



**CITY COUNCIL
SPECIAL AND REGULAR MEETING
AGENDA**

**Tuesday, September 09, 2014 at 6:00 PM
City Council Chambers
701 Laurel Street, Menlo Park, CA 94025**

6:00 P.M. CLOSED SESSION (1st floor Council Conference Room, Administration Building)

Public Comment on these items will be taken prior to adjourning to Closed Session

CL1. Closed session pursuant to Government Code Section 54956.8 regarding real property negotiations (2 matters):

Property: 1175 & 1177 Willow Road, Menlo Park

City Negotiators: Bill McClure, City Attorney, Alex McIntyre, City Manager, or designee

Negotiating Parties: City of Menlo Park and Church of the Pioneers Foundation

Under Negotiation: Price and terms of potential acquisition

Property: 1000 El Camino Real, Menlo Park

City Negotiators: Bill McClure, City Attorney, Alex McIntyre, City Manager, or designee

Negotiating Parties: City of Menlo Park (owner) and MPOC Investors, LLC (ground lessee)

Under Negotiation: Extension and amendment of existing lease including rent and other terms

7:00 P.M. REGULAR SESSION

ROLL CALL – Carlton, Cline, Keith, Mueller, Ohtaki

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation recognizing Adult Literacy Awareness Month

A2. Proclamation recognizing Yuhui Chen, owner of SBM Fitness

A3. Proclamations recognizing the local businesses that participated in the Downtown Family Fitness Extravaganza

A4. Presentation by Menlo Swim and Sport and the Boys and Girls Water Polo Team

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

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. Authorize the City Manager to approve a contract with ICF International in the amount of \$206,698 and future augments as may be necessary to complete the environmental review for the 1300 El Camino Real Project ([Staff report # 14-164](#))

D2. Approve a memorandum of understanding with the Menlo Park Fire District regarding the installation and use of police communications equipment at District Fire Stations 1, 2, and 4, and authorize the City Manager to sign the agreement ([Staff report # 14-160](#))

D3. Authorize the Public Works Director to accept the work performed by CB&I to remove and replace the landfill gas flare at Bedwell Bayfront Park ([Staff report # 14-161](#))

D4. Authorize the Public Works Director to accept the work performed by American Air Conditioning, Plumbing, and Heating for the Menlo Park Public Library Boiler Replacement Project ([Staff report # 14-162](#))

D5. Approve an encroachment agreement with MCImetro Access Transmission Services LLC to install fiber optic network facilities within the public right-of-way ([Staff report # 14-163](#))

D6. Adopt an amended resolution of intention to abandon a public utility and emergency access easements within the property at 721 – 851 Hamilton Avenue ([Staff report # 14-165](#))

D7. Adopt a resolution authorizing the installation of stop signs on Monte Rosa Drive at Eastridge Avenue (continued from August 19th meeting) ([Staff report # 14-137](#))

D8. Waive the second reading and adopt an ordinance to continue implementing the State Water Resources Control Board's Mandatory regulations upon expiration of the urgency ordinance which was adopted on August 26, 2014
[\(Staff report # 14-166\)](#)

D9. Approve a resolution making findings necessary to authorize an energy services contract for power purchase agreements (PPA) at the Arrillaga Gymnasium, Arrillaga Gymnastics Center, Onetta Harris Center, and City Corporation Yard; authorize the City Attorney to finalize the agreement and authorize the City Manager to execute the agreement; and amend the existing consulting contract with Optony, Inc. to include construction management services
[\(Staff report # 14-168\)](#)

E. PUBLIC HEARING – None

F. REGULAR BUSINESS

F1. Appropriate \$57,000 from the Water Fund to implement a Menlo Park Municipal Water District outreach program to meet the State Water Resources Control Board's emergency mandatory regulations for water conservation
[\(Staff report # 14-167\)](#)

F2. Adopt a resolution to authorize a loan to MidPen Housing for up to \$3.2 million for affordable housing at 1200 block of Willow Road as affordable senior housing and authorize the renegotiation of terms of the existing \$4.02 million loan
[\(Staff report # 14-171\)](#)

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS

I1. Draft update of General Fund Reserve Policy incorporating reserve for pension costs [\(Staff report # 14-159\)](#)

I2. Economic Development quarterly update [\(Staff report # 14-169\)](#)

I3. Lisa Wise Consulting Inc. response to documents authored and commissioned by supporters of the Save Menlo group critiquing the ballot measure impact analysis
[\(Staff report # 14-170\)](#)

J. COUNCILMEMBER REPORTS – None

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

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At every Regular Meeting of the City Council, in addition to the Public Comment period where the public shall have the right to address the City Council on 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, 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>.

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COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-164

Agenda Item #: D-1

CONSENT CALENDAR: **Authorize the City Manager to Approve a Contract with ICF International in the Amount of \$206,698 and Future Augments as May Be Necessary to Complete the Environmental Review for the 1300 El Camino Real Project**

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to approve a contract with ICF International in the amount of \$206,698, and future augments as may be necessary, to complete the environmental impact report for the 1300 El Camino Real Project based on the proposal included as Attachment A.

BACKGROUND

Project Overview

Greenheart Land Company ("Greenheart") is proposing to redevelop a multi-acre site on El Camino Real and Oak Grove Avenue with up to 217,000 square feet of non-residential uses and up to 220 dwelling units. The project site consists of 15 legal parcels (11 assessor's parcels) addressed 1258-1300 El Camino Real, 550-580 Oak Grove Avenue, and 540-570 Derry Lane.

The project site fully encompasses the sites of two earlier development proposals from different applicants:

- 1300 El Camino Real Project – Sand Hill Property Company ("Sand Hill 1300 ECR")
- Derry Lane Mixed-Use Development – O'Brien Group ("O'Brien Derry Lane")

In addition, the Greenheart proposal includes a parcel at 1258 El Camino Real, which was not part of either of the earlier development proposals. The total site would be approximately 6.4 acres in size, after the proposed abandonment of Derry Lane, and dedication of a planned extension of Garwood Way (aligning with Merrill Street) and a partial widening of the Oak Grove Avenue right-of-way.

The project site is within the El Camino Real/Downtown Specific Plan (“Specific Plan”) area. The overall intent of the Specific Plan is to preserve and enhance community life, character and vitality through public space improvements, mixed-use infill projects sensitive to the small-town character of Menlo Park, and improved connectivity. The Specific Plan reflects the outcome of an extensive community outreach and engagement process, which took place between 2007 and 2012.

CEQA Review

The Specific Plan process included the preparation of a program-level Environmental Impact Report (EIR), to consider the impacts of development throughout the Specific Plan area, in accordance with California Environmental Quality Act (CEQA) guidelines. When the Specific Plan EIR process originally commenced, the applicants for Sand Hill 1300 ECR and O’Brien Derry Lane stated that these projects would continue their independent and previously-initiated project and environmental review processes. As such, both were considered “background” development for the purposes of the Specific Plan EIR, which meant that the impacts of these and other proposals were fully considered alongside any Specific Plan impacts as part of the required cumulative analysis. While the O’Brien Derry Lane project was ultimately abandoned without comprehensive project/CEQA approvals, the Sand Hill 1300 ECR proposal was approved (including a project-level EIR), prior to the Specific Plan approvals.

Since the submittal of the initial application for the Greenheart proposal, staff has focused on determining the applicable CEQA review process, assisted by an independent consulting firm (ICF International) that has extensive experience working with the City on CEQA-related projects. As noted earlier, the Greenheart proposal has a number of unique characteristics, including the fact that separate developments had previously been proposed and/or approved on the project site, as well as the fact that the project would include changes to roadways (i.e., connection of Garwood Way to Oak Grove Avenue and the alignment to Merrill Street). As a result of these and other factors, staff and the consultant determined that the proposal has the potential for impacts not previously analyzed in the Specific Plan EIR, and thus requires preparation of a project-level EIR. Staff notified the City Council of this determination and associated next steps via an Information Item on the June 17, 2014 Council agenda.

In compliance with the CEQA Guidelines, the City issued a Notice of Preparation (NOP) for the EIR on July 13, 2014. The NOP (included here as Attachment B) was posted on the City web site and distributed to relevant reviewing agencies via the State Clearinghouse. Notice of the NOP’s availability was also published in the local newspaper, mailed to all properties within a quarter-mile of the project, and mailed to additional agencies and organizations that may have an interest in the proposal. These mailings and postings also included notification of a scoping and study session held as part of the August 4, 2014 Planning Commission meeting. The NOP is supported by an Infill Environmental Checklist, which describes in detail which topic areas were adequately reviewed in the Specific Plan EIR, and which require additional analysis and

discussion. The NOP and the Infill Environmental Checklist are available for review at City offices and on the project page's CEQA subpage:

<http://www.menlopark.org/833/CEQA>

At the August 4, 2014 scoping session, one member of the public made comments regarding the EIR, and Planning Commissioners also provided questions and comments. In addition, five items of written correspondence were received during the NOP comment period, and are included for reference as Attachment C. All CEQA-related comments will be considered and included/summarized as part of the Draft EIR, and have been considered when preparing the prepared scope of work.

The initial CEQA review cost a total of \$56,137 in consultant services, which were paid for by the applicant and independently managed by City staff.

Measure M

Under the Permit Streamlining Act, the City has an obligation to review and process development applications. Since the submittal of the initial project application by Greenheart, a ballot initiative was submitted to modify elements of the Specific Plan. At the July 15, 2014 City Council meeting, the Council scheduled this ballot measure (now designated as Measure M) for the November 4, 2014 election. The project sponsor is aware that the ballot measure, if approved, would affect the project as currently proposed, but has requested that the project continue to be reviewed at this time.

Project Review Process

The Specific Plan is set up to allow most projects to be acted on by the Planning Commission, although all Commission actions may be appealed to the City Council. Because the Greenheart proposal includes the abandonment and dedication of public right-of-way, the final actions will be made by the City Council. In addition, the applicant has requested that the City Council consider the pending Public Benefit Bonus proposal in an early study session, which the Specific Plan acknowledges may be warranted for larger and more complex projects. The following represents the minimum set of public meetings required to review the project, and the likely sequencing of actions:

- City Council Information Item on EIR Scoping Schedule (June 17, 2014)
- Planning Commission Scoping Session and Study Session (August 4, 2014)
- City Council meeting on EIR contract and project review process (September 9, 2014)
- Environmental Quality Commission (EQC) review and recommendation on the Heritage Tree removals

- Planning Commission Meeting(s) on Draft EIR and Public Benefit (could be one meeting or separate meetings)
- City Council Meeting(s) on Public Benefit
- Housing Commission recommendation on Below Market Rate (BMR) Housing proposal (could occur any time before PC action)
- City Council Notice of Intent to Abandon Right-of-Way (ROW)
- Planning Commission Meeting(s) to make recommendations on all actions
- City Council Meeting(s) on all actions, including Public Benefit Bonus determination and ROW actions

ANALYSIS

Based on the project description included in the NOP and the Infill Environmental Checklist, the EIR will analyze whether the proposed project would have significant environmental effects in the areas of:

- **Air Quality (construction):** Most air quality topics were adequately addressed in the Specific Plan EIR. However, due to the site's location, size, and relatively lengthy construction schedule, the EIR will quantify construction and demolition-related emissions and include a health risk assessment (HRA) that evaluates potential health risks to existing sensitive receptors from toxic air contaminants (TACs).
- **Hazards and Hazardous Materials:** The Specific Plan EIR establishes detailed mitigation measures and procedures to address the majority of potential hazardous materials issues. However, because this site has an active Department of Toxic Substances Control (DTSC) remediation case that derives from a former dry cleaning business that operated at 570 Derry Lane, the topic has been identified for further analysis in the EIR.
- **Noise (traffic noise):** As a result of the need to conduct additional traffic analysis (see below), the associated traffic noise will also be the subject of additional review.
- **Transportation and Traffic:** Due to the unique relationship of the previous developments proposed and/or approved on the project site to the Specific Plan EIR, and the current project's proposed changes to roadways, a Transportation Impact Analysis (TIA) will be prepared. The NOP specifies the specific intersections and roadway segments that will be analyzed.

As described in more detail in the Infill Environmental Checklist, the following topics will be scoped out of the EIR, since they have been adequately addressed in the Specific Plan EIR:

- Aesthetics
- Agricultural/Forestry Resources
- Air Quality (operational)
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hydrology/Water Quality
- Land Use
- Mineral Resources
- Noise (all but traffic noise)
- Population and Housing
- Public Services
- Utilities

The EIR type is designated by Senate Bill 226 guidelines as an “Infill EIR,” which allows for a limited review of alternatives and does not require growth-inducing impacts be analyzed (as the latter type of impacts are typically only applicable to a project like a new highway interchange, not infill development). However, in order to allow for a fuller range of possible outcomes, the scope of work includes an alternatives analysis. As a result, aside from the absence of a growth-inducing impact analysis, the Infill EIR will effectively be the same as other project-level EIRs recently considered by the City.

