affiliate of Buyer is a member or partner or has an equity interest, provided any assignee shall first have assumed in writing all of Buyer's obligations pursuant to this Agreement. No assignment or other transfer shall relieve Buyer of its obligations under this Agreement.

13.2. Attorneys' Fees. In any litigation, arbitration, or other legal proceedings which may arise between any of the Parties hereto, the prevailing party shall be entitled to recover its costs, including costs of arbitration, if any, and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled.

13.3. Time. Time is of the essence of this Agreement. Unless otherwise stated herein, all days referred to herein are calendar days. Should the date upon which any act required to be performed by this Agreement fall on a Saturday, Sunday, or holiday, the time for performance shall be extended to the next business day.

13.4. Notices. All notifications and notices required or permitted hereunder shall be given to the Parties in writing at their respective addresses as set forth below, by (a) overnight courier, provided proof of delivery is provided, (b) by certified mail, (c) by fax, at the fax number set forth below, with a follow-up copy given by mail, or (d) by email at the addresses set forth below. Notices are effective when received, except notices delivered by certified mail, which shall be considered as received two business days after the date mailed, if delivery is refused. Each party shall have the right to change the address and representative to receive notices by providing notice of such change to other party.

13.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.6. Counterparts/Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed, emailed or photocopied signatures hereon shall be deemed originals for all purposes.

13.7. Interpretation. Any provision of this Agreement which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect. The captions in this Agreement are inserted for convenience of reference and in no way define, describe, or limit the scope of intent of this Agreement or any of the provisions of this Agreement. The presence or absence of language in prior drafts of this document shall not be used to interpret any provision hereof. This Agreement has been prepared and reviewed by attorneys for both Parties, so any rule of construction that ambiguities are to be construed against the Party responsible shall not apply.

14. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the Parties and any agreement or representation respecting the Property or the duties of Buyer and Seller in relation thereto not expressly set forth herein is null and void. No amendment to or modification of this Agreement shall be valid or enforceable unless in writing and signed by Buyer and Seller. This Agreement shall survive the Close of Escrow. Buyer and Seller represent that they are authorized to execute this Agreement, that they have both been represented by legal counsel or had the opportunity to be represented by legal counsel, and that they have not relied on any statements or representations of Agent.

15. OTHER COVENANTS/CONDITIONS OF CLOSING.

15.1 Rezoning and Parcel Map. The Close of Escrow is conditioned upon the rezoning of the School Site to R-1-U, the recording of Parcel Map creating the School Site as generally shown on Exhibit A, and the granting of an easement and utility easements to access the School Site across the City owned parking lot at the Onetta Harris

Community Center and for shared parking, subject to a shared maintenance agreement to be recorded with the parcel map and Deed. The Parcel Map, zoning, and the easement and the shared maintenance agreement shall be subject to review and approval by the parties during the Due Diligence Period. Seller shall use commercially reasonable efforts to complete the conditions required to close escrow at the earliest possible date, including, without limitation, the preparation of the easement and the shared maintenance agreement.

15.2 Option to Repurchase Property.

A. Repurchase Option if School Not Constructed. The City of Menlo Park shall have an option to repurchase the Property, including both the School Site and the Single Family Lot, for the Purchase Price in the event Buyer, if within five (5) years of the Close of Escrow, has not substantially completed the construction of a new school for Beechwood School on the School Site and in such event the Lease, referred to in Section 15.5 below, shall be reinstated without change as of the date of the repurchase, however, Buyer shall have no obligation under such Lease for the period of time Buyer owned the Property. This option may be exercised by giving written notice of such exercise within one hundred eighty (180) days of the expiration of the 5th anniversary of the Close of Escrow notifying Buyer of the Seller's election of its option to repurchase the Property.

B. Right of First Refusal if Sale for Non School Use. The City shall have a right of first refusal to purchase the Property if at any time Buyer desires to sell the Property for any purpose other than the operation of a school primarily serving the Ravenswood school district area on a non-profit basis. Any sale or transfer of the Property for a school, as set forth herein, shall remain subject to this right of first refusal. If Buyer desires to sell the Property for any use other than a school as described herein, Buyer shall notify Seller of its desire to sell the Property, or a portion of the Property, and Seller shall have an option, exercisable within ninety (90) days of receipt of written notice of Buyer's intent to sell the Property, to purchase the Property for the lesser of

(i) the price to be paid by a bona fide purchaser for value,
or

(ii) the appraised value of the Property valued as if the Property was zoned R-1-U with a maximum of 11 lots in its then condition (the intention being that the Seller shall be entitled to repurchase the Property based upon the same appraisal procedure used for this transaction). Buyer shall also be entitled to receive the fair market value of the improvements that Buyer has constructed upon the Property but only if the Seller intends that the improvements shall be used following its purchase. If Seller does not so intend to use the improvements (and, thus, does not reimburse Buyer for their value), Buyer shall have the right to remove the improvements upon not less than one hundred twenty days notice to Buyer. The appraiser shall be jointly selected by the parties, and if they cannot agree, then the appraiser shall be selected by the Presiding Judge of the San Mateo County Superior Court.

C. Buyer's Right to Develop Property. If the events occur which give the Seller the option to repurchase the Property, as set forth in Section 15.2B, above, and if Seller contemplates that the Property shall be developed, rather than continue as a

school site, then Buyer shall have the first right to so develop the Property for the use contemplated by the Seller provided Buyer complies with all reasonable requirements the Seller would place on other parties who would develop the Property for that use.

D. Memorandum of Agreement. At the Close of Escrow, a Memorandum of Option shall be recorded against the Property evidencing the Seller's option and right of first refusal, as set forth above, which shall survive the Close of Escrow and shall remain in effect for a period of fifty five (55) years.

15.3 Repurchase on Certain Events. Buyer intends to apply to the City of Menlo Park for a use permit and other approvals to construct a permanent school on the Property. In the event the City of Menlo Park fails or refuses to approve a use permit and other approvals on terms and conditions reasonably acceptable to Buyer within three (3) years of the Close of Escrow, Buyer shall have the option to require the Seller to repurchase the Property from Buyer for the Purchase Price paid by Buyer and in such event the Lease, referred to in Section 15.5 below, shall be reinstated without change as of the date of the repurchase, however, Buyer shall have no obligation under such Lease for the period of time Buyer owned the Property. Said repurchase shall be completed within 120 days of Buyer's notice to Seller that it has exercised this option. Title shall be delivered to Seller free and clear of all liens.

15.4 Consent to Buyer Entry for Cleanup. Seller authorizes Buyer to enter upon the Property to remove the existing weeds and debris that has been dumped on the Property and Buyer agrees to do so within 45 days of the Effective Date. Buyer shall be entitled to a credit against the Purchase Price for the actual cost of such removal, subject to the prior review and approval of the cost of such work by the Director of Public Works. Seller shall be named as an additional insured on the commercial liability policy of the person or company hired by Buyer to perform the work. If for any reason this Agreement is terminated, including but not limited to Buyer's election not to proceed with the purchase, and escrow does not close, Seller shall reimburse Buyer for its costs of removing the weeds and debris as provided herein. This reimbursement obligation is in addition to any other reimbursement obligation set forth in this Agreement.

15.5 Termination of Lease. Upon the Close of Escrow, the existing Lease between California Family Foundation and the City of Menlo Park for the Beechwood School site shall terminate and shall be of no further force or effect (subject to Sections 15.2 and 15.3 above).

[SIGNATURES APPEAR ON FOLLOWING PAGES]

BUYER'S ACCEPTANCE OF AGREEMENT:

The undersigned Buyer agrees to purchase the Property for the price and upon the terms and conditions herein stated.

Buyer:

California Family Foundation
a 501(c)(3) operating foundation

By: _____
Name: _____
Title: _____

Dated: _____, 2012

Notice Address for Buyer:

California Family Foundation
Attn.: Richard Jacobsen
Telephone No: (650) 493-5314
Facsimile No: _____
Email: RMJ@wsjproperties.com

WITH A COPY TO:

Thomas R. Cave
Groom and Cave, LLP
1570 The Alameda, Suite 100
San Jose, California 95126
Telephone No: (408) 286-3300
Facsimile No: (408) 286-3423
Email: tcave@groomandcave.com

SELLER'S ACCEPTANCE:

The undersigned Seller accepts the foregoing offer and agrees to sell the Property to Buyer for the price and on the terms and condition stated herein. Seller acknowledges receipt of an executed copy of this Agreement.

Seller:

City of Menlo Park,
A California Municipal Corporation

By: _____
Name: Alex D. McIntyre
Title: City Manager

Dated: _____, 2012

ATTEST:

Margaret S. Roberts, MMC
City Clerk

Notice Address for Seller:

City of Menlo Park
Attn.: Alex D. McIntyre, City Manager
Telephone No: (650) 330-6610
Facsimile No: (650) 328-7935
Email: admccintyre@menlopark.org

With copies of notices to:

William L. McClure
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Telephone No: (650) 324-9300
Facsimile No: (650) 324-0227
Email: wlm@jsmf.com

ACKNOWLEDGED AND ACCEPTED BY ESCROW HOLDER:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

Dated: _____, 2012

**LEGAL DESCRIPTION
PROPOSED BEECHWOOD SCHOOL PARCEL**

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of Lot 1, Block 43 as said Lot and Block are shown on that certain Map entitled "Tract No. 525, Belle Haven City, Block 43", filed for record in the Office of the Recorder of said County on September 18, 1940, in Book 23 of Maps at Page 6, and a portion of the Lands described in Book 3441 of Official Records at Page 533; being more particularly described as follows:

Beginning at the northwesterly corner of Lot 2, Block 33 as shown on that certain Map entitled "Tract No. 1, Blocks 18-35, Belle Haven City", filed for record in the Office of the Recorder of said County on May 28, 1932, in Book 20 of Maps at Pages 5 through 7;

Thence along the northwesterly line of said Lot 2 South 22°24'04" West, 17.87 feet to the northerly corner of Lot 1, Block 33, as shown on said Map filed in Book 20 of Maps at Pages 5 through 7;

Thence leaving said corner North 5°01'00" West, 86.20 feet;

Thence North 72°09'37" West, 18.19 feet;

Thence North 5°00'31" West, 22.60 feet to the northerly line of said Lot 1 of Block 43 as shown on said Map filed in Book 23 of Maps at Page 6;

Thence along said northerly line of said Lot 1 and said Lands described in Book 3441 of Official Records at Page 533 North 84°59'29" East, 1266.90 feet;

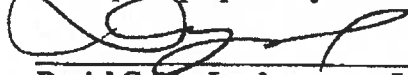
Thence leaving said northerly line South 5°00'31" East, 100.00 feet to the northeasterly corner of Lot 26, Block 33, as shown on said Map filed in Book 20 of Maps at Pages 5 through 7;

Thence along the northerly line of said Block 33 South 84°59'29" West, 1241.90 feet to the Point of Beginning.

Containing 125,517 square feet, more or less;

As shown on the plat attached hereto and made a part hereof.

Description prepared by MacLeod and Associates, Inc.