The following is a summary of the tasks included in the proposed scope of work:

1. Project Initiation and EIR Scope Definition
2. Administrative Draft Infill EIR 1
3. Administrative Draft Infill EIR 2 and Screencheck Draft Infill EIR
4. Public Draft Infill EIR
5. Public Review and Hearing
6. Draft Responses to Comments and Administrative Final Infill EIR
7. Final Infill EIR
8. Certification Hearings, Mitigation Monitoring and Reporting Program (MMRP), Statement of Overriding Considerations, and Administrative Record
9. Meetings
10. Project Management

The scope of work includes a schedule in “Gantt chart” format, showing the sequence of actions and general timing, although this should not be interpreted as guaranteeing certain dates. The scope of work has been formulated after consideration of the NOP comments, and some adjustments have been made in response. For example, suggestions for additional transportation network analysis have resulted in an option to

include additional intersections and roadway segments, after the trip distributions have been determined.

The proposed budget for the scope of work provided in Attachment A is \$206,698, the cost of which would be borne by the applicant, although the applicant would have no control or direction over the work of the consultant. This budget is in addition to the \$56,137 previously expended on the initial CEQA review, for a total of \$262,835. The applicant is in agreement with the scope and is prepared to pay the contract amount. Staff recommends that the Council provide the City Manager with the authority to approve future augments to the contract, if required. Any future augments would be done only with the consent of the project applicant and at the applicant's cost.

IMPACT ON CITY RESOURCES

The applicant is required to pay planning permit fees, based on the Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. The applicant is also required to bear the cost of the associated EIR preparation. For the EIR, the applicant deposits money with the City and the City pays the consultants.

POLICY ISSUES

The proposed project will ultimately require the Planning Commission and City Council to consider certain land use entitlements, including the applicability of a Public Benefit Bonus. The policy implications of such actions are considered on a case-by-case basis, and will be informed by additional analysis as the project review proceeds.

ENVIRONMENTAL REVIEW

An EIR will be prepared for the project.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the 1300 El Camino Real project page is available at the following web address:

<http://www.menlopark.org/732/1300-El-Camino-Real>

This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress.

ATTACHMENTS

- A. 1300 El Camino Real Greenheart Project EIR – Scope of Work, prepared by ICF International, dated August 26, 2014
- B. Notice of Preparation, dated July 14, 2014
- C. Correspondence Received During the NOP Comment Period

Report prepared by:

Thomas Rogers
Senior Planner

Report reviewed by:

Justin Murphy
Development Services Manager

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Scope of Work

Infill Environmental Impact Report

Project Understanding

The City of Menlo Park (City) has developed the El Camino Real/Downtown Specific Plan (Specific Plan) to establish a framework for private and public improvements in the Specific Plan area for the next 30 years. The Specific Plan addresses approximately 130 acres of land and focuses on the character and density of private infill development, the character and extent of enhanced public spaces, and circulation and connectivity improvements. On June 5, 2012, the City Council certified the Menlo Park El Camino Real and Downtown Specific Plan Program EIR (Program EIR). According to the Program EIR, the Specific Plan does not propose specific private developments, but establishes a maximum development capacity of 474,000 square feet (sf) of non-residential development (inclusive of retail, hotel, and commercial development) and 680 new residential units.

Greenheart Land Company (Project Sponsor) is proposing to redevelop 11 Assessor's parcels of land between El Camino Real and the Caltrain right-of-way into a mixed-use development. The Project site includes the former Derry Lane Site (3.5 acres), the former 1300 El Camino Real Sand Hill Site (3.4 acres), and 1258 El Camino Real (0.3 acres), which total approximately 7.2 acres in their current state. These parcels generally consist of vacant, previously developed land in the northern area and commercial buildings along Derry Lane and Oak Grove Avenue in the southern area.

The 1300 El Camino Real Greenheart Project (Project) would demolish the existing structures in the southern portion of the site and construct approximately 420,000 square feet (sf) of mixed uses at the Project site. In total, the Project would include three mixed-use buildings, a surface parking lot, underground parking garages, onsite linkages, and landscaping. The uses at the Project site would include a range of approximately 188,000 sf to 210,000 sf of non-medical office space in two buildings; approximately 203,000 sf to 210,000 sf of residential space (220 housing units) in one building; and up to 29,000 sf of retail/restaurant space throughout the proposed office and residential buildings. The Project would provide approximately 1,158 parking spaces within parking garages and a surface parking lot. After street abandonment and dedication actions under the Project, the total site area would consist of approximately 6.4 acres.

General Approach

Based on ICF's original scope and discussions with the City, ICF has prepared an Appendix N: Infill Environmental Checklist (checklist) per Senate Bill (SB) 226 guidelines. The Infill checklist was released for public review on July 14, 2014, which scopes out several topics from further environmental review. Per discussions with the City, it has been determined that the El Camino Real/Downtown Specific Plan EIR will be used to streamline the Greenheart Project CEQA review in accordance with SB 226. Therefore,

the Infill Checklist (as included in a separate scope of work) scoped out all topics but the following: Air Quality during construction, Hazardous Materials, Noise, and Transportation. These topics, along with an Alternatives analysis, will be included in the Infill EIR. The Infill EIR would be subject to the same procedures and noticing requirements as for any “normal” EIR, as described below.

The below scope includes the work that would be conducted by ICF. Additionally, ICF has included W-Trans as a subconsultant for the transportation analysis. Although this work will be summarized below, W-Trans’s complete scope is included in Attachment A.

Scope of Work

Task 1. Project Initiation and EIR Project Description

The Infill EIR process will be initiated by discussing key issues, reviewing completed environmental documents, planning data collection efforts including a site visit, and refining the schedule for completion of individual tasks. At the outset of the EIR process, ICF will meet with City of Menlo Park staff and the Project Sponsor team. At this meeting, the team will:

- Discuss comments received on the Notice of Preparation (NOP) for incorporation into the EIR.
- Discuss data needs to complete the EIR.
- Confirm procedures for contacting the Project Sponsor team, City staff, and public agencies.
- Review and agree on schedules and deadlines.
- Discuss City preferences regarding EIR format and organization. The team will discuss how the proposed phasing will be presented and analyzed in the EIR.

The Project initiation effort will also include a review of approaches to impact significance thresholds, mitigation techniques, and Project alternatives.

After the discussion at the project initiation meeting, public scoping meeting, and responses to the NOP and checklist, ICF will revise the Project Description from the Infill Checklist for incorporation into the EIR. The revised Project Description will include updated Project parameters and more detailed Project-specific information requested during NOP scoping, such as the lot merger/lot line adjustment and heritage tree removal.

Deliverables

- Data request for the City and Project Sponsor
- Preliminary Infill EIR format and outline
- Revised Project Description

City Involvement

Participation in EIR project initiation meeting and collection of requested information. Identify additional revisions and supplementary work, as necessary.

Task 2. Administrative Draft Infill EIR 1

The purpose of this task is to prepare the Administrative Draft Infill EIR. This task will synthesize background information for use in the existing setting, evaluate changes to those baseline conditions resulting from implementation of the Project to identify significant impacts, and identify mitigation measures to reduce potentially significant impacts to a less-than-significant level. Where appropriate, ICF will refer to the analysis and mitigation measures presented in the Program EIR. The Project Description drafted for the checklist effort will also be used in the Draft EIR.

For this task, there will be four principal activities:

- Determine, by individual resource topic, the significance criteria to be used in the analysis.
- Present the analysis at full buildout of the Project.
- Perform the analysis and make determinations of impact significance.
- Recommend mitigation measures to reduce impacts, if needed.

The ICF team will collect the information necessary to define baseline conditions in the Project area. It is anticipated that baseline conditions will reflect the conditions at the time of the NOP release.

For each environmental topic, significance thresholds or criteria will be defined in consultation with the City so that it is clear how the EIR classifies an impact. These criteria will be based on CEQA Guidelines, Appendix G, standards used by the City, and our experience in developing performance standards and planning guidelines to minimize impacts.

The analysis will be based on standard methodologies and techniques, and will focus on the net changes anticipated at the Project site. The text will clearly link measures to impacts and indicate their effectiveness (i.e., ability to reduce an impact to a less-than-significant level), identify the responsible agency or party, and distinguish whether measures are proposed as part of the Project, are already being implemented (such as existing regulations), or are to be considered. This approach facilitates preparation of the Mitigation Monitoring and Reporting Program (MMRP) that follows certification of an EIR.

The Administrative Draft Infill EIR will incorporate the baseline conditions data as well as impact analysis and mitigation measures, plus the alternatives and other CEQA considerations. It is envisioned that the City's initial review of the document will consider content, accuracy, validity of assumptions, classification of impacts, feasibility of mitigation measures, and alternatives analyses. Because the impacts and mitigations are subject to revision based on staff review of the Administrative Draft Infill EIR, the Executive Summary will be prepared only for the Screencheck Draft. The following task descriptions summarize the data to be collected, impact assessment methodologies to be used, and types of mitigation measures to be considered, by environmental issue.

Air Quality

ICF conducted an Air Quality preliminary analysis in the checklist. The following topics will be scoped out of review in the EIR because, although some are considered significant and unavoidable, the Project impacts would not exceed those evaluated in the Program EIR:

- Conflict with or obstruct implementation of the applicable air quality plan. (Significant and Unavoidable)
- Violate any air quality standard or contribute substantially to an existing or project air quality violation. (Significant and Unavoidable)
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is a nonattainment area for an applicable federal state ambient air quality standard. (Significant and Unavoidable)
- Create objectionable odors. (No Impact)

Therefore, since the above topics do not need to be addressed for the Project, the EIR will focus on the exposure of sensitive receptors to substantial pollutant concentrations during construction. However, due to the lack of site-specific construction information, the Specific Plan EIR did not conduct an analysis related to toxic air contaminants (TAC) exposure during construction. Therefore, the Infill EIR will quantify construction and demolition-related emissions and contain a health risk assessment (HRA) that evaluates potential health risks to existing sensitive receptors. ICF will quantify construction and demolition-related emissions of using the CalEEMod model and construction data (i.e., anticipated construction schedule and equipment) provided by the Project Sponsor.

Once construction emissions have been quantified, ICF will prepare a health risk assessment (HRA) evaluating potential health risks to existing sensitive receptors near the Project. Typical construction activities considered in HRA assessments include project-related demolition, grading, excavation, infrastructure installation, and structure construction. Health risks to nearby receptors from exposure to construction-related diesel particulate matter and PM_{2.5} exhaust emissions will be characterized using diesel-related exhaust as determined from the CalEEMod modeling, the AERMOD dispersion model or other dispersion model (e.g., ISCST3, AERSCREEN, etc.) based on consultation with the BAAQMD, and methodology consistent with the BAAQMD and Office of Environmental Health Hazard Assessment. Identified health risks and pollutant concentrations will be compared to the BAAQMD's thresholds of significance to determine Project-level and cumulative health impacts.

The HRA will be embedded within the EIR and not prepared as a stand-alone report.

Hazards and Hazardous Materials

Several hazardous materials have been identified at the Project site including perchloroethylene (PCE) and PCE degradation products trichloroethene (TCE), dichloroethene (DCE), and vinyl chloride in site soil, soil vapor, and groundwater at concentrations posing a risk to human health and the environment. The presence of these contaminants is reportedly due to the release of PCE from a former dry cleaning business (Wo Sing Cleaners) that operated at 570 Derry Lane from 1981 to 2011. The portion of the Project site located at 1300 El Camino Real includes 21 hydraulic lifts with potential residual hydraulic oil in the lifts and hydraulic oil impacts on the soil at the locations of the lifts. The portion of the Project site at 1258 El Camino Real Site includes groundwater, saturated soils, soil vapor, and indoor air are affected by a past release of dry cleaning solvent to the subsurface at the adjoining property to the east (570 Derry Lane). ICF will conduct the following tasks to complete the Hazards and Hazardous Materials section of the EIR:

- Identify potential exposure to hazardous materials or waste during construction activities and during long-term operation at the Project site.
- Describe applicable federal, state, and local regulations and how these regulations apply to the Project and reduce the potential for impact.
- Evaluate potential public health risks at the site from groundwater and soil contamination from prior land uses. In addition, the analysis will focus on any potentially poor hazardous materials “housekeeping” practices at the site or from nearby uses. This information will be augmented by the Phase I ESAs prepared for the individual components of the Project site.
- Describe current remediation activities underway or future required activities, particularly those associated with the California Department of Toxic Substance Control (DTSC), which issued an Imminent and Substantial Endangerment Determination and Order and Remedial Action Order (2011 DTSC Order) for the Derry Lane Site and 1258 El Camino Real Site.
- Include a discussion of the potential hazardous materials that could be used during the operation of the Project and any potential releases of these materials.
- Include a discussion of the potential public health risk from exposure to hazardous building components in the structures to be demolished at the Project site (e.g., asbestos, PCBs, etc.).

Noise

As described below in the Transportation scope, the EIR will include an analysis of impacts to nearby intersections and roadway segments. Increased traffic resulting from the Project could result in significant increase in noise. For those roadway segments not considered in the Program EIR, ICF will analyze the exposure of existing noise sensitive land uses to Project-related changes in traffic noise. Existing noise conditions in the project area will be described in the setting section. Noise sensitive land uses and noise sources in the Project area will be identified. No noise measurements will be conducted. Instead, existing traffic noise conditions in the Project area will also be modeled using the FHWA Traffic Noise Model (TNM) version 2.5 and traffic data to be provided by W-Trans. Traffic noise along as many as ten roadway segments will be modeled.