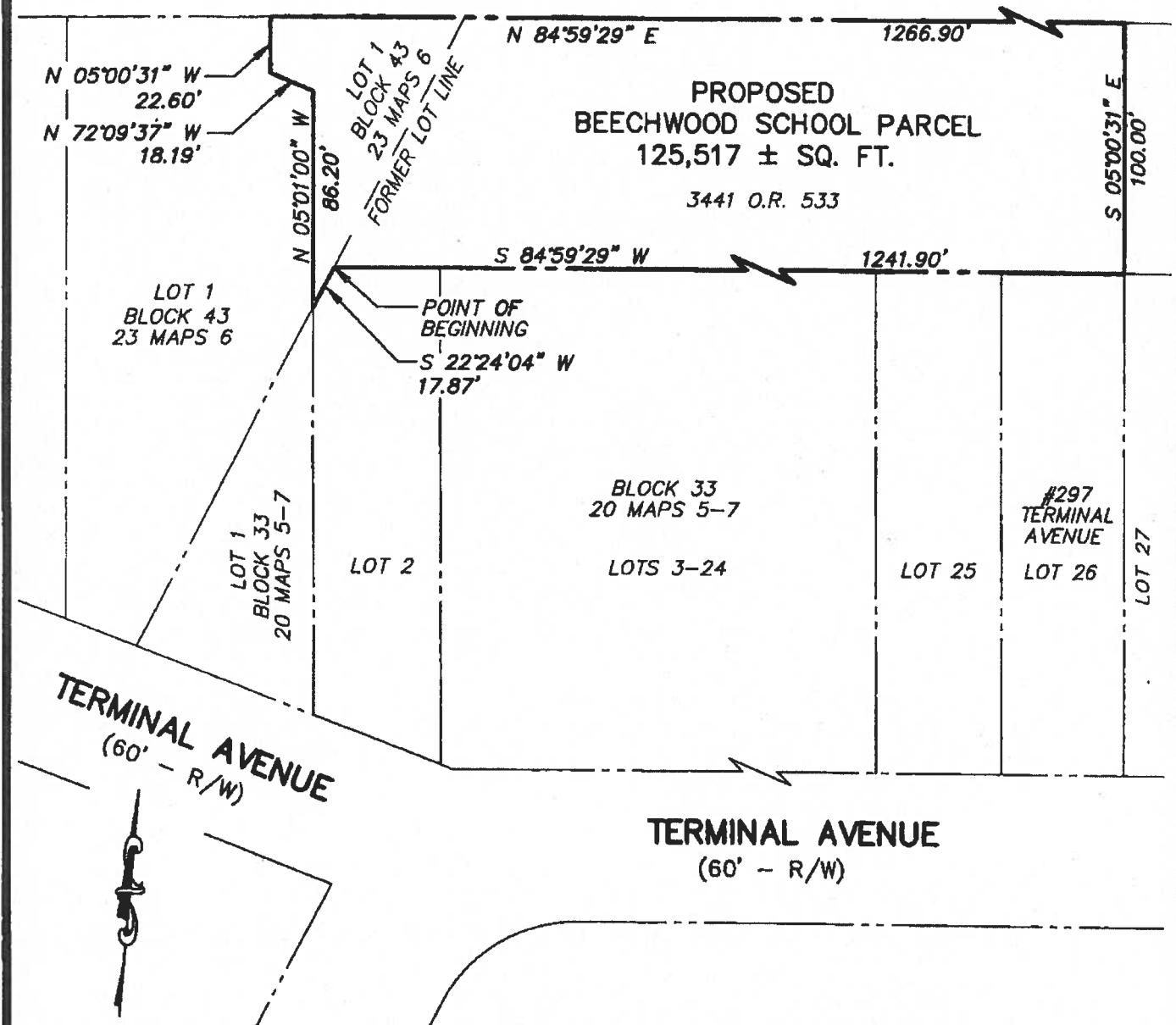

Daniel G. MacLeod L.S. 5304

APRIL 9, 2012
Date



Exhibit AP, 1012

LANDS OF SOUTHERN PACIFIC RAILROAD CO.
DUMBARTON BRANCH



TITLE: PLAT TO ACCOMPANY LEGAL DESCRIPTION
PROPOSED BEECHWOOD SCHOOL PARCEL
MENLO PARK SAN MATEO COUNTY CALIFORNIA

PREPARED FOR: CITY OF MENLO PARK

PLAT: RJD	SCALE: 1" = 60'	DATE: 04-09-12	JOB #: 3030-08
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MacLEOD AND ASSOCIATES
CIVIL ENGINEERING • LAND SURVEYING
965 CENTER STREET SAN CARLOS CA 94070 (650) 593-8580

EXHIBIT B

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

LOT 26 IN BLOCK 33, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT NO. 1, BLOCKS 18 TO 35, BELLE HAVEN CITY, IN THE COUNTY OF SAN MATEO", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MAY 28, 1932 IN BOOK 20 OF MAPS AT PAGE(S) 5, 6 AND 7.

JPN: 055-033-331-13

APN: 055-331-130



PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 17, 2012

Staff Report #: 12-061

Agenda Item #: F-1

REGULAR BUSINESS: **Approve a Comment Letter on Metropolitan Transportation Commission Memorandum of Understanding on High Speed Rail Early Investment Strategy for a Blended System on the Peninsula Corridor to be sent to Caltrain and SMCTA**

RECOMMENDATION

The City Council High Speed Rail Subcommittee recommends that the City Council approve a comment letter on Metropolitan Transportation Commission's (MTC) - Memorandum of Understanding (MOU) on High Speed Rail Early Investment Strategy for a Blended System on the Peninsula Corridor to be sent to Caltrain and SMCTA.

BACKGROUND

Established in 1996, the California High Speed Rail Authority (CHSRA) is charged with planning, designing, constructing, and operating a state-of-the-art high speed train system. The High Speed Rail system as a whole would serve San Diego to Sacramento, including other major cities in-between. A branch of the system would separate and run from the Central Valley to the San Francisco Bay Area. The system is planned to access San Jose as well as San Francisco along the Peninsula within Caltrain right-of-way, with other local stops.

The CHSRA 2012 draft business plan has proposed a major shift toward a blended system approach for Phase One that will coordinate the development and operations of high-speed trains with existing passenger rail systems, such as Caltrain on the San Francisco Peninsula.

This approach also provides integration with high speed rail and regional/local passenger rail systems and targets cost-effective near term solutions in areas that share existing commuter rail facilities to reduce the environmental impacts of the planned full system and to achieve substantial cost savings.

As CHSRA is working to revise its draft Business Plan, they have identified various stakeholders in Southern and Northern California and have asked what projects Caltrain would propose for investment should early money become available. Southern California has already defined their projects with approximately a \$2 billion budget and a timeframe of 2020. With these general timeframes, the Bay Area projects are being defined.

According to Caltrain staff, the early investment parameters for projects:

- They must be located in the San Jose to San Francisco segment of the HSR system.
- They must support both Caltrain modernization and the blended system.

- They must not compromise the local planning process.
- It must be achievable by 2020.
- The funding, up to \$2 billion, would be a match between Proposition 1A money and other funding sources.

The vision in Caltrain's Draft Proposal is the blended system supporting both Caltrain and HSR electrified service connecting at San Jose Diridon to downtown San Francisco. This vision would be realized in two incremental steps. The early investment being proposed is the first increment which includes electrification of Caltrain service and Positive Train Control.

The recommended projects to achieve this are the Communications Based Overlay Signal System/Positive Train Control (CBOSS/PTC), Caltrain electrification and the installation of poles and wires and power facilities throughout the corridor and conversion of trains from diesel to electric.

The cost and funding for the second increment which would achieve an HSR "one-seat" ride from Los Angeles to San Francisco is still to be determined. The key projects include the downtown extension which would extend the commuter rail service from 4th and King to downtown San Francisco. HSR and Caltrain systems would have to be integrated. There would be a need for more infrastructure upgrades such as replacing the ties and straightening out certain curves to support higher speeds. Stations would have to be upgraded to accommodate HSR stations in the corridor, complete more grade separations or upgrades to the crossings and the issue of locating passing tracks which is to be determined.

ANALYSIS

MTC Resolution No. 4056 is an MOU between and among MTC, five Bay Area transportation agencies (the Peninsula Corridor Joint Powers Board (JPB), the San Francisco County Transportation Authority (SFCTA), the San Mateo County Transportation Authority (SMCTA), the Valley Transportation Authority (VTA), the Transbay Joint Powers Authority (TJPA), the City of San Jose, the City and County of San Francisco, and the CHSRA proposing a set of improvements to the Peninsula rail corridor. The MOU includes the following provisions:

- Establish an Inter-related Program of Projects that addresses corridor capacity, operational efficiency and public safety issues required to accommodate the mixed traffic capacity requirements of high-speed rail, commuter and freight services.
- Identify the Inter-related Program of Projects as the following:
 - Corridor Electrification Infrastructure Project,
 - Advance Signal System (also known as Positive Train Control or PTC),
 - An extension of the service to the Transbay Transit Center, which is the Proposition 1A designated northern terminus of high-speed rail,
 - New high-speed rail stations at Diridon Station in San Jose and a Millbrae Station at San Francisco International Airport,
 - Needed upgrades to stations, tunnels, bridges, passing tracks, and other track modifications such as selected grade separations required to accommodate the mixed traffic capacity requirements of high speed rail service and commuter services.

- The MOU recognizes that the most substantial and tangible near term investment benefits will be realized when two essential system wide improvements are delivered: the Corridor Electrification Infrastructure Project that includes the needed rolling stock and the Advance Signal System Project.

MTC approved Resolution No. 4056 on March 28, 2012, which is Attachment A in this staff report.

The City is supportive of a two-track blended system in Menlo Park within the existing Caltrain right-of-way or a new system in an underground configuration. The City Council opposes any system on an elevated structure, and is against expansion in Menlo Park to a four-track system for any phase of the project unless it is in an underground configuration. Based on Caltrain staff presentation at the March 6th, 2012 City Council meeting, the April Caltrain informational item, and the MOU, it appears that Caltrain agrees with the rail corridor remaining primarily a two-track blended system in Menlo Park.

However, the City still has some lingering concerns with the High Speed Rail Early Investment Strategy which need to be addressed. The High Speed Rail Subcommittee recommends the letter should state that Menlo Park support for the blended system is contingent on addressing these items. Some of the concerns relate to the impacts as a result of the increased number of trains on the rail corridor and the additional impacts resulting from the gate down time to vehicles, bicycles and pedestrians on the cross-streets, the sufficiency and accuracy of the Ridership Study for High Speed Rail remains questionable, the level of service increases specifically committed to Menlo Park's station be identified, the resulting impacts associated with any additional trains along the corridor be determined, and funding for the proposed grade separations is not included in the MOU. These concerns are detailed in the draft Council comment letter regarding the MOU to the Caltrain JPB, Attachment B. An identical letter will be addressed and sent to the San Mateo County Transportation Authority Board.

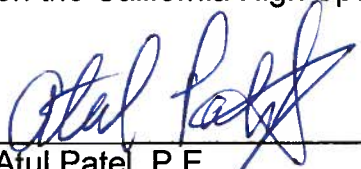
IMPACT ON CITY RESOURCES

The High Speed Rail Project involves no direct commitments of City resources. The project has, however, three major implications for City resources:


- 1) The City could secure funding for grade separations at all four of its roadway crossings without any City financial contribution of local funds or its discretionary share of County transportation sales tax (Measure A) funds.
- 2) As currently planned, construction would be partially funded by bonds paid off by direct draw-downs on the State general fund. Since cities, counties, schools, and many special districts, as well as many aspects of State government, compete for State funding when resources are limited, this funding mechanism could place the high speed rail project in competition for a share of the State funding that Menlo Park receives for other programs/projects.
- 3) Although design and construction of the added tracks and grade separations through Menlo Park would be the high speed rail project's costs, Menlo Park would incur staff costs in coordinating the planning, design, and construction activities of the project.

POLICY ISSUES

Comments contained in the draft letter are consistent with prior actions taken by the City on the California High Speed Rail Project.



Atul Patel, P.E.
Senior Transportation Engineer



Charles Taylor, P.E.
Public Works Director

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS: A. MTC Resolution No. 4056 Memorandum of Understanding
B. Draft letter to the Joint Powers Board and San Mateo County Transportation Authority

MEMORANDUM OF UNDERSTANDING

**HIGH SPEED RAIL EARLY INVESTMENT STRATEGY FOR A BLENDED SYSTEM IN
THE SAN FRANCISCO TO SAN JOSE SEGMENT KNOWN AS THE PENINSULA
CORRIDOR OF THE STATEWIDE HIGH-SPEED RAIL SYSTEM**

BY AND AMONG THE FOLLOWING PARTIES (PARTIES)

**CALIFORNIA HIGH SPEED RAIL AUTHORITY (AUTHORITY)
METROPOLITAN TRANSPORTATION COMMISSION (MTC)
PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY (SFCTA)
SAN MATEO COUNTY TRANSPORTATION AUTHORITY (SMCTA)
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)
CITY OF SAN JOSE
CITY AND COUNTY OF SAN FRANCISCO
TRANSBAY JOINT POWERS AUTHORITY (TJPA)**

Recitals

Whereas, the California High-Speed Rail AUTHORITY (AUTHORITY) is responsible for planning, building and maintaining an 800-mile statewide high-speed rail system and improved mobility through the development of safe, clean, reliable rail technology; and

Whereas, the AUTHORITY, in partnership with the Federal Railroad Administration is advancing a California High-Speed Train (HST) network that links the major metropolitan areas of the State of California utilizing corridors into and through Southern, Central and Northern California; and

Whereas, the AUTHORITY has responsibility for planning, construction and operation of high-speed passenger train service in California and is exclusively charged with accepting grants, fees and allocations from the state, from political subdivisions of the state and from the federal government, foreign governments, and private sources; and

Whereas, the AUTHORITY's 2012 Business Plan proposes to incrementally develop the HST system utilizing a blended system approach that will coordinate the development and operations of HST with existing passenger rail systems that improves, enhances and expands the integration of high-speed and regional/local passenger rail systems; and

Whereas, this blended approach requires a series of incremental investments in the Peninsula corridor to prepare for integrated service and operations and the AUTHORITY recognizes the need for a collaborative effort with regional and local agencies to identify early investment projects along existing rail corridors that improves service, improves safety and efficiency, and creates linkages between HST and local passenger rail service; and

Whereas, a blended system will remain substantially within the existing Caltrain right-of-way and will accommodate future high-speed rail and modernized Caltrain service along the Peninsula corridor by primarily utilizing the existing track configuration on the Peninsula; and

Whereas, this MOU is specific to project investments that upgrade existing rail service and prepare for a future high-speed train project that is limited to infrastructure necessary to support a blended system, which will primarily be a two-track system shared by both Caltrain and high-speed rail and will be designed to continue to support existing passenger and freight rail tenants; and

Whereas, local transportation improvement projects are required to be included in a Regional Transportation Plan (Plan), and the Metropolitan Transportation Commission, working closely with local agencies is charged with developing the Plan every four years to provide guidance for transportation investments within the Bay Area and with development of regional transportation strategies to address the needs of the San Francisco Bay Area; and

Whereas, on December 19, 2001, MTC adopted the Regional Transit Expansion Program of Projects (Resolution 3434) which includes the Transbay Transit Center Phase 2 Downtown Extension and Caltrain Electrification projects as regional priorities for transit expansion; and

Whereas, the Sustainable Communities and Climate Protection Act of 2008 (SB 375, Steinberg, Statutes of 2008) requires the Plan to include a Sustainable Communities Strategy (SCS), showing evidence of integrated planning, goals that establish and strengthen the crucial linkages between the economy, land use development and the regional transportation system to improve access to jobs, education, healthcare, and other amenities in ways that improve the overall quality of life in the Bay Area and the blended system on the Peninsula corridor in the California High-Speed Rail program are consistent with achieving SB 375 goals to reduce greenhouse gas emissions; and

Whereas, all Parties are involved in the planning, funding, construction and/or operation of heavy and light rail transit, buses, and/or commuter train services in the Peninsula corridor and are considering intermodal service integration, including linkages to the proposed HST service; and

Whereas, it is the intent and purpose of this MOU to strengthen the working relationship between the PARTIES to facilitate the development and implementation of passenger rail improvements that will improve local passenger rail service and operations while preparing designated HST corridors for eventual HST operation to achieve region wide systems integration of rail service in Northern California; and

Whereas, local transportation improvement projects are required to be environmentally evaluated according to CEQA and NEPA regulations and where necessary, existing environmental approval covering incremental improvements to the Peninsula corridor will be updated to reflect evolving local and regional conditions and concerns; and

Whereas, incremental improvements and the blended system project will be planned, designed and constructed in a way that supports local land use and Transit Oriented Development policies along the Peninsula corridor; and

Now, THEREFORE, it is mutually understood and agreed to by the PARTIES as follows:

To jointly support and pursue the implementation of a statewide high speed rail system that utilizes a blended system and operational model on the Peninsula corridor and that has its northern terminus at the Transbay Transit Center in San Francisco as specified in law, and its southern limit at Mile Post 51.4 at the Tamien Station in San Jose. The blended system will support and benefit operation of both Caltrain and future high speed train service.

To jointly recognize a defined set of Inter-related Program of Projects that are consistent with the AUTHORITY's phased implementation plan, are consistent with a blended system operation of the corridor and achieve objectives that include but are not limited to system capacity and connectivity for Caltrain, HST and freight, public safety, operational efficiency, effectiveness and connectivity.

To generally describe, identify and work to fully fund an Inter-related Program of Projects known as the Corridor Electrification Infrastructure Project, Advanced Signal System (also known as Positive Train Control), the Downtown Extension to the Transbay Transit Center, which is the Proposition 1A designated northern terminus of high-speed rail, new high-speed stations at San Jose Diridon Station and a Millbrae BART/Caltrain Station with a connection to San Francisco International Airport, and a Core Capacity project of needed upgrades to stations, tunnels, bridges, potential passing tracks and other track modifications and rail crossing improvements including improvements and selected grade separations required to accommodate the mixed traffic capacity requirements of high-speed rail service and commuter services.

To recognize that of the set of Inter-related Program of Projects, the most substantial and tangible early-investment benefits will be realized when two essential projects are identified for an Initial Investment Strategy to secure, at the earliest possible date, the benefits of the blended system for the traveling public and an Initial Investment Strategy is needed to provide the groundwork upon which future construction can more readily progress.

To recognize that the two Inter-related projects for Initial Investment Strategy are the Corridor Electrification Infrastructure Project that includes the needed rolling stock to operate revenue service; and the Advanced Signal System project and to adopt as part of this MOU, the funding plans needed to move as expeditiously as possible toward construction of these two essential projects.

To work toward the implementation of the Initial Investment Strategy to the maximum extent feasible and that the PARTIES shall endeavor to incorporate the Electrification Infrastructure and Advanced Signal System projects into their respective plans and that the AUTHORITY shall reflect this MOU in its Business Plan by December 31, 2012.

That the aforementioned projects will need to be environmentally analyzed and cleared according to CEQA and NEPA guidelines as appropriate, including updating and recirculation of the Caltrain Electrification EA/FEIR completed in 2009.

That the AUTHORITY will endeavor in good faith to secure approval and release of \$ 600 million of Proposition 1A funds and \$106 million of Proposition 1A "connectivity" funds

consistent with the funding plans contained in this MOU as required to complete at the earliest possible date, the Corridor Electrification Infrastructure and Advanced Signal System projects.

That the AUTHORITY will endeavor in good faith to secure approval of Proposition 1A “connectivity” funds for Bay Area project sponsors consistent with and in accordance with the schedule and project expenditure plan approved and as amended by the California Transportation Commission.

That the AUTHORITY will work with funding partners to assist in seeking and releasing the funds necessary to implement the Electrification Infrastructure Project and Advanced Signal System project. Local agencies may provide local funds, real property, or in-kind resources as matching funds where matching funds are required to qualify for grant funds. PARTIES agree to work together to identify the appropriate amounts and types of local resources that may be used to support the completion of the Electrification Infrastructure Project and the Advanced Signal System Project.

That the AUTHORITY and appropriate PARTIES will coordinate to obtain funding using a mutually agreed-upon strategy. In the event that funding for the program is constrained by statute, recession of existing law, change in funding requirements or eligibility, reduction in funding level or availability, the AUTHORITY and the PARTIES shall takes steps notify each other as needed in a timely manner.

FUNDING PLAN

Program Costs and Proposed Funding for Peninsula Corridor Projects: Electrification and Advance Signal System

Program Costs <i>(in \$ millions, year of expenditure)</i>	
Advance Signal System / Positive Train Control (PTC)	\$231
Electrification and Electric Multiple Units (EMUs)	\$1,225
Total	\$1,456

Program Funding <i>(in \$ millions)</i>	
Source	Amount
JPB Contributions	\$180
JPB Local - Currently Available	\$11
Caltrain PTC	\$4
Subtotal Local	\$195
Prop 1A Connectivity	\$106
Prop 1A High Speed Rail Authority	\$600
Prop 1B Caltrain	\$24
Subtotal State	\$730
Federal RR Admin. for PTC	\$17
Federal Transit Admin prior/current obligations	\$43
Federal Transit Admin future obligations	\$440
Subtotal Federal	\$500
MTC Bridge Tolls	\$11
BAAQMD Carl Moyer	\$20
Subtotal Regional	\$31
Total	\$1,456

See Next Page for Notes.

Funding Plan Notes:

1. Caltrain Joint Powers Board (JPB) Local Contribution is \$60 million from San Mateo sales tax, \$60 million from VTA sales tax, and \$60 million from San Francisco (\$23 million from sales tax, \$37 million from Regional Transportation Improvement Program (RTIP)/local/other). Each agency's contribution, including Proposition 1A Connectivity funds as outlined in Note 2, is contingent upon the \$60 million each from the other two JPB partners.
2. Prop 1A Connectivity is \$42 million from Caltrain, \$26 million from VTA, and \$38 million from BART (2nd priority for BART after receipt of \$150 million for railcars).
3. Prop 1B Caltrain is \$20 million Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA), \$4 million State-Local Partnership Program (SLPP).
4. FTA Prior/Current Obligations is \$16 million for electrification in prior years, \$27 million for EMUs in FY12.
5. FTA Future Obligations is \$315 million for electric multiple units (EMUs), \$125 million from fixed guideway caps. Funds will be programmed in accordance with MTC Transit Capital Priorities process between approximately FY2012-2013 and FY2022-2023.
6. Bridge Tolls is from Regional Measure 1 (RM1) West Bay Rail Reserve.
7. Bay Area Air Quality Management District (BAAQMD) funds to be confirmed.
8. Assumes that all local sources, Prop 1B PTMISEA, all federal sources, and bridge tolls can be used as match to Prop 1A funds, totaling \$726 million in matching funds for \$706 million in Prop 1A funds.
9. Other potential future funding sources could be substituted if secured, including federal Transportation Investment Generating Economic Recovery (TIGER) funds (such as current Caltrain application for \$44 million), State Interregional Transportation Improvement Program (ITIP) funds, and private financing.

KIRSTEN KEITH
MAYOR

PETER OHTAKI
MAYOR PRO TEM

ANDREW COHEN
COUNCIL MEMBER

RICHARD CLINE
COUNCIL MEMEBR

KELLY FERGUSSON
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701 LAUREL STREET, MENLO PARK, CA 94025-3483
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April 17, 2012

Adrienne Tissier
Chairperson
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306

Subject: Comments on the Memorandum of Understanding: High Speed Rail Early Investment Strategy for a Blended System on the Peninsula Corridor

Dear Chair Tissier:

This letter is in reference to the Memorandum of Understanding regarding the High Speed Rail Early Investment Strategy for a blended system on the Peninsula corridor.

We commend the work done by all the stakeholders in developing an alternative approach for improvements to the regional rail system and expansion and integration of high-speed and regional/local passenger rail systems in the Bay Area. We concur with California High Speed Rail Authority utilizing a blended system approach within the existing JPB/Caltrain right-of-way.