Transportation/Traffic

Due to the level of technical detail in the transportation scope, the full text has been included as Attachment A. In summary, W-Trans has identified 27 study intersections and 14 roadway segments that will be considered in the analysis. W-Trans will also prepare the analysis in the format of a chapter to the EIR. All technical data will be appended to the EIR. The analysis will be prepared consistent with the City of Menlo Park and San Mateo County Congestion Management Program (CMP) requirements.

ICF, in conjunction with the City, will provide third party review of the TIA and the EIR chapter.

Other CEQA Considerations

This task involves documenting unavoidable adverse impacts and cumulative effects of the Project:

- The unavoidable effects will be summarized.
- Cumulative effects where relevant will be addressed in Task 4 and summarized as part of this section of the EIR. The future projects in the vicinity of the Project site will be considered as they relate to potential cumulative impacts. This scope assumes the City will help develop the approach for analyzing cumulative effects, typically a combination of using the General Plan and a list of reasonably foreseeable planned projects.

The Other CEQA Considerations chapter will also include a discussion of energy conservation per Appendix F of the CEQA Guidelines. In order to assure that energy implications are considered in project decisions, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. The EIR will consider the energy implications of the Project to the extent relevant and applicable to the Project.

Alternatives

ICF recognizes that the City would like to include at least one alternative in the EIR. While SB 226 does not require that an Infill EIR evaluate alternative locations, densities, or building intensities, there is nothing restricting the City from analyzing such an alternative. The alternatives to the Project must serve to substantially reduce impacts identified for the Project while feasibly attaining most of the Project objectives. ICF assumes that the three alternatives will be quantitatively analyzed, where appropriate, while the rest of the analysis will be qualitative. The EIR will also include the evaluation of a No Project Alternative. ICF will consider the alternatives proposed during the NOP scoping process.

Deliverables

- Five (5) hard copies of Administrative Draft EIR 1
- One (1) electronic copy of Administrative Draft EIR 1 in MS Word
- One (1) electronic copy of Administrative Draft EIR 1 in Adobe PDF format

City Involvement

Review and comment on the document.

Task 3. Administrative Draft Infill EIR 2 and Screencheck Draft Infill EIR

The purpose of this task is to prepare the Administrative Draft EIR 2 and the Screencheck Draft EIR for City staff review. ICF will prepare an Administrative Draft EIR 2 and a Screencheck Draft EIR to respond to the City's comments on the prior drafts. This scope assumes that comments from multiple reviewers will be consolidated with any conflicting comments resolved, and that comments do not result in substantial revisions or additional analyses. The Screencheck Draft EIR will include an Executive Summary section, which will summarize the Project Description, impacts and mitigations, and alternatives. Impacts and mitigations will be presented in a table that identifies each impact, its significance, and proposed mitigation as well as the level of significance following adoption for the mitigation measures.

Deliverables

- Five (5) hard copies of Administrative Draft EIR 2
- Electronic copies of Administrative Draft EIR 2 in MS Word and Adobe PDF format
- Five (5) hard copies of Screencheck Draft EIR
- Electronic copies of Screencheck Draft EIR in MS Word and Adobe PDF format

City Involvement

Review and comment on the document.

Task 4. Public Draft Infill EIR

The purpose of this task is to prepare and submit the Draft EIR to the City for distribution to the public. ICF will revise the Screencheck Draft to incorporate modifications identified by the City. The revised document will be a Draft EIR, fully in compliance with State CEQA Guidelines, City guidelines, and SB 226. The Draft EIR will be circulated among the public agencies and the general public as well as specific individuals, organizations, and agencies expressing an interest in receiving the document. During this task, ICF will also compile the appendices that will be distributed with the Draft EIR and produce a version of the full document that can be uploaded onto the City's website. ICF will also prepare a Notice of Completion (NOC) to accompany the copies that must be sent to the State Clearinghouse. This scope of work and budget assumes that ICF will send the required documents to the State Clearinghouse and that the City will distribute the Draft EIRs to all other recipients.

Deliverables

- Thirty (30) hard copies of the Draft EIR
- Electronic copies of the Draft EIR in MS Word and in Adobe PDF format
- Notice of Completion
- Fifteen hard copies of the Executive Summary, along with 15 electronic copies of the entire Draft EIR on CD, for the State Clearinghouse

City Involvement

Review the NOC. Prepare and file the Notice of Availability (NOA) with the County Clerk. Distribute the NOA and Draft EIRs (other than to the State Clearinghouse), and handle any additional noticing (e.g., newspaper, posting at site).

Task 5. Public Review and Hearing

The City will provide a 45-day review period during which the public will have an opportunity to review and comment on the Draft EIR. During the 45-day review period, the City will hold a public hearing to receive comments on the Draft EIR. ICF key team members will attend and participate as requested. ICF will prepare a PowerPoint presentation for the public hearing. This scope of work does not include preparing other meeting materials (e.g., handouts) or providing meeting transcript/minutes; but the scope can be amended to include these items.

City Involvement

Coordinate the public hearing – prepare and distribute any meeting materials, accept comments, and hold public meeting.

Task 6. Draft Responses to Comments and Administrative Final Infill EIR

The purpose of this task is to prepare responses to the comments received on the Draft EIR and incorporate these responses into an Administrative Final EIR for City review. The Administrative Final EIR will include:

- Comments received on the Draft EIR, including a list of all commenters and the full comment letters and public meeting transcripts with individual comments marked and numbered;
- Responses to all comments; and
- Revisions to the Draft EIR in errata format as necessary in response to comments.

All substantive comments for each written and oral comment will be reviewed, bracketed, and coded for a response. Prior to preparing responses, ICF will meet with staff to review the comments and suggest strategies for preparing responses. This step is desirable to ensure that all substantive comments are being addressed and that the appropriate level of response will be prepared. This scope of work and budget assumes ICF will prepare responses for up to 30 substantive discrete, non-repeating comments and will coordinate integrating the responses prepared by other consultants. However, the number and content of public comments is unknown at this time. Therefore, following the close of the Draft EIR public review period and receipt of all public comments, ICF will meet with the City to revisit the budget associated with this effort to determine if additional hours are needed.

Frequently raised comments of a substantive nature may be responded to in a Master Response, which allows for a comprehensive response to be presented upfront for all interested commenters. ICF will identify and recommend possible Master Responses for City consideration during the initial meeting to discuss strategies for preparing responses.

Following the strategy session, ICF will prepare Master Responses (as appropriate) and individual responses to the bracketed and coded comments. Individual responses to each comment letter will be placed immediately after the comment letter. As necessary, responses may indicate text revisions, in addition to clarifications and explanations. All text changes stemming from the responses to the comments, as well as those suggested by City staff, will be compiled into an errata included as part of the Final EIR.

Following City's review of the Administrative Final EIR, ICF will address all comments received and prepare a Screencheck Final EIR for City review to ensure that all comments on the Draft were adequately addressed.

Deliverables

- Five (5) hard copies of the Administrative Final EIR
- Electronic copies Administrative Final EIR in MS Word and in Adobe PDF format
- Five (5) hard copies of the Screencheck Final EIR
- Electronic copies of the Screencheck Final EIR in MS Word and in Adobe PDF format

City Involvement

Participate in strategy session to provide guidance on the responses to comments. Assist with response to comments on process, procedures, and City policy. Review and comment on the Administrative Final EIR and Screencheck Final EIR.

Task 7. Final Infill EIR

Based on comments received from City staff, the Screencheck Responses to Comments will be revised and appropriate revisions to the Draft EIR will be noted. The Final EIR will then consist of the Draft EIR and the Responses to Comments document. Revisions to the Draft EIR will be presented as a separate chapter in the Final EIR. The revised Responses to Comments document will be submitted to the City for discussion by the Planning Commission and subsequent certification by the City Council.

Deliverables

- Fifteen (15) hard copies of the Final EIR
- Electronic copies of the Final EIR in MS Word and Adobe PDF format

Task 8. Certification Hearings, MMRP, Statement of Overriding Considerations, and Administrative Record

The purpose of this task is to attend meetings to certify the EIR. Team members will attend and participate in up to two meetings to certify the EIR. If requested by City staff, ICF will present the conclusions of the EIR and a summary of the comments and responses.

As part of this task, ICF will also prepare a draft and final MMRP for the project, as required by Section 15097 of the State CEQA Guidelines. The MMRP will be in a tabular format and include:

- The mitigation measures to be implemented, including those outlined in the Specific Plan EIR and presented in the Infill Checklist
- The entity responsible for implementing a particular measure
- The entity responsible for verifying that a particular measure has been completed
- A monitoring milestone(s) or action(s) to mark implementation/completion of the mitigation measure

In addition, ICF will prepare the Statement of Overriding Considerations and Findings of Fact pursuant to Section 15093 of the CEQA Guidelines. CEQA requires the decision-making agency to balance the economic, legal, social, and technological benefits of a proposed project against its unavoidable environmental impacts. The Statement of Overriding Considerations includes the specific reasons to support its action based on the Final EIR and other information in the record. Upon certification, ICF will prepare the Notice of Determination (NOD) for the City to file with the County Clerk.

ICF will also compile the Administrative Record, assembling background documents, e-mail records, correspondence or telephone notes that are cited as sources in the EIR.

Deliverables

- Electronic copies of the Draft MMRP in MS Word and Adobe PDF format

- Electronic copies of the Final MMRP in MS Word and Adobe PDF format
- One electronic copy (on CD or DVD) of the Administrative Record (submitted at the Draft EIR phase and the Final EIR phase)

City Involvement

Review and comment on the draft MMRP and Findings of Fact. Coordinate any meetings. File the NOD with the County Clerk.

Task 9. Meetings

The purpose of this task is to attend meetings to accomplish the above tasks. Team members will attend and participate in meetings on an as-needed basis. For purposes of the cost estimates, ICF has assumed two City staff and/or Project Sponsor face-to-face meetings and four phone conference calls. Additional meetings may be appropriate during the course of this effort, and will be invoiced on a time-and-materials basis. The estimated cost for additional meetings is included in the discussion of the project budget. ICF will notify the City once the allocated hours for meetings are exhausted and request authorization for additional meetings before any are held.

City Involvement

Organize, announce, conduct, and prepare any materials for public meetings.

Task 10. Project Management

The purpose of this task is to effectively manage the above tasks, and maintain communication with City staff. ICF project management will be responsible for coordination activities, will maintain QA/QC requirements for document preparation, and will monitor schedule and performance for all EIR work tasks. Project management subtasks also include maintaining internal communications among ICF staff and W-Trans and with City staff and other team members through emails and frequent phone contact, as well as the preparation of all correspondence. The Project Manager will coordinate internal staff, project guidance, and analysis criteria.

City Involvement

Coordination with ICF Project Manager.

Cost

The cost estimate to prepare the EIR is \$206,698 as detailed in Attachment B.

Schedule

A schedule for the EIR is included as Attachment C. This schedule assumes that the start date will correspond with contract approval and will need to be revised once a more definitive timeline is established.

1300 El Camino Real - Greenheart, EIR Transportation Workscope

The following tasks will provide a transportation impact analysis report that meets current City of Menlo Park and San Mateo County Congestion Management Program (CMP) requirements, and provide focused information on the proposed 1300 El Camino Real - Greenheart project.

Task 1: Data Collection and Field Reconnaissance

There are 27 study intersections and 14 roadway segments assumed in this analysis. These are:

Intersections:

1. *El Camino Real and Encinal Avenue*
2. *El Camino Real and Valparaiso Avenue/Glenwood Avenue*
3. *El Camino Real and Oak Grove Avenue*
4. *El Camino Real and Santa Cruz Avenue*
5. *El Camino Real and Ravenswood Avenue/Menlo Avenue*
6. *El Camino Real and Roble Avenue*
7. *El Camino Real and Middle Avenue*
8. *El Camino Real and Cambridge Avenue*
9. University Drive and Valparaiso Avenue
10. Laurel Street and Oak Grove Avenue
11. Laurel Street and Ravenswood Avenue
12. Middlefield Road and Willow Road
13. Middlefield Road and Ringwood Avenue
14. Middlefield Road and Ravenswood Avenue
15. Santa Cruz Avenue and University Drive (S)
16. Laurel Street and Glenwood Avenue (four-way stop)
17. Alma Street and Ravenswood Avenue (two-way stop)
18. Alma Street and Oak Grove Avenue (two-way stop)
19. Garwood Way and Glenwood Avenue (two-way stop)
20. Derry Lane (Garwood Way)/Merrill Street and Oak Grove Avenue (two-way stop)
21. Santa Cruz Avenue and University Drive (N) (unsignalized)
22. Oak Grove Avenue and University Drive (unsignalized)
23. Encinal Avenue and Laurel Street (unsignalized)
24. Middlefield Road and Oak Grove Avenue [Atherton]
25. Middlefield Road and Marsh Road [Atherton]
26. Middlefield Road and Glenwood Avenue [Atherton] (two-way stop)
27. Encinal Avenue and Middlefield Road [Atherton] (unsignalized)

*State-controlled intersections are shown with *italic* type.

**It is assumed that all a.m. and p.m. intersection turning movement counts will provided by the City of Menlo Park in fall 2014. There is a nominal reserve budget available should additional data collection be needed.

1300 El Camino Real - Greenheart, EIR Transportation Workslope

Residential and Non-Residential Roadway Segments:

1. Middlefield Road north of Glenwood Avenue
2. Middlefield Road south of Oak Grove Ave.
3. Ravenswood Avenue east of Laurel Street.
4. Valparaiso Avenue west of El Camino Real
5. Oak Grove Avenue west of Laurel Street
6. Oak Grove Avenue east of Laurel Street
7. Glenwood Avenue west of Laurel Street
8. Glenwood Avenue east of Laurel Street
9. Encinal Avenue east of Laurel Street.
10. Laurel Street south of Oak Grove Avenue
11. Laurel Street north of Glenwood Avenue
12. Alma Street south of Oak Grove Avenue
13. Merrill Street south of Oak Grove Avenue
14. Garwood Way south of Glenwood Avenue

*It is assumed that all 24-hour roadway segment counts will be provided by City of Menlo Park staff. There is a nominal reserve budget available should additional data collection be needed.

The list of intersections and roadway segments represent those facilities that are most likely to be potentially impacted by the proposed project. If it is found, through the course of the transportation analysis, that additional intersections or roadway segments should be analyzed, then we will bring that to the attention of City staff at that time. The incremental cost of adding study intersections or roadway segments is noted on the budget table under optional tasks.

Field Reconnaissance

W-Trans staff will conduct field visits during the AM and PM peak periods on a typical weekday (Tuesday, Wednesday or Thursday) for those intersections not recently evaluated under other projects such as the SRI Master Plan EIR or the El Camino Real Corridor Study. W-Trans will observe:

- Traffic patterns and circulation in the site vicinity
- Study intersection lane geometrics
- Traffic control
- Pedestrian circulation and facilities/amenities
- Bicycle circulation and facilities/amenities
- Proximity of public transit service
- Sight distance issues at study intersections
- Potential access issues

1300 El Camino Real - Greenheart, EIR Transportation Workscope

Task 2: Transportation Impact Analysis

Project Trip Generation and Distribution

The trip generation and CSA trip distribution assumptions that were used to the Initial Study will be applied to the EIR analysis. If the project description has changed since the Initial Study was prepared then W-Trans will calculate an updated trip generation projection.

Near-Term Trip Generation and Distribution

Near-term traffic will be based on a list (and the traffic studies if possible) of pending and approved projects that will be provided by City of Menlo Park staff. We will also ask City of Menlo Park staff to provide a list (and the traffic studies if possible) of any pending and approved projects from the cities of Palo Alto, East Palo Alto, and Redwood City, and the Town of Atherton that should be included in the near-term transportation analysis.

Study Intersection Traffic Analysis

The AM and PM peak hour operational Levels of Service (LOS) will be analyzed at the study intersections. The analysis will include the following scenarios:

- a. Existing Conditions
- b. Near Term Conditions (Existing [a] + Approved and Pending Projects, plus one percent per year of background growth)
- c. Near Term [b] + Project Conditions
- d. Cumulative Conditions (No Project Alternative, Approved and Pending Projects plus one percent per year of background growth [based on C\CAG 2040 Travel Forecast Model projections])
- e. Cumulative [d] + Project Conditions (based on proposed project full build out)

All study intersections will be evaluated during the AM and PM peak hours using VISTRO software and the 2000 Highway Capacity Manual methodology. This traffic analysis will include estimates of average vehicle delays on all approaches. For any impact found to be significant, we will determine the traffic contribution from the proposed project. The suggested mitigation measures for other development projects in Menlo Park, as detailed in the EIRs prepared for those projects, will also be included if they are within the jurisdiction of Menlo Park.

W-Trans will confirm with City staff the list of approved and pending projects prior to conducting analysis, including the status of projects proposed as part of the Downtown Specific Plan.

Arterial and Collector Streets Assessment

W-Trans will estimate the daily traffic on nearby minor arterials and collector streets and estimate whether the proposed project will result in a significant impact under the City's significance criteria. For any study intersections or roadway segments not in Menlo Park, W-Trans will apply the local agency's adopted analysis methods and significance criteria.

1300 El Camino Real - Greenheart, EIR Transportation Workscope

Site Plan and Parking Evaluation

To the extent that the site plan has been developed, W-Trans will review the site plans for the project site, and access locations with respect to on-site traffic circulation, proposed site access and operational safety conditions.

We will also review the proposed parking supply in light of the City's Code requirements and also the anticipated peak parking demand based on ITE Parking Generation rates. A shared parking analysis will be completed using methodology published by the Urban Land Institute. Feasible circulation and parking modifications, if needed, will be evaluated and suggested in the EIR transportation study.

Railroad Gate Downtime Evaluation

We will provide a qualitative discussion of the effects of railroad gate downtime on local street and intersection operation. This will include potential for queuing and delay with respect to the frequency of gate downtime occurrence.

Pedestrian Conditions, Bicycle Access and Transit Impacts Analysis

W-Trans will review the proposed project with respect to the potential effects on pedestrian and bicyclist facilities. This includes sidewalks, bicycle lanes, and amenities to promote the safe use of alternate modes of transportation, and connections to the existing bicycle and pedestrian network. The analysis will consider the project's proposed elements with respect to the City's Bicycle Plan and Sidewalk Master Plan. W-Trans will estimate the potential number of additional transit riders that may be generated by the proposed project, and qualitatively assess whether they would constitute an impact on transit load factors.

San Mateo County CMP Analysis

The proposed project will be subject to review by the San Mateo County Congestion Management Program (CMP) and its requirements. As such, W-Trans will evaluate the following Routes of Regional Significance:

1. SR 84 Willow Road to University Avenue
2. SR 84 University Avenue to County Line
3. SR 114 US 101 to Bayfront Expressway
4. SR 82 north of Ravenswood Avenue
5. SR 82 south of Ravenswood Avenue
6. US 101 North of Marsh Road
7. US 101 Marsh Road to Willow Road
8. US 101 Willow Road to University Avenue
9. US 101 South of University Avenue

The identification of the potential impacts of adding project-generated trips to these routes will be examined. This will include the volume of project-generated traffic added to the US 101/Willow Road interchange ramps and adjacent freeway segments. Evaluation of the CMP routes will be based on the most recently approved CMP Traffic Impact Analysis guidelines in the Land Use section of the CMP.

1300 El Camino Real - Greenheart, EIR Transportation Workscope

Planned Transportation Improvements

W-Trans will incorporate any planned transportation improvements as part of the EIR analysis. We will consider the timing and funding for any improvements prior to its inclusion in the analysis.

Development of Mitigation Measures

W-Trans will discuss specific mitigation measures to address project traffic impacts. We will provide a table comparing analysis results before and after mitigation, and follow the TIA guidelines for mitigation measure preparation. While a TDM program may be recommended as a mitigation measure, a detailed TDM program is not part of the EIR report. Should significant impacts be identified, W-Trans will recommend the mitigation measures needed to alleviate such impacts and improve operational conditions. Potential impacts may include those to intersections, roadways, on-site circulation and access, as well as parking, bicyclist, pedestrian and transit operations. The analysis shall first concentrate on short-term strategies that can be implemented by the applicant, and then longer-term joint effort strategies. Mitigation measures identification and selection process will be coordinated with City staff. As part of this task, W-Trans will provide conceptual drawings and corresponding construction cost estimates for recommended improvement measures, up to the budget resources available.

Analysis of Project Alternatives

The Cumulative Conditions No Project Alternative, as noted above, will be analyzed in full quantitative detail. Up to three other alternatives will be analyzed in a qualitative manner. This includes a trip generation comparison of the alternative to the proposed project and a qualitative assessment of whether the potential impacts of the alternative would be more or less than those of the proposed project.

VMT Analysis

The following task is proposed to provide information related to pending changes in state law for transportation analyses under CEQA (SB 743). This information may or may not be included in the Environmental Impact Report, but no impacts or mitigation measures should be proposed based on this analysis. It is for informational purposes only. W-Trans will work with C/CAG to obtain cumulative baseline and project conditions travel forecast model runs for the proposed project. We will ask C/CAG to:

- a. Identify the TAZ (assuming it's just one TAZ) where the Greenheart project is located.
- b. Provide daily, a.m. peak hour and p.m. peak hour VMT for the existing and model buildout year (Cumulative No Project).
- c. Provide the number of jobs forecast for this TAZ in the model buildout year.
- d. Based on the net change in jobs and housing in this TAZ associated with the proposed Greenheart project, re-run model and provide daily, a.m. peak hour and p.m. peak hour VMT for the model buildout year (Cumulative with Project). The VMT can be provided for the entire county, or for a subarea, as long as there is consistency between model runs and VMT calculations in tasks b and d.
- e. Provide change in VMT, and also VMT per capita, based on the results of items b and d above.

1300 El Camino Real - Greenheart, EIR Transportation Workscope

Task 3: Two (2) Administrative Draft EIR Chapters

W-Trans will document all work assumptions, analysis procedures, findings, graphics, impacts and recommendations in an Administrative Draft EIR Chapter for review and comments by City staff and the environmental consultant. The Chapter will also include:

- Description of new or planned changes to the street system serving the site, including changes in driveway location and traffic control, if any
- Future Project Condition Volumes (ADTs, a.m. peak hour, p.m. peak hour)
- Project trip generation rates
- Project trip distribution
- Discussion of impact of project trips on study intersections
- Levels of service discussion and table for each study scenario
- Comparison table of Project Condition and Existing LOS along with average delay and percent increases at intersections
- Impacts of additional traffic volumes on city streets
- Intersection level of service calculation sheets (electronic format)

We have assumed preparation of two Administrative Drafts of the EIR Transportation Chapter.

W-Trans will respond to one set of consolidated comments on the first Administrative Draft Report. The text, graphics and analysis will be modified as needed. The second Administrative Draft Report will then be prepared. W-Trans will coordinate with the environmental consultant and provide both pdf and WORD versions of the EIR Transportation Chapter to the environmental consultant, as well as intersection and roadway segment traffic data for use in air and noise analysis.

The environmental consultant will provide W-Trans with an outline of the format to be used for the EIR Transportation Chapter. To support the EIR Transportation Chapter, W-Trans will provide a technical appendix. The appendix may include more detailed transportation analysis such as level of service calculations, technical memoranda that were developed as part of this proposal, and other supporting materials. To expedite the review process, and if requested, W-Trans will provide a separate copy of the EIR Transportation Chapter with its appendix to City staff for their review.

Deliverable: Electronic Copy of Administrative Draft EIR Transportation Chapter (pdf, WORD)

Task 4: Draft EIR Transportation Chapter

W-Trans will respond to one set of consolidated comments on the second Administrative Draft EIR Transportation Chapter. The text, graphics and analysis will be modified as needed. The Draft EIR Transportation Chapter will then be prepared.

Deliverable: Electronic Copy of Draft EIR Transportation Chapter (pdf, WORD)

Task 5: Final EIR - Response to Comments

W-Trans will respond in writing to comments received on the Draft EIR Transportation Chapter. We have assumed preparation of comment responses as well as revisions to the responses based on City staff review.

1300 El Camino Real - Greenheart, EIR Transportation Workscope

Deliverable: Electronic Copy of Comments and Responses Memo [and Comments and Responses Matrix if requested] (pdf, WORD)

Task 6: Meetings (6)

This work scope includes up to six meetings related to this project. These could be with project team members, public hearings or other formal meetings.

Exclusions:

- City staff shall provide recent traffic data as noted above (intersection and roadway segment counts, CSA and other data);
- All study scenarios will be evaluated based on existing intersection geometrics. Should significant impacts be determined with the proposed project development, mitigation measures which may include changes to the intersection geometrics will be recommended;
- Any material modifications to the site plan, driveway locations or project description once W-Trans has begun the traffic analysis may constitute a change in work scope and/or budget;
- Should analysis of additional phases, scenarios, intersections, or roadway segments be requested, or additional meetings, a modification to this scope and budget will be requested. The cost for each additional intersection or roadway segment is noted as “optional” on the budget table;
- Should additional time be necessary to prepare the Final EIR beyond the budgeted hours (as it is unknown how many comments or the level of effort that will be required to respond to Draft EIR comments) we will request additional budget at that time, and proceed only after receiving written authorization for additional services;
- Any services not explicitly identified above are excluded.