The City remains committed to a two-track blended system in Menlo Park within the existing Caltrain right-of-way or a new system in an underground configuration. The City Council opposes any system on an elevated structure, and is against expansion in Menlo Park to a four-track system for any phase of the project unless it is in an underground configuration. Based on Caltrain staff presentation at the March 6th, 2012 City Council meeting, it appears that Caltrain agrees with the rail corridor remaining a two-track blended system in Menlo Park.

However, in light of the State Attorney General ruling regarding whether a blended system fits within Prop. 1A remaining undetermined, the City still has some lingering concerns with the High Speed Rail Early Investment Strategy due to the lack of details concerning the impacts to the projects.

The City has three concerns which need to be addressed prior to Menlo Park supporting the blended system approach.

1. The City expects Caltrain to provide more service along the corridor, with additional stops in Menlo Park, but wants to ensure that it is completed in a manner that maximizes benefits and reduces or eliminates impacts. With that said, Menlo Park has concerns about the Early Investment Project to the extent that it may implicitly obligate Caltrain to future High Speed Rail efforts that have not been fully discussed or agreed to by the local jurisdictions.

The Council is concerned, about the potential of unintended consequences. The use of a blended system may increase the use of the system. Additional trains could result in increased west-east congestion by non-train traffic (bikes, cars, pedestrians) and safety concerns while the gates are down for the trains and safety concerns for non-train traffic. Congestion and traffic delays and horn noise impacts will need to be mitigated and those mitigations will need to be evaluated and agreed to by the local jurisdictions. The City would like funding for grade separations and/or other mitigation measures to mitigate impacts.

2. Questions remain unanswered as billions of dollars are allocated for the High Speed Rail system. There is a lack of information to support the full cost of the overall project from the California High Speed Rail Authority.
 - a. The sufficiency and accuracy of the Ridership study for High Speed Rail remains questionable.
 - b. The Level of Service increases specifically committed to Menlo Park's station and the resulting impacts from additional trains along the corridor to cross-street traffic has not been determined yet.
 - c. Proposed grade separations and any proposed closures of cross-streets have not been determined and funding for grade separations is not included in this MOU.
3. We are concerned that earlier discussions and statements from State legislators and the Governor propose exempting the project from the CEQA process. The City supports the CEQA process. We believe in the value of the CEQA process, and urge that the CEQA process be applied consistently.

Another consideration is the lack of equal representation of cities in the Memorandum of Understanding. For instance, the City of San Francisco is overly represented (the Joint Powers Board, San Francisco County Transportation Authority, the City and County of San Francisco, and the Transbay Joint Powers Authority), in the MOU, as is the City of San Jose (City of San Jose, VTA, and Joint Powers Board), but the Peninsula Corridor Cities are not represented at all although the impacts are proportionately more intense throughout San Mateo County.

We would like to support the Early Investment Strategy, but we need clarity on final outcomes for the early investment projects

The City will continue to participate in the Early Investment Project review process as well as Caltrain Electrification EIR process to review impacts and proposed mitigation measures within Menlo Park.

Sincerely,

Kirsten Keith
Mayor on behalf of the entire City of Menlo Park City Council

cc: Jose Cisneros
Malia Cohen
Tom Nolan
Jerry Deal
Arthur Lloyd
Ash Kalra
Liz Kniss
Ken Yeager (Vice Chair)
Mike Scanlon, Caltrain Executive Director
Marian Lee, Director of Caltrain Modernization Program



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 17, 2012
Staff Report #: 12-063

Agenda Item #: F2

REGULAR BUSINESS: Consider the Term Sheet for the Development Agreement for the Facebook East Campus Project Located at 1601 Willow Road

RECOMMENDATION

Staff recommends that the City Council approve the proposed Term Sheet for the Facebook East Campus Development Agreement (Attachment A) and proceed with the project review process according to the previously established schedule as follows:

- May 7: Planning Commission public hearing and recommendation on all aspects of the project;
- May 29: City Council public hearing and first step of actions on all aspects of the project; and
- June 5: City Council second (and final) step of actions on all aspects of the project.

BACKGROUND

The City is currently conducting the environmental review and processing the development applications for the Facebook Campus project located at the intersection of Willow Road and Bayfront Expressway. Facebook, the Project Sponsor seeks to amend the existing Conditional Development Permit (CDP) for the East Campus located at 1601 Willow Road by converting the existing employee cap of 3,600 people into a vehicular trip cap. The proposed trip cap includes a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m., 2,600 trips during the PM Peak Period from 4:00 p.m. to 6:00 p.m., and 15,000 daily trips. The trip cap would allow approximately 6,600 employees to occupy the East Campus. This action will not affect any future development of Facebook's West Campus.

In concert with the requested CDP Amendment, the Project Sponsor is requesting a legally binding Development Agreement. The Development Agreement would define the long-term land use intentions, specific terms and conditions for the development, and public benefits that would apply, should the East Campus component of the Project be approved. Under State law (California Government Code Sections 6584-65869.5), development agreements enable the City to grant a longer-term approval in exchange for demonstrable public benefits.

The previous staff reports, which provide more detailed background information, plus the Draft Environmental Impact Report (EIR) and Draft Fiscal Impact Analysis (FIA) are available for review on the City-maintained project page accessible through the following link:

http://www.menlopark.org/projects/comdev_fb.htm

On February 14, 2012, the City Council provided direction to the City negotiating team to enter into good faith negotiations on the Development Agreement with the Project Sponsor. The Council direction was framed by the following parameters:

1. Provide a source of on-going revenue for as long as the land use entitlement to exceed 3,600 employees is in place.
2. Provide one-time items in the form of public improvements or studies that would benefit the surrounding area.
3. Provide a mechanism for funding programs and services that meet on-going community needs.
4. Pursue a commitment to fund housing opportunities in the City and surrounding region.
5. Pursue a trip cap penalty amount that is severe enough to ensure compliance with the project description.

In addition, the collective Council direction was accompanied by individual Council members' comments, which were informed by public comment obtained through a series of meetings. A summary of the Council comments, which are part of the minutes from the February 14, 2012 meeting, is included as Attachment B.

ANALYSIS

Development Agreement Negotiation Process

A Development Agreement is a contract between the City of Menlo Park and a project sponsor that delineates the terms and conditions of a proposed development project. A Development Agreement allows a project sponsor to secure vested rights, and it allows the City to secure certain benefits. The City Council is not obligated to approve a Development Agreement, but if the City Council does want to approve a Development Agreement, the terms of the Development Agreement need to be acceptable to both parties; one party cannot impose terms on the other party.

The City's negotiating team, comprised of the City Attorney, Public Works Director, Development Services Manager, and David Boesch acting as a consultant to the City, met multiple times over the past 10 weeks. The negotiating team met internally to

discuss strategy and specifics and held negotiating sessions with the applicant team. The City Attorney and the City Manager consulted with the Council Subcommittee, comprised of Mayor Keith and Council Member Cline, at key junctures in the negotiation process.

Development Agreement Term Sheet

The proposed Term Sheet, along with a cover letter from the Project Sponsor, is included as Attachment A. The Term Sheet reflects the “last, best and final” offer from the Project Sponsor. As explained by the Project Sponsor, this offer is a “stretch” for them as it relates to real estate decisions and is in addition to the required mitigation measures. The City negotiating team pushed hard on the Project Sponsor to put everything on table and not hold back something that could be offered during the remaining public meetings. The Council Subcommittee has reviewed the proposed Term Sheet and supports it.

The Term Sheet covers five main topics, each with multiple items that will get fleshed out as part of the full Development Agreement. Some of the topics crossover into mitigation measures from the EIR and potential conditions of approval that would appear in the Conditional Development Permit. When considering the terms of the Development Agreement, it is important to remember that it reflects a negotiated package and any one aspect cannot be viewed in isolation. The Term Sheet balances a number of interests including the City of Menlo Park, the City of East Palo Alto, the Menlo Park Fire Protection District and various community groups. The proposed Term Sheet can be summarized as follows.

Topic 1: City Benefits

Items 1 through 5 of the Term Sheet cover topics that provide benefit directly to the City. Items 1, 4 and 5 call for Facebook to make annual payments to the City of Menlo Park based on the following schedule so long as the increased intensity of use above 3,600 employees is in place:

- \$800,000 per year for years 1-5
- \$900,000 per year for years 6-10
- \$1,000,000 per year for years 11-15
- Adjusted annually above \$1,000,000 based on changes in the Consumer Price Index (CPI) for the remaining years

These annual payments are in lieu of sales tax or other revenues that might otherwise accrue to the City if the site was occupied by a sales tax producer. The first 10 years are guaranteed. After 10 years, Facebook has the right to revert to the previous use limitation of 3,600 employees or to reduce the entitlement as measured in trips and reduce the payment by a corresponding amount. Subsequent elections by Facebook to adjust the entitlements and therefore the corresponding annual payment could occur on

five-year intervals and must be made not less than 180 days before the start of City's fiscal year to provide adequate notice to the City for budget planning purposes.

Items 2 and 3 relate to one time payments to the City. Item 2 is a guaranteed payment of \$1.1 million for the City's unrestricted use toward capital improvement projects. Item 3 is a conditional payment if the City is able to secure other funds to pay for mitigations that Facebook is otherwise obligated to perform, such as transportation improvements.

Topic 2: Community Benefits

Items 6 through 17 of the Term Sheet cover a range of topics that can be categorized as Community Benefits. The Community extends beyond the jurisdictional boundaries of the City and the items have the potential to provide benefits to the City of East Palo Alto and other community groups. These topics range from one-time or annual financial commitments and commitments of Facebook staff and consultant resources through sponsoring programs or hosting events. The following summarizes the items covered under this topic:

- Creation of a Local Community Fund with a contribution of \$500,000
- Creation of a High School Internship Program
- Sponsoring job training programs and events
- Housing assistance through potential investments in low income housing tax credits and potential contributions to a housing development project
- Cooperate to underground electrical transmission lines
- Working to help close the Bay Trail Gap
- Participating in the Caltrans Adopt-a-Highway program for 5 years
- Continuing the "Facebucks" program for 3 years and other efforts to patronize Menlo Park businesses
- Promote local volunteer opportunities for Facebook employees
- Enhance proposed improvements to the undercrossing of Bayfront Expressway
- Explore the creation of Willow Road business improvement district and contribute seed funding up to \$50,000
- Perform ecologically sensitive improvements to the existing public trails around the perimeter of the East Campus

Topic 3: Environmental Commitments

Items 18 through 24 of the Term Sheet cover a range of topics that can be categorized as Environmental Commitments. Items 18, 19 and 20 are related to the East Campus' location adjacent near the San Francisco Bay and more particularly to the adjacent Don Edwards San Francisco Bay National Wildlife Refuge. The items address the need to be sensitive to endangered species and other wildlife when considering landscaping, window treatments, lighting, levee maintenance, and storm water treatment measures. Item 21 re-iterates Facebook's commitment to the vehicle trip cap and a willingness to share best practices related to its Transportation Demand Management (TDM) program. Finally, item 22 outlines Facebook's commitment to pursue Leadership in Energy and Environmental Design (LEED) certification.

Topic 4: Pedestrian and Bicycle Circulation Enhancements

Items 23 and 24 of the Term Sheet focus on bicycle and pedestrian improvements. Item 23 focuses on restriping to improve bicycle and pedestrian circulation in the City and East Palo Alto. Item 24 focuses specifically on pedestrian improvements to the U.S. 101 and Willow Road interchange.

Topic 5: Mutual Commitments

Items 25 through 31 cover a range of topics that can be categorized as Mutual Commitments. In general, these are items for which Facebook is requesting assurances and certainty from the City. These topics cover permit processing, changes to City ordinances, protection from new City fees, and the ability to pursue project modifications. In addition, item 29 references the fact that Facebook and the Menlo Park Fire Protection District have entered into an agreement related to the project. Staff understands that this agreement relates to the installation of emergency vehicle preemption devices (Opticom) on traffic signals in the vicinity of the project site. Item 30 clarifies that Facebook's obligations in the Term Sheet are contingent upon the absence or resolution of any potential legal challenges. Finally, Item 31 states that certain aspects of Facebook's offer are contingent upon an amicable resolution of issues with the City of East Palo Alto.