Task	HOURS BY STAFF MEMBER					Misc	Total Hours
	Dalene Whitlock	Mark Spencer	Project Eng	Tech/ Admin			
1. Data Collection & Field Reconnaissance	0	0	8	1		\$3,400	9
2. Transportation Impact Analysis	2	45	246	93		\$0	386
3. Administrative Draft EIR Chapters (2)	5	15	46	56		\$0	122
4. Draft EIR Chapter	0	7	14	6		\$0	27
5. Final EIR	2	14	14	3		\$0	33
6. Meetings (6)	0	24	10	0		\$600	34
7. Project Management	0	16	0	2		\$0	18
	9	121	338	161		\$4,000	629

Task	FEE AT HOURLY RATES INDICATED					TOTAL
	\$220	\$205	\$120	\$85	LS	
1. Data Collection & Field Reconnaissance	\$0	\$0	\$960	\$85	\$3,400	\$4,445
2. Transportation Impact Analysis	\$440	\$9,225	\$29,520	\$7,905	\$0	\$47,090
3. Administrative Draft EIR Chapters (2)	\$1,100	\$3,075	\$5,520	\$4,760	\$0	\$14,455
4. Draft EIR Chapter	\$0	\$1,435	\$1,680	\$510	\$0	\$3,625
5. Final EIR	\$440	\$2,870	\$1,680	\$255	\$0	\$5,245
6. Meetings (6)	\$0	\$4,920	\$1,200	\$0	\$600	\$6,720
7. Project Management	\$0	\$3,280	\$0	\$170	\$0	\$3,450
	\$1,980	\$24,805	\$40,560	\$13,685	\$4,000	\$85,030

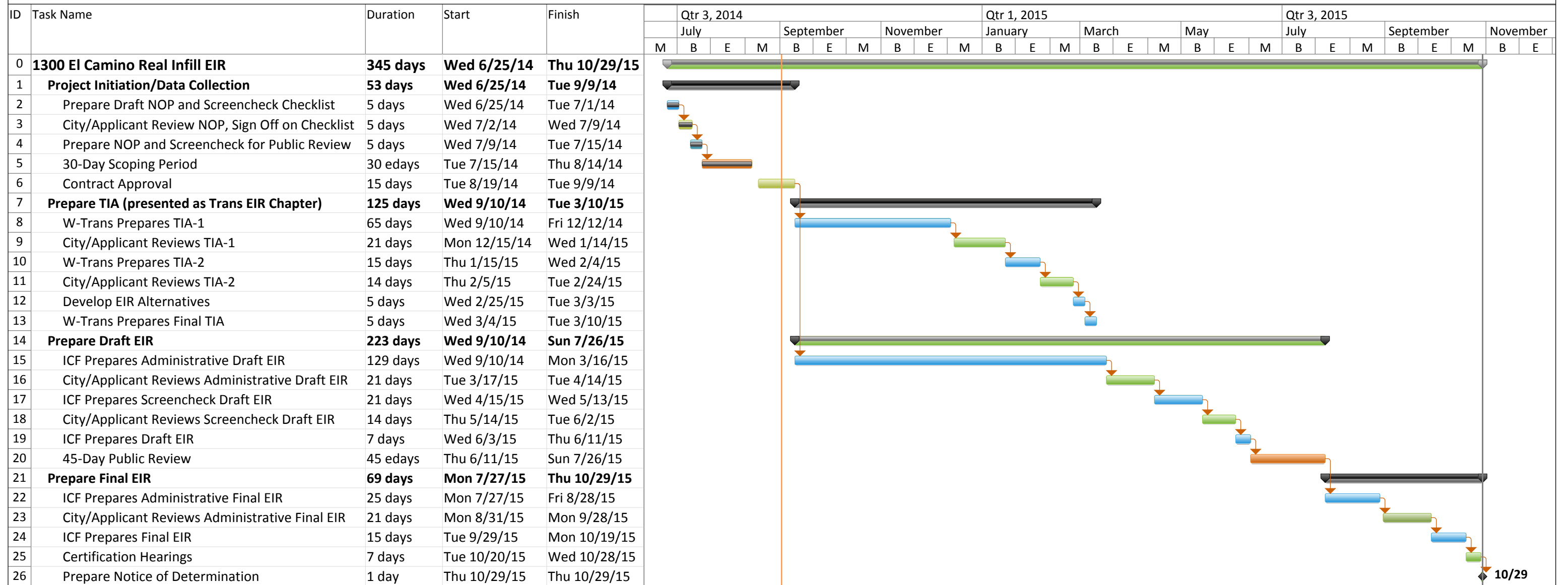
Optional Tasks

Each additional intersection (including traffic count, analysis, and incorporation into report text, tables and figures) \$1,600
 Each additional roadway segment (including traffic count, analysis, and incorporation into report text, tables and figures) \$800

Attachment B: 1300 El Camino Real Greenheart Project - Infill EIR

Task	Labor Classification	Employee Name										Subcontractor		Production Staff			Labor Total	Direct Expenses	Total Price
		Walter Ric	Efner Eri	Chapman Kir	Matsui Cor	Kuo Kai	Hatcher Sha	Barrera Mar	Buehler Dav	Messick Tim	W-Trans		Monzon S	Jew D					
Project Role	Proj Dir	Project Manager	Deputy PM	AQ, Noise	Trans	AQ	HazMat/Geo	Noise	Graphics										
Task	Proj Dir	Mng Consult	Sr Consult I	Assoc Consult II	Sr Consult II	Mng Consult	Sr Consult I	Proj Dir	Assoc Consult III	Subtotal		Subtotal	Editor	Support Editor	Subtotal				
Task 1. Project Initiation and Infill EIR Scope Definition	2	4	8			4			4	\$3,488		\$0			\$0		\$3,488		
Task 2. Administrative Draft EIR 1										\$0		\$0			\$0		\$0		
Air Quality	2	4	2	80		16				\$11,374		\$0	4	2	\$570		\$11,944		
Noise		2	2	32				4		\$4,330		\$0	3	2	\$475		\$4,805		
Hazards and Hazardous Materials		4	4						70	\$9,092		\$0	3	2	\$475		\$9,567		
Transportation	2	4	2		10				6	\$3,638	\$85,030	\$85,030	6	6	\$1,140		\$89,808		
Other CEQA Considerations		1	6	2	30					\$4,950		\$0	1	1	\$190		\$5,140		
Alternatives	8	18	32	40	8	4	24	2		\$17,632		\$0	4	4	\$760		\$18,392		
Task 3. Admin Draft 2 and Screencheck	2	6	24	24		4		4		\$8,176		\$0	3	10	\$1,235		\$9,411		
Task 4. Public Draft Infill EIR		4	8	2						\$1,876		\$0		4	\$380		\$2,256		
Task 5. Public Review and Hearing		6	6							\$1,878		\$0			\$0		\$1,878		
Task 6. Draft RTCs and Admin Final EIR	2	10	24	32	4	2		2	2	\$9,606		\$0	10	16	\$2,470		\$12,076		
Task 7. Final Infill EIR	2	6	10	4						\$3,182		\$0	4	4	\$760		\$3,942		
Task 8. Certification, MMRP, SOC	4	8	12							\$3,972		\$0	4	4	\$760		\$4,732		
Task 9. Meetings	4	6	6			2				\$3,264		\$0			\$0		\$3,264		
Task 10. Project Management	8	25	40							\$11,552		\$0			\$0		\$11,552		
Total hours	36	108	186	216	52	32	94	12	12				42	55					
ICF E&P 2013 Billing Rates	\$254	\$200	\$113	\$86	\$130	\$185	\$112	\$238	\$134				\$95	\$95					
Subtotals	\$9,144	\$21,600	\$21,018	\$18,576	\$6,760	\$5,920	\$10,528	\$2,856	\$1,608	\$98,010	\$85,030	\$85,030	\$3,990	\$5,225	\$9,215	\$192,255			
Direct Expenses																			
523.02 Reproductions																	\$5,000		
523.04 Postage and Delivery																	\$250		
523.05 Travel, Auto, incld. Mileage at current IRS rate (.555/mile)																	\$150		
Mark up on all non-labor costs and subcontractors: 10%																	\$9,043		
Direct expense subtotal																	\$14,443		
Total price																	\$206,698		

1300 El Camino Real Infill EIR Schedule





**NOTICE OF PREPARATION
OF AN
ENVIRONMENTAL IMPACT REPORT
FOR THE
1300 EL CAMINO REAL GREENHEART PROJECT
CITY OF MENLO PARK
July 14, 2014**

Notice is hereby given that the City of Menlo Park will be the Lead Agency and will prepare an Infill Environmental Impact Report (EIR) for the 1300 El Camino Real Greenheart Project. An Appendix N: Infill Environmental Checklist (Checklist) has been prepared along with this Notice of Preparation (NOP), which scopes out several environmental topics from further review. The EIR will address the potential physical environmental effects for those environmental topics that have not been scoped out, as outlined in the California Environmental Quality Act (CEQA) and pursuant to Senate Bill (SB) 226, Streamlining for Infill Projects. The City is requesting comments on the Checklist as they relate to the scope and content of the EIR. The Checklist is available for review at the Community Development Department and online at:

www.menlopark.org/732/1300-El-Camino-Real

A Scoping Session will be held as part of the Planning Commission meeting on August 4, 2014 starting at 7:00 p.m. at the Menlo Park City Council Chambers located at 701 Laurel Street, Menlo Park, 94025. The Scoping Session is part of the EIR scoping process during which the City solicits input from the public and other agencies on specific topics that they believe should be addressed in the environmental analysis. Written comments on the Checklist and the scope of the EIR may also be sent to:

**Thomas Rogers, Senior Planner
City of Menlo Park
Community Development Department
Planning Division
701 Laurel Street
Menlo Park, CA 94025
throgers@menlopark.org
Phone: 650.330.6722
Fax: 650.327.1653**

Comments are requested within 30 days, or by August 13, 2014

PROJECT LOCATION AND EXISTING CONDITIONS: The proposed 6.4-acre Project site is located in the City of Menlo Park and is generally bound by residential and commercial development along Glenwood Avenue to the north, the Caltrain and Garwood Way right-of-ways to the east, Oak Grove Avenue to the south and El Camino Real to the west.¹ Downtown Menlo Park is approximately 0.1 mile southwest of the Project site. In total, the Project site contains seven existing buildings with approximately 25,800 square feet (sf) that front onto Derry Lane, Oak Grove Avenue, and El Camino Real. In addition, the Project site features parking areas, expansive pavement, and limited vegetative features. The Project site includes 11 individual parcels. The location of the Project site is depicted in Figure 1.

¹ For descriptive purposes, true northwest is Project north with El Camino Real running in a north-south direction and Oak Grove Avenue running in an east-west direction.

The Project site is located within the Menlo Park El Camino Real and Downtown Specific Plan (Specific Plan) area. The City has developed the Specific Plan to establish a framework for private and public improvements in the Plan area for the next 30 years. The Specific Plan addresses approximately 130 acres of land and focuses on the character and density of private infill development, the character and extent of enhanced public spaces, and circulation and connectivity improvements. On June 5, 2012, the City Council certified the Specific Plan Program EIR (Program EIR).

PROJECT DESCRIPTION: Greenheart Land Company (Project Sponsor) is proposing to redevelop the Project site into a mixed-use development. The Project would demolish the existing structures in the southern portion of the site and construct approximately 420,000 sf of mixed uses. In total, the Project would include three mixed-use buildings, a surface parking lot, underground parking garages (up to two levels deep), onsite linkages, and landscaping. The uses at the Project site would include a range of approximately 195,000 sf to 210,000 sf of non-medical office space in two buildings; approximately 203,000 sf to 210,000 sf of residential space (up to 220 housing units) in one building; and up to 22,000 sf of retail/restaurant space throughout the proposed office and residential buildings. The Project would provide 1,071 parking spaces within parking garages and a surface parking lot. The Project Sponsor's conceptual site plan is shown in Figure 2.

The two office buildings would be oriented in an east-west direction and would front onto El Camino Real. Both buildings would be three stories and would not exceed 48 feet in height. Each building would include approximately 105,000 sf of building area with lobbies, office spaces, and potential retail/restaurant space in the western frontages of the building along El Camino Real. A plaza would be situated between the two buildings with landscaping, water features, and outdoor dining areas. Together, the two office/retail buildings would not exceed 210,000 sf.

The residential building would front along Oak Grove Avenue and Garwood Way and would consist of approximately 210,000 sf. Plazas would be located between this building and the adjacent office building to the north and west, and at the corner of Oak Grove Avenue and Garwood Way. The building would also wrap around a center courtyard area with a pool. Potential retail/restaurant space would be located along the Oak Grove Avenue street frontage. The residential building would consist of four stories and would not exceed 48 feet in height.

In total, the three buildings would cover approximately 45 percent of the Project site and would be constructed at 1.5 floor area ratio (FAR). A 10,000-sf public park, Garwood Way Public Park, would be located in the northeast corner of the Project site adjacent to Garwood Way and the Caltrain right-of-way. The park would contain up to two bocce courts, seating and table areas for casual picnicking, resting, table game play (chess and checkers), and a gathering area. A portion of the park may be used as bioswales for the San Mateo County National Pollutant Discharge Elimination System (NPDES) C.3 storm water requirements as well utilizing native grasses in these areas.