Evaluation of Terms Compared to Parameters and Council Comments

Staff believes that a majority of the parameters have been achieved in the proposed Term Sheet as discussed below. In addition, the negotiating team and the Project Sponsor did discuss all of the individual Council member comments contained in Attachment B, and explored certain items in greater depth that eventually did not appear on the Term Sheet.

Parameter 1: Provide a source of on-going revenue for as long as the land use entitlement to exceed 3,600 employees is in place.

The Term Sheet achieves this parameter. The Project Sponsor would be obligated to make an annual payment to the City so long as the increased land use entitlement remains in place. The Term Sheet includes a minimum payment to the city of \$8.5 million over the next 10 years. If the Project Sponsor elects to stay at the site at the same land use intensity, then the City would receive a total of \$5 million for years 11 through 15.

Parameter 2: Provide one-time items in the form of public improvements or studies that would benefit the surrounding area.

The Term Sheet achieves this parameter. The Project Sponsor has committed to make a one-time payment to the City of \$1.1 million with the potential for an additional payment if the City is successful in leveraging other funds. In addition, the Term Sheet includes a number of other one-time improvements that the Project Sponsor will be pursuing, primarily related to bicycle and pedestrian circulation improvements in the vicinity of the project site.

Parameter 3: Provide a mechanism for funding programs and services that meet on-going community needs.

The Term Sheet achieves this parameter. The Project Sponsor has committed to create a Local Community Fund to provide support for local community needs. The board of the fund will include representation from the City and from East Palo Alto.

Parameter 4: Pursue a commitment to fund housing opportunities in the City and surrounding region.

The Term Sheet includes a provision to consider funding housing opportunities. One potential avenue would be through the investment in low income housing tax credits for affordable housing projects in the City and in East Palo Alto. The other potential avenue would be through the investment of capital in a housing project in the City. In addition, the City has committed to adopting an update to its Housing Element.

Parameter 5: Pursue a trip cap penalty amount that is severe enough to ensure compliance with the project description.

The trip cap penalty is not intended to be a revenue generator. It is intended to be a deterrent to violate the trip cap, which is part of the project description. Although not articulated in the Term Sheet, the Project Sponsor has agreed to dollar amounts associated with the violations of the trip cap. The penalty amount would be \$50 per trip per day for violations in the AM peak period, PM peak period, or daily trips. The penalty would double if the threshold was exceeded in two consecutive months or for four months within any six month period. The penalty would double again if the threshold

was exceeded for six consecutive months. The following table provides examples of potential daily penalties based on three hypothetical violations.

Vehicles over Trip Cap	Tier 1 (\$50/trip)	Tier 2 (\$100/trip)	Tier 3 (\$200/trip)
100	\$5,000	\$10,000	\$20,000
300	\$15,000	\$30,000	\$60,000
500	\$25,000	\$50,000	\$100,000

Consideration of East Palo Alto Concerns

As mentioned previously, the Term Sheet reflects a balancing of interests, and not just interests of the City and Facebook. The Term Sheet also considers the interests of the City of East Palo Alto. A number of the items in the Term Sheet would be applicable and/or beneficial to the City of East Palo Alto, as well as the City of Menlo Park. Furthermore, the Council Subcommittee and the City Attorney met with the East Palo Alto Council Subcommittee and the East Palo Alto City Attorney early in the process to ensure that the lines of communication were open. Subsequent to the meeting, the respective City Attorneys conducted multiple follow up conversations to discuss various topics. One topic of conversation was the trip cap penalty. Given the unique circumstances of this particular project, the City of East Palo requested, and City staff acknowledged that it may be appropriate, to share a portion of the trip cap penalties with the City of East Palo Alto. The percentage splits for the sharing has yet to be finally determined, however, it is anticipated that the City would agree to a percentage split of any trip cap penalties with the City of East Palo Alto as part of the final project approvals. Another topic of conversation involved the incorporation of some material terms from a potential agreement that may be reached between the City of East Palo and Facebook into the City’s Development Agreement. This would be comparable to what Palo Alto did with Menlo Park’s memorandum of understanding related to the Stanford University Medical Center project.

IMPACT ON CITY RESOURCES

The Project Sponsor is required to pay planning permit fees, based on the City’s Master Fee Schedule, and to fully cover the cost of staff time spent on the review of the Project. The Project Sponsor is also required to bear the cost of the associated environmental review and FIA. For the environmental review and FIA, the Project Sponsor deposits money with the City and the City pays the consultants.

The FIA itself provides projections of the potential changes in fiscal revenues and service costs directly associated with development of the proposed project, for both the City and associated special districts. The Draft FIA was released on December 8, 2011 for a public comment period that ended on January 23, 2012. The Final FIA, prepared in response to comments on the Draft FIA, is scheduled to be released on April 23,

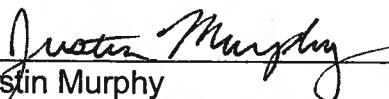
2012. Comments on the Final FIA would be due on or before the Planning Commission public hearing scheduled for May 7, 2012.

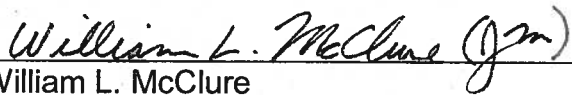
POLICY ISSUES

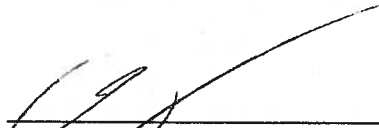
The Project does not require an amendment to the City's General Plan. The primary policy issues for the City Council to consider while reviewing the Development Agreement Term Sheet relate to the appropriate level of public benefit based on the request to exceed the current employee cap of 3,600 people on the East Campus.


ENVIRONMENTAL REVIEW

Action on the Term Sheet is not subject to environmental review. Action on the Conditional Development Permit Amendment and the Development Agreement are subject to environmental review. A Draft EIR was released for public review on December 8, 2011 through January 30, 2012. The Final EIR, prepared in response to comments on the Draft, is scheduled to be released on April 23, 2012. Comments on the Final EIR would be due on or before the Planning Commission public hearing scheduled for May 7, 2012.


Justin Murphy
Development Services Manager


William L. McClure
City Attorney


Charles Taylor
Public Works Director


Alex D. McIntyre
City Manager

PUBLIC NOTICE

Public notification was achieved by posting the agenda, at least 72 hours prior to the meeting, with this agenda item being listed. In addition, the City sent an email update to subscribers to the project page for the proposal, which is available at the following address: http://www.menlopark.org/s/comdev_fb.htm

ATTACHMENTS

- A. Letter from John Tenanes, dated April 10, 2012 with proposed Development Agreement Term Sheet
- B. Excerpt of the Minutes from the February 14, 2012 Council Meeting

April 10, 2012

The Honorable Kirsten Keith
Mayor of the City of Menlo Park
And Members of the City Council
701 Laurel Street
Menlo Park, CA 94025

RE: Facebook Project – Development Agreement Term Sheet

On behalf of Facebook, we are privileged to present you the Facebook Term Sheet for the Facebook East Campus, which sets forth the terms negotiated between Facebook and the City of Menlo Park Negotiating Team (City) for the East Campus Development Agreement (DA).

We are pleased to bring you the terms outlined in this agreement that are the result of a careful, constructive and comprehensive process; a process which included hundreds of hours of collaborative, creative negotiations between the City and Facebook.

These terms represent Facebook's significant investment in the City, in addition to the public benefits that inherently flow from its recent occupancy of the former Sun Microsystems campus.

According to an independent economic analysis commissioned by Facebook, even at the currently permitted 3,600 employees, Facebook's occupancy of the East Campus is expected to generate some \$50 million annually in new economic activity in the City, and about \$179,000 in new retail and lodging tax dollars. When the East Campus is fully occupied pursuant to the DA, annual economic activity escalates to \$69 million. Facebook's occupancy of the East Campus in accordance with the DA is expected to generate some \$236,000 in net fiscal benefit, before considering the DA's annual payment commitment.

The DA term sheet reflects a multi-million dollar package that includes payments to the City of in lieu taxes, as well as an additional one-time payment to the City for capital improvements. The DA also provides:

- Public benefits for the City and East Palo Alto that will include a *Local Community Fund*, as well as job-training and internship programs.
- Environmental investments and safeguards for the nearby San Francisco Bay wildlife and habitat.
- Economic incentives for Facebook employees to shop in the City, which will build on the "Facebucks" pilot program.

AI

- A hard cap on the number of car trips permitted on and off Facebook's campus, which will carry a financial penalty for excess trips.
- Investments in traffic mitigations and infrastructure improvements as outlined in the Environmental Impact Report.

While Facebook's obligations under the DA will be considerable, they build upon the most significant aspect of Facebook's move – its commitment to building a stronger community and being a good neighbor. As many in your community can attest, Facebook has already invested significant resources to support local programs and create long term relationships. This is not part of the DA, because it arises organically from the nature of the Facebook culture. Facebook values its connection and engagement with the community and considers it a long term priority.

We thank you for your consideration of this matter. We look forward to the upcoming Council meeting on April 17, 2012.

Sincerely,



John Tenanes
Director Global Real Estate

A2

FACEBOOK TERM SHEET

City Benefits

1. Annual Payment - Facebook will make an annual payment to the City while it increases the use intensity of the East Campus (as compared to that allowed by the existing entitlements). Facebook will commit to making an annual payment for at least 10 years. The annual payment amount will be \$800,000 in each of the first 5 years, \$900,000 in years 6-10 and \$1,000,000 in years 11-15. Following year 15, the annual payment amount will adjust annually based on changes to the CPI as compared to the preceding year (i.e. beginning in year 16, the annual payment amount will be adjusted based on changes to the CPI as compared to year 15). These annual payments are in-lieu of sales tax or other revenues that might otherwise accrue to the City. Facebook will be entitled to a credit for sales taxes attributable to retail operations performed at the East Campus and any future taxes on Facebook's services.
2. One-Time Payment - Facebook will make a one-time payment to the City of \$1.1 million for the City's unrestricted use toward capital improvement projects.
3. Facebook agrees that if the City secures other funds to pay for mitigations Facebook is obligated to perform under the EIR, then Facebook will make an equivalent in lieu payment to the City.
4. Following expiration of the minimum annual payment period (i.e. 10 years) and on each 5-year anniversary thereof, Facebook will have the option to temporarily suspend or decrease the intensity of use increase permitted by the entitlements; or, if the intensity increase is then suspended or decreased, to un-suspend or increase the intensity not to exceed the intensity originally permitted by the entitlements. Facebook may only elect to increase or decrease the intensity in increments of 1,000 daily vehicle trips. The amount of the annual payment will be adjusted in case of an increase or decrease to the intensity of use.
5. In addition, if there is a "Triggering Event," Facebook will have the option to suspend or decrease the intensity increase by giving the City notice of its exercise of its option. A "Triggering Event" means the vacation of 4 or more of Buildings 10, 12, 14, 15, 16, 17 and 18, or the performance of building improvements that cause the average employee density of the Buildings 10, 12, 14, 15, 16, 17 and 18 to be less dense than the occupancy permitted by the existing entitlements. The amount of the annual payment will be adjusted in case of a decrease to the intensity of use.