PROJECT APPROVALS: The following approvals would be required by the City under the Project:

- Environmental Review
- Approval of Public Benefit Bonus
- Architectural Control Review
- Lot Line Adjustment/Lot Merger
- Heritage Tree Removal Permits
- Below Market Rate Housing Agreement

RESPONSIBLE AGENCIES: The below agencies are expected to review the Draft EIR to evaluate the Project:

- Bay Area Air Quality Management District
- California Department of Transportation
- California Regional Water Quality Control Board, San Francisco Bay Region/San Mateo Countywide Water Pollution Prevention Program
- Department of Toxic Substances Control
- City/County Association of Governments
- Menlo Park Fire Protection District
- San Mateo County Environmental Health Division
- West Bay Sanitary District

INTRODUCTION TO THE INFILL EIR: An Infill Environmental Checklist for the Project has been prepared by the City, in conformance with Section 15183.3 of the State CEQA Guidelines and Section 21094.5 of the Public Resources Code (PRC), adopted per SB 226. SB 226 was developed to eliminate repetitive analysis of effects of a project that were previously analyzed in a programmatic EIR for a planning-level decision or are substantially mitigated by uniformly applied development policies. As discussed above, the Project site is within the Specific Plan area. Since the Project site plan and development parameters are consistent with the development anticipated by the Specific Plan, the Specific Plan EIR (certified June 2012) is applicable to this Project.

It has been determined that the proposed infill Project would have effects that either have not been analyzed in the prior Specific Plan EIR, or are more significant than described in the prior EIR, and that no uniformly applicable development policies would substantially mitigate such effects. Therefore, since these impacts could be significant, an Infill EIR is required to analyze those effects.

The purpose of an EIR is to inform decision-makers and the general public of the environmental effects of a proposed project. The EIR process is intended to provide environmental information sufficient to evaluate a proposed project and its potential to cause significant effects on the environment; examine methods of reducing adverse environmental impacts; and identify alternatives to the proposed project. The 1300 El Camino Real Greenheart Project Infill EIR will be prepared and processed in accordance with CEQA and the State CEQA Guidelines. The EIR will include the following:

- Summary of the Project and its potential environmental effects;
- Description of the Project;
- Description of the existing environmental setting, potential environmental impacts of the Project, and mitigation measures to reduce significant environmental effects of the Project;
- Alternatives to the Project;
- Cumulative impacts; and
- CEQA conclusions.

PROBABLE ENVIRONMENTAL EFFECTS: Based on the Checklist, the following topics will be scoped out of the EIR: Aesthetics, Agricultural/Forestry Resources, Air Quality (operational), Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hydrology/Water Quality, Land Use, Mineral Resources, Noise (all but traffic noise), Population and Housing, Public Services, and Utilities. Therefore, the EIR will analyze whether the Project would have significant environmental impacts in the following areas:

- Air Quality (construction)
- Hazards and Hazardous Materials

- Noise (traffic noise)
- Transportation and Traffic

In order to prepare these sections and analyze the impacts, a Transportation Impact Analysis (TIA) will be prepared. The TIA will focus on intersections, residential and non-residential roadway segments, and Routes of Regional Significance.

The following 27 intersections will be included in the TIA:

- | | |
|--|--|
| 1. <i>El Camino Real and Encinal Avenue</i> ² | 15. Santa Cruz Avenue and University Drive (S) |
| 2. <i>El Camino Real and Valparaiso Avenue/Glenwood Avenue</i> | 16. Laurel Street and Glenwood Avenue |
| 3. <i>El Camino Real and Oak Grove Avenue</i> | 17. Alma Street and Ravenswood Avenue |
| 4. <i>El Camino Real and Santa Cruz Avenue</i> | 18. Alma Street and Oak Grove Avenue |
| 5. <i>El Camino Real and Ravenswood Avenue/Menlo Avenue</i> | 19. Garwood Way and Glenwood Avenue |
| 6. <i>El Camino Real and Roble Avenue</i> | 20. Derry Lane (Garwood Way)/Merrill Street and Oak Grove Avenue |
| 7. <i>El Camino Real and Middle Avenue</i> | 21. Santa Cruz Avenue and University Drive (N) |
| 8. <i>El Camino Real and Cambridge Avenue</i> | 22. Oak Grove Avenue and University Drive |
| 9. University Drive and Valparaiso Avenue | 23. Encinal Avenue and Laurel Street |
| 10. Laurel Street and Oak Grove Avenue | 24. Middlefield Road and Oak Grove Avenue [Atherton] |
| 11. Laurel Street and Ravenswood Avenue | 25. Middlefield Road and Marsh Road [Atherton] |
| 12. Middlefield Road and Willow Road | 26. Middlefield Road and Glenwood Avenue [Atherton] |
| 13. Middlefield Road and Ringwood Avenue | 27. Encinal Avenue and Middlefield Road [Atherton] |
| 14. Middlefield Road and Ravenswood Avenue | |

In addition, 14 residential and non-residential roadway segments will be analyzed:

1. Middlefield Road north of Glenwood Avenue
2. Middlefield Road south of Oak Grove Avenue
3. Ravenswood Avenue east of Laurel Street
4. Valparaiso Avenue west of El Camino Real
5. Oak Grove Avenue west of Laurel Street
6. Oak Grove Avenue east of Laurel Street
7. Glenwood Avenue west of Laurel Street
8. Glenwood Avenue east of Laurel Street
9. Encinal Avenue east of Laurel Street
10. Laurel Street south of Oak Grove Avenue
11. Laurel Street north of Glenwood Avenue
12. Alma Street south of Oak Grove Avenue
13. Merrill Street south of Oak Gove Avenue
14. Garwood Way south of Glenwood Avenue

² State-controlled intersections are shown with *italic* type.

The environmental impacts of the Project will be measured as the change that results from the Project against “baseline” environmental conditions. For the purposes of the topics analyzed in the EIR, the baseline environmental conditions for the Project include existing conditions at the release of this NOP.

ALTERNATIVES: Based on the significance conclusions determined in the EIR, alternatives to the Project will be analyzed that might reduce identified impacts. Section 15126.6(e) of the CEQA Guidelines requires the evaluation of a No Project Alternative. Other alternatives will be considered during preparation of the EIR and will comply with the CEQA Guidelines that call for a “range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.”

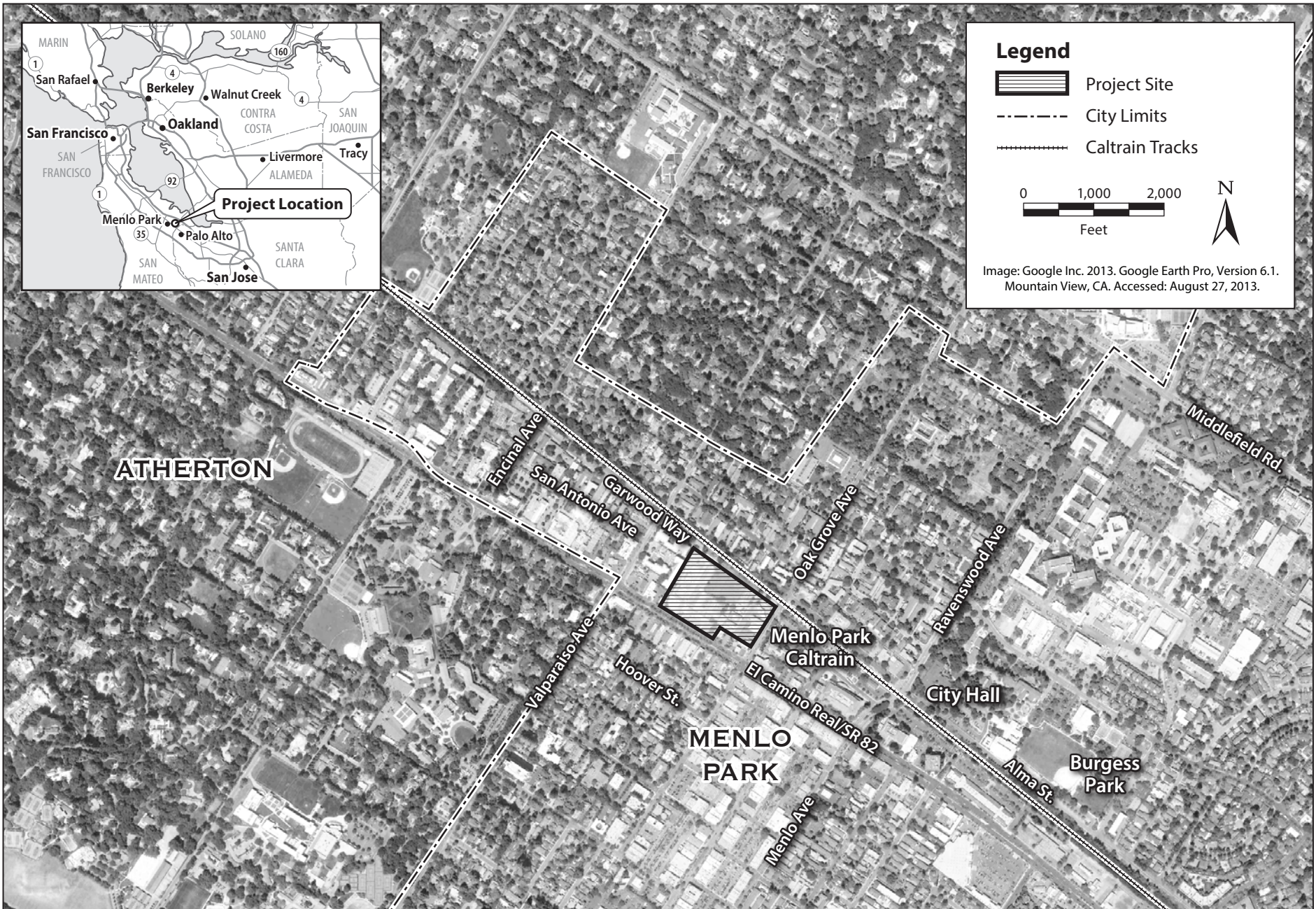
EIR PROCESS: Following the close of the NOP comment period, a Draft EIR will be prepared that will consider all comments on the NOP and the Infill Environmental Checklist. In accordance with CEQA Guidelines Section 15105(a), the Draft EIR will be released for public review and comment for the required 45-day review period. Following the close of the 45-day public review period, the City will prepare a Final EIR which will include responses to all substantive comments received on the Draft EIR. The Draft EIR and Final EIR and will be considered by the Planning Commission and City Council in making the decision to certify the EIR and to approve or deny the Project.



Thomas Rogers, Senior Planner
City of Menlo Park

July 14, 2014

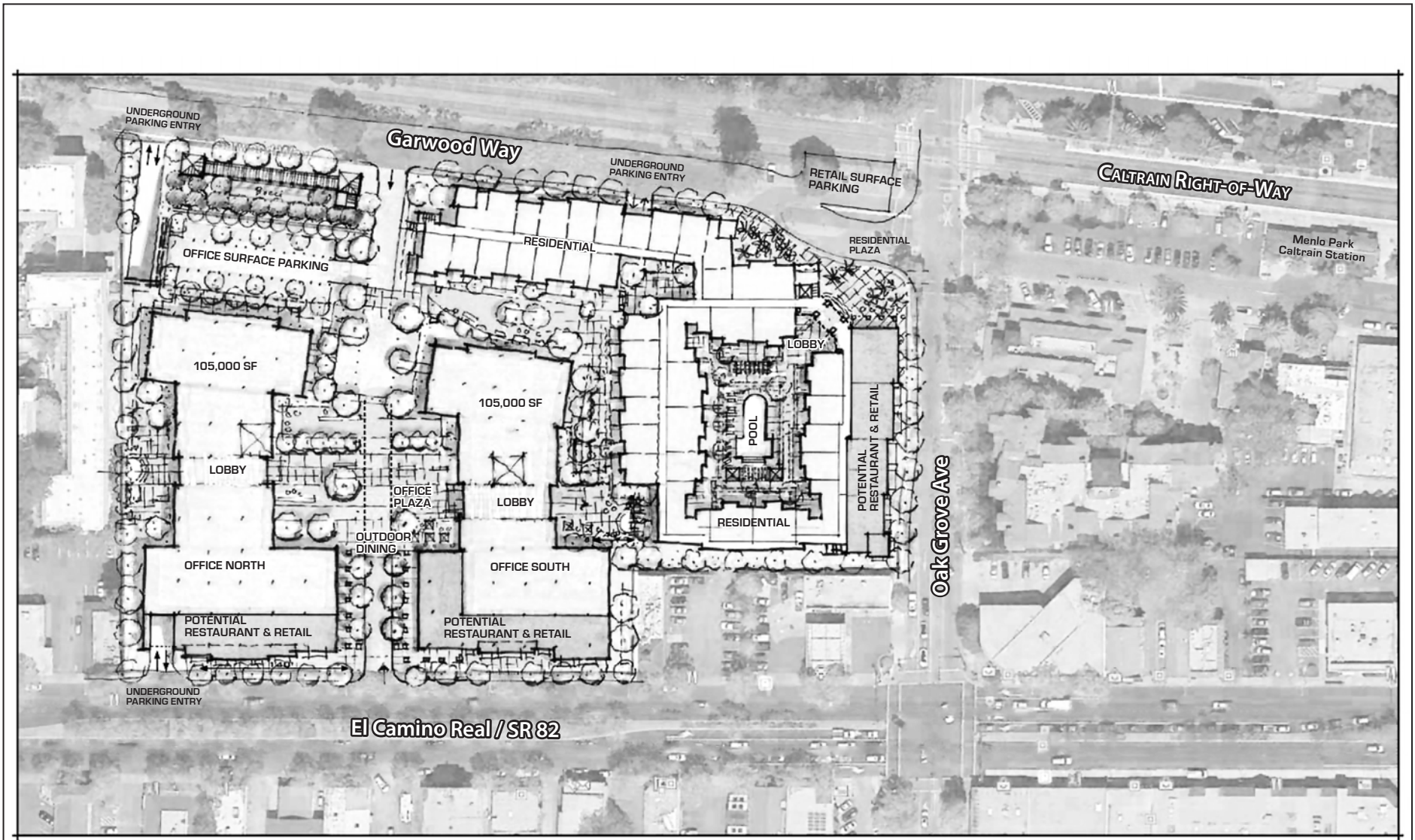
Date



Graphics ... 0062713 NOP (6-27-2014) tm



Figure 1
Project Location
1300 El Camino Real Greenheart Project



Graphics ... 0062713 NOP (6-27-2014).tm

Source: Bar Architects, 2013.