Community Benefits

6. Facebook will create a Local Community Fund in partnership with a non-profit partner to manage and administer the fund and contribute \$500,000 to it. The purpose of the Local Community Fund will be to provide support for local community needs. It will be managed by a 5-member Board of Directors consisting of 3 persons appointed by Facebook (1 of whom will be a Facebook representative who will serve on a continuing basis), 1 person appointed by the City's City Manager and 1 person appointed by East

Palo Alto's City Manager. If the Local Community Fund is a success and Facebook concludes that the Local Community Fund is operating smoothly and making a positive impact on the community, then when its assets are exhausted Facebook will consider making an additional contribution to it.

7. Facebook will create a Facebook summer intern program for qualified high school students who are residents of the Ravenswood Elementary District. The internship program will be launched in partnership with an academic non-profit organization to source students, and will include at least 10 students per session. Facebook may elect to expand the program to include an after-school session during the school year in addition to an annual summer program.
8. Facebook will (a) work with a local training program (such as Jobtrain) to expand training services for residents of the City and East Palo Alto, (b) create an ongoing quarterly series of career development workshops, and (c) host a session on how to become a Facebook employee. To encourage the hiring of residents of the City and East Palo Alto, Facebook will require future vendors to use reasonable efforts to notify residents of the City and East Palo Alto when they are hiring new people to work at the Facebook East Campus in the facilities, culinary and construction trades. Facebook will also encourage campus vendors to host sessions on how to become an employee of their organization.
9. Facebook will explore opportunities to invest in low income tax credits for affordable housing projects in the City and East Palo Alto. Facebook will also work with a local real estate developer(s) to explore ways to support a housing project in the City, including through investing capital in the project, committing to leasing units or offering marketing opportunities to Facebook employees.
10. Facebook agrees to cooperate with the City in its efforts to underground existing electric transmission lines located in the vicinity of the East Campus.
11. Facebook will work with the Bay Trail stakeholders and the business community to close the Bay Trail Gap and will also evaluate making a future financial contribution to the effort.
12. Facebook will adopt a roadway segment in the vicinity of the East Campus pursuant to Caltrans' Adopt-A-Highway Program for a period of 5 years.
13. Facebook has created the Facebooks program with local businesses and agrees to continue its Facebooks program for at least 3 years. When purchasing goods and engaging vendors to provide on-site services to employees (e.g., chiropractic services) that can be sourced locally, Facebook will endeavor to purchase from or engage vendors located in the City. If the Menlo Gateway project is developed, Facebook will consider adding the hotel built as part of that project to its list of preferred hotels for East Campus visitors.

14. Facebook will actively promote local volunteer opportunities to all its employees. Facebook will also host a "Local Community Organization Fair" on the Facebook campus. This event will launch in Summer 2012 and take place annually.
15. Facebook will perform improvements to the undercrossing above and beyond those described in the project description. Conceptually, these improvements include landscape embellishments, seating areas and a self-service bicycle station.
16. Facebook will investigate the possibility of creating a business improvement district in the Willow Road corridor between U.S. 101 and Bayfront Expressway that includes the East Campus. If the business improvement district is feasible and the adjacent property owners are likewise interested in creating the business improvement district, Facebook will initiate the process for creating the business improvement district; provided, however, that Facebook will not be obligated to spend more than \$50,000 on this effort.
17. Facebook will perform improvements to publicly accessible walking path trails and levees in the immediate vicinity of the East Campus, subject to approval by the San Francisco Bay Conservation and Development Commission (BCDC), to make the area surrounding the East Campus more pedestrian friendly and enable the community, visitors and Facebook employees to learn about and enjoy the surrounding bay-lands in an ecologically sensitive manner. Facebook will work with an environmental consultant to ensure that human interactions with the ecosystem are appropriate.

Environmental Commitments

18. When performing work that might impact the bay-lands, Facebook will hire an environmental consultant knowledgeable about the S.F. Bay and associated marsh habitats to ensure that endangered species, particularly the Salt Marsh Harvest Mouse and Clapper Rail, are not harmed. When performing future landscape improvements to those portions of the property that abut the San Francisco Bay, Facebook will consult with a qualified environmental consultant familiar with California native plant communities and select suitable natives for landscaping.
19. Facebook will cooperate with the Don Edwards San Francisco Bay National Wildlife Refuge team and related nonprofit groups on habitat restoration adjacent to the East Campus. Facebook will educate employees and visitors about the unique species next to the East Campus and their habitat requirements. Facebook will engage in "wildlife-friendly behavior," such as ensuring that dogs are leashed, feral cats are trapped and beneficial species are encouraged (through, for example, the installation of bat houses). If Facebook installs new windows facing the parking lot or new window treatments on windows facing the parking lot, it will select windows and window treatments that minimize impacts of glare, window exposure and night lighting on migratory birds. If Facebook installs new lighting in the parking lot, it will use then available best practices to design and shield that new lighting so as to confine direct rays to the property and not out into the wildlife refuge. Except for the existing basketball court, Facebook will not create any lighted playing fields on the perimeter of the site that abut the San Francisco Bay. If Facebook installs new building roofs, window ledges and parking lot light poles,

Facebook will use then available best practices to ensure that the new building roofs, window ledges and parking lot light poles do not create sites for predatory bird species to roost or nest.

20. Facebook agrees to periodically maintain and improve the levees in order to ensure that the condition of the levees remains adequate. Facebook will also cooperate with Federal efforts to address repair/reconstruction of adjacent levees. When performing future landscape improvements, Facebook will minimize potential stormwater runoff through the use of appropriate techniques, such as grassy swales, rain gardens, and other Low Impact Development (LID) measures.
21. Facebook will adhere to a vehicle trip cap which limits am/pm peak period trips to 2,600 and daily trips to 15,000. To ensure compliance, the trip cap will include monitoring with periodic reporting. Facebook agrees to share its Transportation Demand Management (TDM) best practices with other interested Silicon Valley companies to help mitigate regional traffic.
22. Facebook will pursue Leadership in Energy and Environmental Design (LEED) Commercial Interiors 2009 Gold certification for all nine buildings at the East Campus.

Pedestrian and Bicycle Circulation Enhancements

23. Facebook will perform or contribute funds towards Bicycle/Pedestrian Improvements in the City and East Palo Alto subject to the consent of the applicable regulatory agencies (e.g. the City, East Palo Alto and Caltrans). These improvements will include restriping within the existing rights-of-way.
24. Facebook will also investigate making crosswalk improvements to the pedestrian crossings at the U.S. 101 and Willow Road interchange, and, subject to the consent of the applicable regulatory agencies, spend up to \$100,000 on such improvements.

Mutual Commitments

25. The City will use its best efforts to expeditiously process permits and approvals required for development, use and occupancy of the project.
26. Facebook will have the vested right to occupy the East Campus consistent with the various project approvals and subject to the terms and conditions of the Development Agreement. Generally, the City laws applicable to the project will be those in force and effect on the effective date of the Development Agreement.
27. Generally, there will be a fixed cap at current rates on the effective date of the Development Agreement for city fees and exactions, except for fees scheduled to rise by way of indexing and/or the imposition of new City-wide or area-wide (e.g. the M-2 district) fees/taxes.
28. Project modifications that are substantially consistent with the initial project approvals may be approved by the City Manager or his/her designee.

29. Facebook has entered into a separate agreement with the Menlo Park Fire Protection District.
30. Facebook's obligations under the Development Agreement will be conditioned on the absence or resolution (as applicable) of all legal and referenda challenges to the EIR, the Development Agreement and the project.
31. In making this offer, Facebook has assumed it will reach an amicable resolution with East Palo Alto. If Facebook and East Palo Alto do not reach an amicable resolution, then certain of the commitments benefitting the City and East Palo Alto will be reduced or changed. The annual payment to the City and the one-time payment to the City will not, however, be affected.

**Facebook Campus Project Development Agreement
Summary of City Council Direction for Entering into Good-Faith Negotiations
February 14, 2012**

City Council considered the following parameters as outlined in the staff report for negotiating the Development Agreement for the Facebook East Campus Project located at 1601 Willow Road:

1. Provide a source of on-going revenue for as long as the land use entitlement to exceed 3,600 employees is in place.
2. Provide one-time items in the form of public improvements or studies that would benefit the surrounding area.
3. Provide a mechanism for funding programs and services that meet on-going community needs.
4. Pursue a commitment to fund housing opportunities in the City and surrounding region.
5. Pursue a trip cap penalty amount that is severe enough to ensure compliance with the project description.

In general, the Council expressed support for a realistic, reasonable and fair agreement and believed the parameters provided a good basic structure subject to the addition of the following individual comments:

Cline

- Development Agreement negotiations should focus on opportunities where [public-private] partnerships would create the greatest benefit.
- Affordable housing is the number one priority.
- Consider development of creative programs that can address the need for affordable housing through corporate cash management systems.
- There needs to be good access to and from the site related to bicycles, shuttles and nearby amenities.
- Dissolution of redevelopment agencies should not be factor in negotiations.
- Explore ways in which funds are contributed directly to community organizations with guidance from the City.
- Address traffic impacts and pursue means to enhance the transportation system.
- Community resources, such as recreational and senior facilities, related to potential impacts should be on the table for discussion.
- If possible, the state of the existing school districts serving Menlo Park should be part of the discussions.
- Consider opportunities for improving Flood Park.

Cohen

- Consider advertisement revenue as a source for the on-going revenue stream.
- Explore ideas to link the impacts of jobs to housing associated with the project.
- Factor in the implication of the State Housing Element requirements associated with the need to plan for new housing.
- Facebook should be viewed as a community partner and the negotiation process should not be adversarial.
- Facebook should support the development of affordable housing, but should not be responsible for addressing all City challenges related to this matter.
- Facebook should recognize City's obligation to maintain services and infrastructure.
- Consider the nearby marshlands as a place where some of the volunteer energy could be spent to assist in reducing greenhouse gases and improve wildlife habitats.
- East of 101 is a unique community and trust that Facebook understands the balance that needs to be achieved.

Fergusson

- City has been pursuing efforts to improve the quality of life in the area and the Development Agreement provides a catalyst to pull threads together to create a better outcome.
- Consider an on-site bus stop for the transit service across the Dumbarton bridge.
- Attachment A of the staff report that summarizes public benefit ideas to date is aspirational.
- Consider undergrounding of electrical transmission lines on property frontage along Bayfront Expressway on the West Campus.
- Provide the language for Bayfront Expressway landscaping agreement from the Menlo Gateway project as part of the discussion.
- Supports idea to explore possibilities related to the school districts.
- Provide transit shelters.
- Number one focus from the public benefit ideas is completing the Bay Trail gap.

Keith

- Supports concept of a foundation or on-going committee to address community needs.
- Trip cap penalty is important and would like to see other examples of trip cap implementation.
- Improved bicycle access to the site and work on the Bay Trail Gap are key and they have broad benefits.
- In-lieu fee is important and maybe it should be evaluated periodically.
- Shuttles are important.

- Focus more on the Ravenswood School District than the Menlo Park School District.
- Does not support funding improvements to Flood Park associated with this project.
- Landscape improvement to Willow Road is a great idea.
- Look to leverage dollars through C/CAG for items such as bus shelters.
- Likes the idea of job opportunities for local residents.
- Explore potential for on-site child care.

Ohtaki

- Highest priority is on-going revenue.
- Expressed a concern that the estimate of \$15,000 of taxable sales per employee in the Fiscal Impact Analysis is understated.
- Comparable development agreements in other communities such as San Mateo (e.g., Franklin Templeton), Los Gatos (e.g., Netflix) and South San Francisco (e.g., Genentech) should be considered.
- Focus on near term revenues related to the East Campus.
- Provide a mechanism for funding programs and services that meets on-going community needs, such as Community Foundation.
- Attempt to formalize the existing corporate volunteer efforts into an on-going program.
- Add a 6th parameter to recognize the City's lead agency role and responsibility to work with and address the concerns of other agencies and organizations, such as East Palo Alto and the Fire District.



ADMINISTRATIVE SERVICES

Council Meeting Date: April 17, 2012
Staff Report #: 12-065

Agenda Item #:F-3

REGULAR BUSINESS: Consider placing AB 1455 for Council Action on a City Council Agenda

RECOMMENDATION

The High Speed Rail City Council Subcommittee recommends Council consideration of AB 1455 (Harkey) which would restrict funding for High Speed Rail as of January 1, 2013.

BACKGROUND

The need for Council to consider AB 1455 came up during the meeting of April 9, 2012 High Speed Rail Council Subcommittee. The subcommittee requested consideration by the full Council for staff to further analyze and evaluate the merits of the bill. This item is before the Council for direction for further analysis by staff, to inform a recommendation by staff for City Council consideration. A copy of the bill is attached as well as a brief history and short summary.

Starla Jerome-Robinson
Assistant City Manager

ATTACHMENTS:

Attachment A: AB 1455 text, a short summary and a history of the bill

ASSEMBLY BILL

No. 1455

**Introduced by Assembly Member Harkey
(Principal coauthor: Assembly Member Valadao)
(Principal coauthor: Senator La Malfa)
(Coauthors: Assembly Members Grove, Hagman, Jones, Nielsen,
and Wagner)**

January 9, 2012

An act to add Section 2704.30 to the Streets and Highways Code, relating to high-speed rail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1455, as introduced, Harkey. High-speed rail.

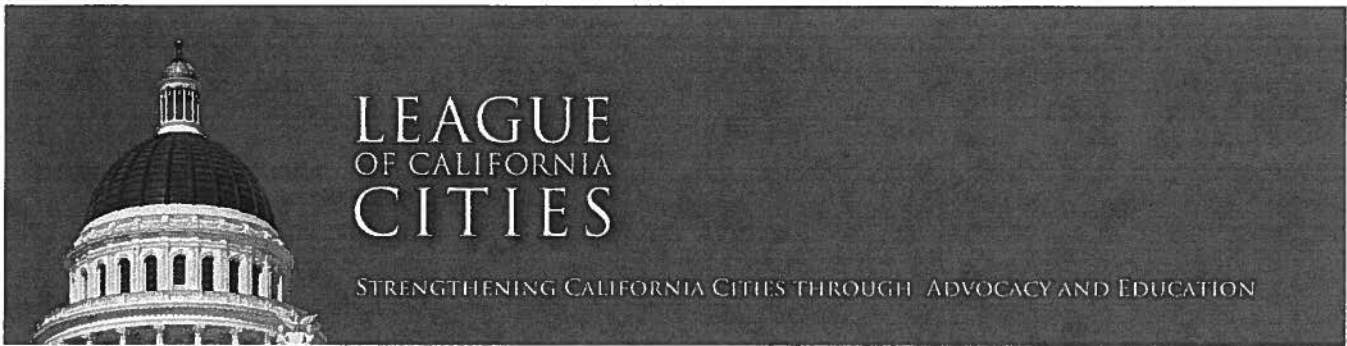
Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes. Article XVI of the California Constitution authorizes the Legislature, at any time after the approval of a general obligation bond act by the people, to reduce the amount of the indebtedness authorized by the act to an amount not less than the amount contracted at the time of the reduction or to repeal the act if no debt has been contracted.

This bill would reduce the amount of general obligation debt authorized pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to the amount contracted as of January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 2704.30 is added to the Streets and
2 Highways Code, to read:
3 2704.30. Pursuant to Section 1 of Article XVI of the California
4 Constitution, the amount of indebtedness authorized by Chapter
5 20 (commencing with Section 2704) is hereby reduced to the
6 amount contracted as of January 1, 2013, notwithstanding anything
7 in that chapter to the contrary.



AB 1455 Harkey High-speed rail.

Status: 2/13/2012 Re-referred to Com. on TRANS.

Current Location: 2/13/2012 A-TRANS.

2YR/Dead | 1st Desk | 1st Policy | 1st Fiscal | 1st Floor | 2nd Desk | 2nd Policy | 2nd Fiscal | 2nd Floor | Conf./Conc. | Enrolled | Vetoed | Chaptered

<u>Status</u>	<u>History</u>	<u>Short Summary</u>	<u>Long Summary</u>	<u>User Summary</u>	<u>Digest</u>
	Primary Lobbyist <i>Whiting, Jennifer</i>	Policy Committee <i>Transportation, _Communications_and _Public_Works</i>	Topic <i>Carrigg, Dan</i>		
	League Position <i>Watch</i>	Position Taken	2nd Lobbyist <i>Revenue & Taxation, High Speed Rail</i>	Policy Analyst	
	Notes:				

Calendar

04/23/12 1:30 p.m. - State Capitol, Room 4202 A-TRANSPORTATION, LOWENTHAL, Chair

Bill Text

Amended - 2/9/2012 [html](#)

Amended - 2/9/2012 [pdf](#)

Introduced - 1/9/2012 [html](#)

Introduced - 1/9/2012 [pdf](#)

Analyses

Votes

Affecting Same Code

AB 76 High-speed rail. Streets and Highways Code 2704.3

Governor Message

Attachments/Links

AB 1455 Harkey High-speed rail.

Current House
Assembly

Long Author

Harkey (Principal coauthors: Garrick and Valadao) (Principal coauthor: Senator La Malfa) (Coauthors: Achadjian, Bill Berryhill, Donnelly, Grove, Hagman, Jeffries, Jones, Logue, Mansoor, Nielsen, Silva, and Wagner).

Status

2/13/2012

Re-referred to Com. on TRANS.

Title

An act to add Section 2704.30 to the Streets and Highways Code, relating to high-speed rail.

Relating To

High-speed Rail

Current Location

2/13/2012

TRANS.

Text Version

2/9/2012

Amended

Bill Type

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

AB 1455 (Harkey) High-speed rail.

From text dated: 02/09/12

Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9 billion in general obligation bonds for high-speed rail purposes and \$950 million for other related rail purposes. Article XVI of the California Constitution authorizes the Legislature, at any time after the approval of a general obligation bond act by the people, to reduce the amount of the indebtedness authorized by the act to an amount not less than the amount contracted at the time of the reduction or to repeal the act if no debt has been contracted. This bill would reduce the amount of general obligation debt authorized for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to the amount contracted as of January 1, 2013.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 17, 2012

Staff Report #: 12-059

Agenda Item #: I-1

INFORMATION ITEM: Recology Collection of Garbage and Recycling Day Changes

This is an information item and does not require Council action.

BACKGROUND

On January 1, 2011, Recology began collecting garbage and recycling for residents and businesses under a new Franchise Agreement adopted by the City Council. The transition to Recology was substantial for residential customers, and included a new food scrap recycling program, recycling cart service and a non-organic single stream recycling program. It took several months for residents to adjust to the new hauler service and programs.

Before the transition period began, the South Bayside Waste Management Authority (SBWMA), of which Menlo Park is a member, instructed Recology to limit waste collection day changes for residential customers to allow the transition time to focus on adjusting to the new hauler service and recycling programs. As a result, Recology developed a collection schedule that changed the waste collection day for 40 percent of residential customers in the entire SBWMA service area (consisting of 11 cities and San Mateo County). SBWMA's main goal is to provide cost effective waste reduction, recycling, and solid waste programs to its member agencies. See Attachment A for Recology's current collection schedule in Menlo Park.

Unfortunately, Recology's collection schedule was not compatible with the City's street sweeping schedule, and staff has been working with Recology for the past year to develop a new schedule that would still be cost effective and efficient for Recology and compatible with City street sweeping services. Staff has received numerous calls from residents concerning this change in schedule. The result of this collaborative effort and proposed collection schedule can be found in Attachment B, and will begin September 1, 2012. The purpose of this report is to brief Council on the impacts and benefits of the proposed waste collection schedule, and describe the outreach methods that will be used to inform affected residents.

ANALYSIS

Street sweeping generally occurs in a neighborhood one to two days after waste collection. This is beneficial because some waste may remain after pickup. Also, street sweeping within a couple days of waste collection assists the City in meeting federal and state stormwater requirements to reduce trash in stormdrains that pollute waterways and wildlife habitats.

Recology's existing collection schedule is not compatible with the City's street sweeping schedule. Street sweeping generally occurs over large sections of the City on the same day. However, Recology's effort to limit waste collection day changes in Menlo Park created fragmented service days in large sections of the City. Recology's fragmented collection pockets caused the street sweeper to drive around from one section of the City to another. If this schedule continues, it will increase street sweeping costs for the City.

Staff is recommending the proposed changes for the following reasons:

- The proposed changes will not increase collection costs for Recology and the City for this change;
- Improved efficiency of Recology collection services will help drivers focus on one large section versus driving around to smaller sections of the City;
- Garbage and Recycling tonnage is more accurately determined; drivers will now be in Menlo Park on the same day and accurate estimating of quantities will occur;
- No increase to street sweeping costs;
- Improved street sweeping schedule; and
- Recology's drivers have less traveling thereby reducing greenhouse gas emissions.

Recology's proposed collection schedule will change the waste collection day for 80 percent of Menlo Park residents. This will be a significant change for residential customers.

To prepare residents for this transition, City and Recology staff will work together over the next four months to inform residents of waste collection day changes, and will develop a uniform message to assist residents in understanding why the change is occurring. Specifically, Recology will provide the following outreach strategies to notify impacted residents of their new service day:

- Send pre-recorded automated phone calls (Robocalls);
- Send informational postcards;
- Use social media and website to post information; and
- Provide information in billing inserts.

City staff will use the following outreach materials to notify residents of the collection day changes:

- Press releases
- Social media (Facebook, Twitter)
- City's website

In addition, maps of the street sweeping and garbage/recycle collections services will be placed on the City's website.

Given that Recology will be the waste hauler until December 31, 2020, implementing a waste collection schedule that is more efficient and compatible with the City's street sweeping program will be cost effective to rate payers over the long term.

IMPACT ON CITY RESOURCES

There is no direct impact on City resources associated with Recology's proposed collection schedule.

POLICY ISSUES

Recology's proposed collection schedule does not represent any change to existing City policy.

ENVIRONMENTAL REVIEW

Recology's proposed collection schedule is not subject to the California Environmental Quality Act (CEQA) because it does not involve a physical change and is therefore not a project.