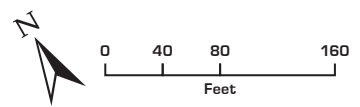


Figure 2
Conceptual Site Plan
 1300 El Camino Real Greenheart Project



Graphics: ... 0062713 NOP (7-9-2014) tm



Figure 3
Study Intersections and Roadway Segments
 1300 El Camino Real Greenheart Project

DEPARTMENT OF TRANSPORTATION

DISTRICT 4
P.O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 711
www.dot.ca.gov



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August 1, 2014

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SCH#2014072028

Mr. Thomas Rodgers
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

CITY OF MENLO PARK
BUILDING

Dear Mr. Rodgers:

1300 El Camino Real Greenheart Project – Notice of Preparation (NOP)

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. We have reviewed the NOP and have the following comments to offer.

Traffic Impact Study (TIS)

One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance potential adverse impacts by local development on State highways. We recommend using the Caltrans *Guide for the Preparation of Traffic Impact Studies* (TIS Guide) for determining which scenarios and methodologies to use in the analysis. The TIS Guide is a starting point for collaboration between the lead agency and Caltrans in determining when a TIS is needed. The appropriate level of study is determined by the particulars of a project, the prevailing highway conditions, and the forecasted traffic. The TIS Guide is available at the following website address:

http://dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf.

The TIS should include:

1. Vicinity map, regional location map, and a site plan clearly showing project access in relation to nearby State roadways. Ingress and egress for all project components should be clearly identified. The State right-of-way (ROW) should be clearly identified. The maps should also include project driveways, local roads and intersections, parking, and transit facilities.
2. Project-related trip generation, distribution, and assignment. The assumptions and methodologies used to develop this information should be detailed in the study, and should be supported with appropriate documentation.
3. Average Daily Traffic, AM and PM peak hour volumes and levels of service (LOS) on all

roadways where potentially significant impacts may occur, including crossroads and controlled intersections for existing, existing plus project, cumulative and cumulative plus project scenarios. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect study area roadways and intersections. The analysis should clearly identify the project's contribution to area traffic and any degradation to existing and cumulative LOS. Caltrans' LOS threshold, which is the transition between LOS C and D, and is explained in detail in the TIS Guide, should be applied to all State facilities.

4. Schematic illustration of traffic conditions including the project site and study area roadways, trip distribution percentages and volumes as well as intersection geometrics, i.e., lane configurations, for the scenarios described above.
5. The project site building potential as identified in the General Plan. The project's consistency with both the Circulation Element of the General Plan and the Congestion Management Agency's Congestion Management Plan should be evaluated.
6. Identification of mitigation for any roadway mainline section or intersection with insufficient capacity to maintain an acceptable LOS with the addition of project-related and/or cumulative traffic.

Lead Agency

As the lead agency, the City of Menlo Park (City) is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State ROW and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the City work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see end of this letter for more information regarding encroachment permits.

Vehicle Trip Reduction

Caltrans encourages you to locate any needed housing, jobs and neighborhood services near major mass transit centers, with connecting streets configured to facilitate walking and biking, as a means of promoting mass transit use and reducing regional vehicle miles traveled and traffic impacts on the State highways.

Mr. Thomas Rodgers, City of Menlo Park
August 1, 2014
Page 3

We also encourage you to develop Travel Demand Management (TDM) policies to encourage usage of nearby public transit lines and reduce vehicle trips on the State Highway System. These policies could include lower parking ratios, car-sharing programs, bicycle parking and showers for employees, and providing transit passes to residents and employees, among others. For information about parking ratios, see the Metropolitan Transportation Commission (MTC) report *Reforming Parking Policies to Support Smart Growth* or visit the MTC parking webpage: http://www.mtc.ca.gov/planning/smart_growth/parking.

In addition, secondary impacts on pedestrians and bicyclists resulting from any traffic impact mitigation measures should be analyzed. The analysis should describe any pedestrian and bicycle mitigation measures and safety countermeasures that would in turn be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on State highways.

Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the following address: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See this website for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits>.

Should you have any questions regarding this letter, please call Shawn Hallum of my staff at (510) 622-1696 or shawn.hallum@dot.ca.gov.

Sincerely,



for

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

Rogers, Thomas H

From: George Fisher <georgefisher@gmail.com>
Sent: Thursday, July 31, 2014 3:56 PM
To: _Planning Commission; Rogers, Thomas H
Cc: _CCIN
Subject: EIR Scoping Session for the required EIR for the 1300 El Camino Real Greenheart project, August 4, 2014

Planning Commission

RE EIR for 1300 Greenheart Project

I am responding to the request in the NOP of EIR for comments on specific topics that should be addressed in the Infill EIR for the new Greenheart project at 1300 ECR. Thomas Rogers on July 10, 2014 determined that infill effects "WOULD be significant.

1. All work should be done per Menlo Park's Transportation Impact Analysis, including the requirement as of January 2014 that the VISTRO analysis, as the successor for the TRAFFIX program should be utilized for transportation analysis. A near term analysis should be done as well as an existing and cumulative analysis.
2. Project generated traffic should be distributed to local and regional destinations based on trip distribution profiles stated by the City of Menlo's Circulation System Assessment (CSA) Document. These distribution profiles only specify the origin/destination of the trips, not the route used to travel to these origin/destinations. Route specific assignment of traffic on the local transportation network is required and should be based upon various alternative access configurations, as well as local knowledge of the local transportation network and travel patterns. This was done by W-Trans in its 500 ECR Traffic operational analysis for Menlo Park. These trip assignment alternatives used should be specified and explained in a manner to be understandable by the public, including residents, decision makers, and developers of the Project.
3. Neighborhood cut-through analysis should be assessed for all roadways between ECR and the Alameda and San Fransquito Creek and Valparaiso, as well as ECR and Middlefield, Encinal and Willow, and willow and Marsh road. See geographical gateway discussion for different uses in Paragraph 5 below. W-Trans in the 500 ECR consistency report of March 7, 2014, p 10 found significant route changes from the Specific plan EIR, which increased trips on Middle from 87 to 528, AM peak hour from 4 to 63, and pm peak hour from 9 to 67. These peak hour increases are not only substantial, but will

affect LOS at various intersections. Office space generated more trips at peak hours than other uses, in addition to geographic changes.

4. Alternatives should be included for reasonably anticipated changes in the roadway system or the project. These alternatives should include the following;

- a. Three full lanes on ECR through town as Henry Riggs has recently published in the Almanac, and which he states was supposed to happen for Specific Plan infrastructure further states "has begun". That change in itself requires additional CEQA work.
- b. Other proposed changes to ECR being currently studied by the City's El Camino corridor study, including pedestrian and bicycle crossings on ECR, and access north south on ECR, particularly if Riggs accurately stated the city is installing three lanes through town in each direction. .
- c. Inclusion and non-inclusion of an additional right turn northbound from ECR to Ravenswood as urged by Council Member Ohtaki.
- d. Limitation of office space by the Ballot Initiative to the Menlo Park ECR DSP. Although Menlo Park spent approximately \$150,000 in anticipation of passage of this initiative, the consultant's report did not include any competent Traffic Impact Analysis of office space limitation.
- e. The changes to traffic patterns identified in the W-trans reports regarding traffic related to Stanford's 500 ECR project including the changes on Middle and also analysis of Cut through Traffic, as well as changes in any EIR's done in Menlo Park in the past two years.
- f. Because of the congestion on ECR a vehicular analysis of the project should be done assuming no ECR access.

5. All 14 residential and non-residential roadway segments and the 27 intersections identified on page 4 of the NOP should be included in the Transportation Impact Analysis, plus additional roadway segments and intersections reasonably required because of geographic differences in the CSA between office space, and other non-residential and residential space. Pursuant to the CSA 69% of office trips have gateways on I-280, S 101, and SR 84 east, opposed to only 16% retail, which are much more local. The prior 1300 project was primarily retail, a grocery store, as approved and studied . To get to the projected gateways, 69% of the office traffic will have to use other roadways and intersections, which should also be studied after trip distribution and trip assignments are determined. Possibilities include :

a. Roadway segments:

- i. Ringwood From Middlefield to Bay
- ii. Willow from Laurel to Middlefield
- iii. Willow from Middlefield to Bay
- iv. Marsh from Bay to US 101
- v. Santa Cruz from ECR to Alameda Avy
- vi. Avy from Alameda to Monte Rosa
- vii. Monte Rosa from avy to sand hill
- viii. Middle Ave from ECR to Olive
- ix. Olive from middle to Oak
- x. Oak from olive to Sand hill
- xi. ECR from Sand Hill to

b. Intersections:

- i. Middle and University
- ii. University and Roble
- iii. University and Menlo
- iv. Cambridge and University
- v. Middle and Yale
- vi. Middle and Princeton
- vii. ECR and Sand Hill
- viii. Marsh and Bay Road
- ix. Marsh and Scott
- x. Ringwood and Bay

6. The amount of traffic to be generated by the 1300 ECR project should be added to the 13, 385 ADT projected by the specific plan area by the Specific Plan EIR because no traffic was included for this area in those 13, 385 ADT, because the pending project traffic, if at all, was only included in the 30 year cumulative comparison, not the 13,385 projection.

7. Intersection Queuing should be considered on all ECR Intersections and all Intersections within 4 km of ECR on streets accessing ECR.

8. New traffic counts should be done on all roadway segments and intersections to be included in the EIR.

9. The EIR and the Planning commission should both review determinations of what new development should be considered net new development under the Specific Plan. As noted in the Wise report Staff uses inconsistent methods, primarily to maximize the allowance for net new development, by making improper exclusions. The Specific Plan EIR test was only exclusion for existing buildings occupied at the time. The prior 1300 Greenheart project was never built or occupied. Also the Marriott net new development test of comparison of equivalent space with traffic counts was fictitious.

Don't hesitate to contact me with any questions or comments. Thank You, George C Fisher

George C. Fisher
1121 Cotton Street
Menlo Park, Ca, 94025

(650) 799 5480
Fax (650) 475 1849
georgecfisher@gmail.com
<http://www.gfisherlaw.com>

Rogers, Thomas H

From: Patti L Fry <pattilry@gmail.com>
Sent: Wednesday, August 13, 2014 4:56 PM
To: _CCIN
Cc: Rogers, Thomas H
Subject: Greenheart project EIR Scoping
Attachments: Sierra Club Gita comments 20131119.pdf; FEIR Fehr & Peers Perkins + Will w Sub Areas.pdf; Greenheart 1300 ECR gross and net SF 20140804.pdf

Dear City -

Following are comments regarding the Greenheart project EIR Scope. These are in addition to my prior comments sent to the Planning Commission before their Study Session and discussion about the EIR Scope. Those comments are appended below.

Definition of Project - The project itself needs additional definition. Even the ECR/D Specific Plan had definite amounts of various types of uses. No such thing has been identified for this project. Instead, ranges for the total FAR and for the SF of different uses have been provided for this Greenheart project. That is not acceptable for EIR purposes, as the EIR must study a specific project. An evaluation of both the environmental impacts and potential project benefits depend on exactly what is defined as "the project".

In the August 4, 2014 Planning Commission staff report page 8 is a statement of how unclear the actual project is "Each of these buildings would feature potential retail/restaurant space in the western frontages along El Camino Real. This would be "flex" space that could be either retail/restaurant or non-medical office at any particular time, depending on market interest and developer preference."