Rebecca Lucky Fotu
Environmental Program Manager



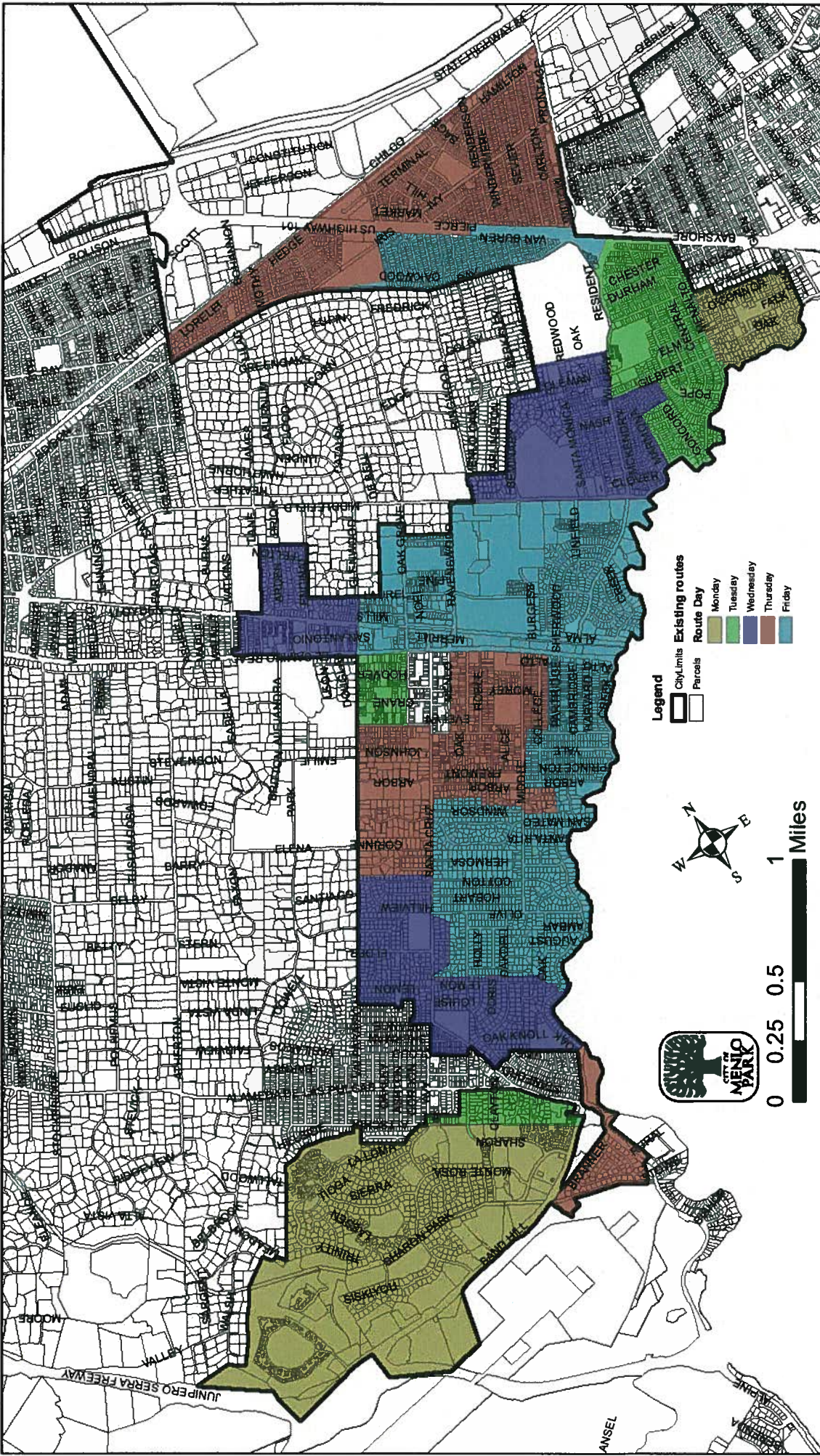
Charles Taylor
Public Works Director

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS: A. Recology's Current Collection Schedule in Menlo Park
B. Recology's Proposed Collection Schedule in Menlo Park
(Start September 1, 2012)

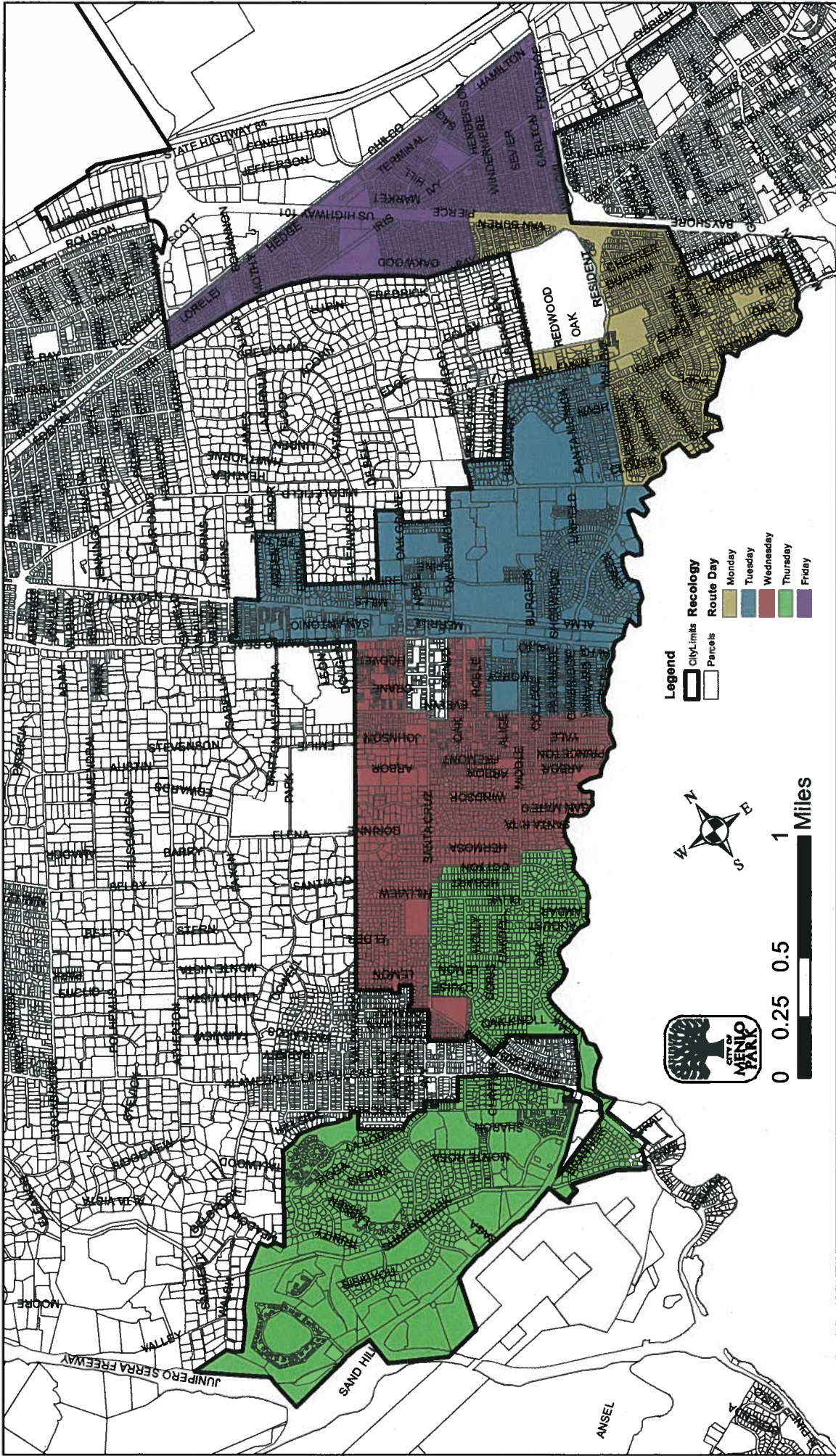
Existing Recology Pick-up Days

City of Menlo Park



Proposed Recology Pick-up Days

City of Menlo Park





ADMINISTRATIVE SERVICES

Council Meeting Date: April 17, 2012
Staff Report #: 12-058

Agenda Item #: I-2

INFORMATION ITEM: Review Timeline Regarding a November 2012 Ballot Measure to Increase the Transient Occupancy Tax Rate for the City of Menlo Park

RECOMMENDATION

Staff recommends that the City Council review the timeline presented in this staff report regarding a November 2012 ballot measure to increase the City's transient occupancy tax (TOT) rate.

BACKGROUND

The City has had a transient occupancy ordinance since June 1974, when it was first established at a rate of six percent. The rate was increased to eight percent in March 1983 and to ten percent in 1992. Currently, the City imposes a ten percent tax on rent charged by any hotel, motel or inn within the City limits for any person who exercises occupancy for thirty consecutive calendar days or less.

With eroding General Fund revenues for local governments resulting from the economic recession which began in 2008, many cities in San Mateo County have sought and received majority vote approval for raising their TOT rate. In 2010, the City Council requested that staff analyze the impact of a potential increase in the City's TOT rate. After weighing the pros and cons of such an increase, Council decided not to proceed.

The City's finances continue to be strained in light of resident demand for quality services and the cost to provide them. In January, the dissolution of the City's redevelopment agency, coupled with the Council priority of maintaining a sustainable financial plan, caused the Council to ask staff to explore placing an increase in the TOT rate (from 10 to 12 percent) on the November 2012 ballot.

ANALYSIS

This report provides a brief analysis of TOT rates in surrounding communities and TOT revenues in Menlo Park, and outlines a schedule for placing a ballot measure on the November 2012 election for an increase in the TOT rate.

result in a loss of the business to surrounding communities. However, that concern has diminished significantly as TOT rates have increased in the region.

The hospitality business sector in Menlo Park consists of five motel/inns and two hotels. Sixteen percent of the City's budgeted TOT revenue comes from the five motel/inns operating along El Camino Real, an estimated \$459,000 in the current fiscal year. Together, these motel/inns provide approximately 143 rooms and are frequently used for long-term purposes related to Stanford Hospital and Clinics and the Ronald McDonald House. At rates ranging from \$72 to \$210 a night, these rooms provide lodging in close proximity to the major health care facilities in the area. The two full service hotels within the City, (Rosewood Sandhill and Stanford Park), contribute 84 percent of TOT revenue (an estimated \$2,460,000 in fiscal year 2011-12). Together, these hotels provide approximately 284 rooms ranging from \$300 to \$625 a night and are typically used for business travel and special events lodging.

Back in 2010 when the City was considering a similar change, representatives from some Menlo Park hotels and motels expressed concern that an increased TOT would make their establishments less competitive to price-conscious travelers. Since that time, room rates have increased and occupancy rates have recovered to pre-2008 levels. Staff has recently contacted area hotel/motel owners and managers in the City to apprise them of the City's intent to place a ballot measure on the November 2012 election for increasing the TOT rate to 12 percent. Some of the owners/managers continue to express concern regarding an increased TOT. Staff intends to continue outreach efforts over the next few months.

Next Steps

Most importantly, Staff asks that the City Council note the timelines for placing a ballot measure on the November 2012 election: the City Attorney will provide a draft ordinance revising the current TOT for the City of Menlo Park from its current 10 percent rate to a 12 percent rate. Once the ordinance is introduced, a second reading will be needed, along with adoption of a resolution placing the matter on the November ballot, before the end of July.

All general tax ballot measures must be submitted to San Mateo County no later than 88 days before the scheduled regional general election. If Council chooses to place an ordinance on the November 6, 2012 ballot, the measure would need to be approved by the end of July (by a 2/3 vote, or four Council members) and submitted to the County no later than August 10, 2012. Therefore, Staff recommends scheduling the ordinance for introduction on June 12th. With the second reading and adoption of the ordinance on July 17th, Council would also direct the City Attorney to prepare an Impartial Analysis and designate one or more of its members to write and sign a ballot argument in favor of the measure (if so determined by the City Council).

IMPACT ON CITY RESOURCES

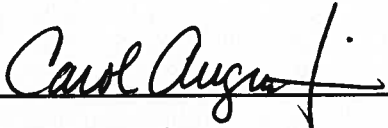
The current projection of TOT revenues for the City for fiscal year 2011-12 is slightly over \$2.9 million. Each additional one percent increase in the City's TOT rate would increase the City's current TOT annual revenue budget by approximately \$290,000, assuming hotel usage and rents meet the 2011-12 projections and remain similar in the future. The earliest effective date for the increased rate would be January 1, 2013. Because of the Council's previous support for the TOT increase as a budget strategy and general success of such measures in nearby cities, staff has included a \$290,000 increase in TOT revenues in the preliminary 2012-13 General Fund revenue budget. The cost to add a secondary ballot measure on the ballot in the November 2012 general election is currently unknown, but should not exceed an additional \$20,000.

POLICY ISSUES

The TOT is a general tax, and as such may be imposed for general governmental purposes. As a tax on hotel and motel guests, it is not a tax that falls on local residents, but is paid by visitors to assist in the continuance of City-provided services that include roads, parks, public safety and library services. Pursuant to State law, any increase of the TOT rate must be approved by a 2/3 vote (four members) of the City Council and a majority of the City's voters at a Regular Municipal Election.

ENVIRONMENTAL REVIEW

Environmental Review is not required.



Carol Augustine
Finance Director

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.