Further adding to confusion about what this project is: different numbers are used in different documents about the quantity of residential units, the amount of retail, the number of parking spaces. Examples:

- The 1300 El Camino Real Greenheart Project Infill Environmental Checklist page 1-1 "The uses at the Project site would include a range of approximately 195,000 sf to 210,000 sf of non-medical office space in two buildings; approximately 203,000 sf to 210,000 sf of residential space (220 housing units) in one building; and up to 22,000 sf of retail/restaurant space throughout proposed office and residential buildings. The Project would provide approximately 1,071 parking spaces."
- Page 7 of the August 4, 2014 Planning Commission staff report lists "up to 220" residential units with 203,000 SF; Retail/Restaurant of 7,000 SF, and "Flex" Space (Non-Medical Office or Retail/Restaurant) of 22,000 SF, and Non-Medical Office of 188,000 SF. 1,145 parking spaces.
- Page C2 of the August 4, 2014 Planning Commission staff report lists Retail of 7, 000 SF in the residential buildings and 22,00 SF in the commercial building [total 29,000 SF] and "200 rental units". The same 29,000 SF of retail is listed on page C4 where it lists 1,158 parking spaces. The calculations for parking suggest that there are 216 residential units (270 divided by 1.25).
- Page D2 of the August 4, 2014 (the July 14, 2014 Notice of Preparation) states there is 195,000 to 210,000 SF of non-medical office, 203,000 to 210,000 SF of residential space (up to 220 units), up to 22,000 SF retail/restaurant, and 1,071 parking spaces.
- Page 2-5 of the 1300 El Camino Real Greenheart Project Infill Environmental Checklist Table 2.3 states that the project is 105,000 SF of non-medical office in each of two buildings, and 210,000 SF of residential.
- Page 2-6 of the same Infill Checklist Table 2-4 states that Non-medical Office 195,000 – 210,000 SF, Retail 15,000 – 22,000 SF and Residential 203,000 – 210,000 SF (220 units)

- Page 2-8 of the Infill Checklist describes "Office and retail uses would be allocated 3.8 parking stalls per 1,000 sf of building space for a total of 798 spaces. The other parking garage would be located under the residential buildings and would provide one level of parking for exclusive use by onsite residents. This parking garage would have 1.3 spaces per unit for a total of 273 spaces. Combined, the Project site would include 1,071 parking spaces." Note that the parking rates are not the same as in other documents listed above.

These numbers are inconsistent. There must be a single set of numbers for specific uses; not ranges, and not different numbers for the project to be evaluated in the EIR.

If there is uncertainty about potential uses, create Alternatives for study of the different options for each, including total project size and amounts of the different types of uses included, and parking.

Plans - The plans available for this project are incomplete, making it difficult to evaluate the project. There are no interior elevations, and no northside elevations (non-street). Plans are important for evaluation of potential impacts and for understanding the project benefits.

Comparison of Impacts and Determination of Net New Development - There was a third EIR done regarding a portion of this project site -- that for the original Derry Lane Mixed Use Project, certified in 2006.

There is no clear rationale for netting out only one of these two prior projects (i.e., 1300 El Camino Real and Derry Lane Mixed Use), each of which was supposedly in the background of the EIR for the ECR/D Specific Plan. It seems more appropriate that both are netted against the project or neither is netted against the Greenheart project.

As indicated in the previous communication, any calculation of "net" development needs to use today's FAR yardstick, with prior SF adjusted accordingly, and "net" of active uses only once. Regarding the latter, the prior project impacts in the background for the ECR/D Specific Plan were considered as "net" of then-active uses. So the gross SF of those projects cannot be netted against the Greenheart project now. It appears that there is an attempt to deduct active uses multiple times (previously for the prior EIR's, and now for the Greenheart project).

EIR Scope - It is not appropriate to exclude Population/Housing from the EIR study. Using the same analytical assumptions as used by the City's consultant Lisa Wise Consulting, Inc., the Greenheart project could generate more than 2.5 jobs/housing unit. This worsens the assumed average in the Specific Plan of 1.56. Since the Specific Plan did not assume the Greenheart site was an "opportunity site", this impact is potentially significant and adverse because the project adds disproportionately more jobs than housing. Given the previously announced proposal at 500 El Camino Real, it may not be possible for development within the Specific Plan's Maximum Buildout to make up for the additional jobs represented by the Greenheart project in addition to other approved and pending projects in order to achieve the Specific Plan's average.

Because incremental traffic impacts can be directly related to GHG emissions, it is inappropriate to exclude study of Greenhouse gases in the EIR for the Greenheart project.

Respectfully submitted,
Patti Fry
Menlo Park resident and former Planning Commissioner

----- Forwarded message -----
From: **Patti L Fry** <pattilry@gmail.com>

Date: Mon, Aug 4, 2014 at 1:05 PM

Subject: Greenheart project EIR Scoping and Study Session

To: "planning.commission@menlopark.org" <planning.commission@menlopark.org>

Dear Planning Commission - this evening you will be discussing two topics about the Greenheart project at 1300 El Camino Real (ECR) and related parcels -- its EIR scope and a study session about the project. Below are comments for consideration during both of your discussions.

As you may know, this project is being proposed using the Specific Plan's rules on a combination of parcels where there used to be

- an approved project that had its own EIR (1300 ECR) AND that was considered in the long-term background of the Specific Plan EIR,
- another project (Derry site) that was the subject of a successful referendum. A revised project was approved by the PC March 2008 but not taken forward by the applicant to the CC (combination of strife amongst Derry family members and with developer, and recession). This may also have been in the long-term background of the Specific Plan EIR.
- 3rd smaller site at 1258 El Camino that was not part of either of the above

Regarding the EIR scoping - the **scope** of the EIR is very critical to get right because that, and only that, is what will be studied in the EIR.

Definition of Project - it appears that there is uncertainty about how much retail the Greenheart project will contain. It is too ambiguous for EIR purposes to call potential Retail space "flex space" since different uses could have different environmental and financial (for FIA) characteristics. The Project for the purposes of the EIR needs to pick a certain amount of each type of use for its study. Alternative(s) could study the other option(s) for types and amounts of uses..

Identification of Alternatives - be sure that at least one of the Alternatives studied is a reasonable and realistic (and ideally desirable) scenario with no more than 100K SF of office. Assuming the Initiative is approved this fall, having such an Alternative pre-identified should help speed up pursuit of it. As we know, often times the Alternatives are virtual throw-aways but it's good information for you/community to see a contrast of the proposal with the Alternative, and good for developer to have EIR already underway for what could be built when initiative is approved..

Another Alternative should be a combination of the 2 prior projects and something similar added for the new parcel that was not part of either prior site.

Comparison of impacts - the previously approved 1300 ECR project was included in 2 different EIRs - its own (in 2009), and that of the Specific Plan (DEIR in 2011, FEIR 2012). The issue at hand is whether the Greenheart project exceeds the impacts studied in the Specific Plan, as it followed the original 1300 ECR proposal and its EIR.

The previously approved grocery store project EIR may contain some useful information, however. Do bear in mind that the project was accepted despite "significant and unavoidable traffic impacts". The project was approved despite those impacts because the Council made a finding of "overriding considerations" based on the benefits of that project. It's a project that doesn't exist and never was built, and the benefits never realized. The grocery and a health club were among the benefits. In contrast, the Greenheart contains no health club, and promises no retail.

For that EIR decision see page 25 of the Council 10/06/09

action: http://service.govdelivery.com/docs/CAMENLO/CAMENLO_97/CAMENLO_97_20091006_020000_en.pdf

Definition of Net New project - be sure that consideration (and subtraction from the gross new SF and uses of the Greenheart project) of the previously approved/studied 1300 ECR impacts are based on its 2009 "net new" development SF, not its 2009 gross SF. I think the City is using the wrong number for that (110,065 SF) that was the 2009 gross SF..

Be sure to also consider that since August 2009 the City redefined what is considered FAR. When that decision was made, the staff report indicates what the 2009 project would be counted as in the new definition of SF. See attached for more details about all of this. A similar adjustment would need to be made for the Derry Lane project that was assumed as background for the Specific Plan EIR.

It is important when discussing "net new" development to know what both the gross SF by use is and what is to be netted against it, using the same ruler. Use of the spring 2009 gross SF for the 1300 ECR grocery project (2008 Derry project, too) and is not appropriate when comparing "net new" to what was studied in the Specific Plan EIR, which used a different definition of what is FAR.

The active uses should be netted, not total structures including vacant ones. For Derry site, page 2-2 lists 22,300 SF of existing structures but at least 8,300 SF is vacant (inactive).

Impacts - Impacts studied should take into account the lost opportunity of the prior projects. Analysis of net new impacts of the Greenheart project, for example, must take into account the loss of retail, office, housing units, health club etc. from both of the prior projects. When the Financial Impact Analysis (FIA) is done, the same needs to be taken into account. Similarly, when potential benefits are considered when evaluating the possibility of Overriding Considerations for accepting the EIR and when evaluating Public Benefit for a Public Benefit Bonus, the loss of the benefits of the prior projects has to be taken into account while the incremental benefits of the new project are evaluated.

Specific Plan assumptions for El Camino North quadrant

Ensure that this new EIR considers not only total impacts expected from the Specific Plan but also the impacts the Plan's EIR assumed would occur in the north El Camino area where the Greenheart site is located. See attached table from the Specific Plan Transportation Appendices, bearing in mind that the previously approved projects were assumed in the long-term background. In other words, the new, and removed uses shown do not include the 2009 project or the 2008 Derry Lane project. They were assumed to be "built" at the time.

The differences between the Greenheart project and the 2009 approved project (e.g., in terms of uses and square footage) are ALL incremental above and beyond what the Specific Plan EIR assumed. After all, other "opportunity" sites in El Camino North quadrant, including the former Roger Reynolds site, were assumed to be represented by the changes in the attached table; nothing in the table was assumed for the Greenheart site except for the 1258 ECR parcel.

for the study session -- The session should include the approved plans of the prior projects at 1300 ECR and at Derry sites. There are a few elevations on the city website for the former 1300 ECR project

EIR www.menlopark.org/DocumentCenter/View/2189 but none about the revised project for the Derry site.

The revised Derry project was approved by the PC, and elevations shown to the PC at that time, but the project was not taken by the applicant to the CC. The comparisons of the scopes of those projects, their uses, and their look & feel might be helpful.

Additionally, it would be helpful to compare the project to the Specific Plan Vision, and re-examine the Nov 2013 Sierra Club letter about larger sites being very important to the City's ability to achieve its housing goals. The CCIN link to that letter is broken so I've attached the letter, too.

Respectfully submitted,
Patti Fry, former Planning Commissioner (2000-2004)

WAYS TO LOOK AT THE "NET NEW" SIZE/IMPACT OF THE PROPOSED GREENHEART PROJECT

1. FAR DEFINITION CHANGE IMPACT

From Planning Commission Staff Report 8/31/09 page 5
"Building Square Footage

The proposed project was designed in accordance with the City's gross floor area definition in effect at the time of the application submittal. In addition, the project was designed consistent with the Institute of Traffic Engineers (ITE) definition of gross floor area for purposes of conducting the traffic analysis in the EIR. In the intervening time, the City's definition of gross floor area has been modified, and the applicant has examined the plans in light of the new definition. It appears that there are features of the proposed project, such as utility rooms and mechanical areas, which have the potential to be excluded from the current definition of gross floor area based on the ultimate designs that would be developed during the construction drawing phase of the building permit process. The applicant estimates that the **gross floor area under the current definition would be 106,308 square feet, instead of 110,065 square feet.** [emphasis added] Given the fact that the EIR establishes a maximum building size based on the transportation analysis and the specificity associated with the planned development permit, the size of the building is limited to what is represented on the attached project plans and the square footage could not be increased if portions of the project do qualify for an exclusion under the current gross floor area definition."

The Derry Lane project, approved by the Planning Commission in 2008 may be similarly affected by the redefinition. This calculation needs to be conducted.

2. EXISTING USES –

1300 ECR – there are several possibilities:

a. 4/4/06 CC staff report says 31,000 SF of auto dealership at 1300 ECR

b. Prior 1300 EIR project DEIR March 2009 page 28 says "Currently, the project site is occupied by a former Cadillac dealership. The five stand-alone and connected buildings on the site (comprising **approximately 30,000 square feet of interior space**) were constructed in 1967 and were occupied by several different car dealerships prior to the closing of the Cadillac dealership."
Note - this is probably low because it's interior, not exterior.

c. Specific Plan DEIR April 29, 2011 page 4-5 for Specific Plan says **28,584 SF active use (110,065 SF new)**, so net new at that time was **81,481 SF**

Derry Lane – ONLY active uses should be netted against gross SF.

3. NET NEW SF - should be NEW GREENHEART SF (by type of use) Minus Prior Project Gross SF using today's FAR ruler [i.e., gross **106,308 SF**] minus Prior Project Active as measured in one of the ways from #2 above. This must be done for both the prior 1300 ECR and Derry projects.

TABLE ES-1: PROPOSED LAND USE CHANGES BY SUB AREA

Land Use ¹	Downtown	Station Area	El Camino South	El Camino North	Total
Existing Development Anticipated to be Removed (Occupied Space)					
Commercial/Office (sf)	23,500 sf	39,700 sf	5,000 sf	0	68,200 sf
Retail (sf)	77,050 sf	27,500 sf	147,000 sf	28,100 sf	279,560 sf
Hotel (rooms)	0	0	0	0	0 rms
Residential (du)	0	0	0	0	0 dus
Proposed Land Uses					
Commercial/Office (sf)	36,400 sf	0	221,020 sf	51,600 sf	309,020 sf
Retail (sf)	144,715 sf	59,000 sf	142,925 sf	25,200 sf	371,840 sf
Hotel (rooms)	80 rms	0	300 rms	0	380 rms
Residential (du)	257 dus	133 dus	192 dus	98 dus	680 dus
Net Added Uses					
Commercial/Office (sf)	12,900 sf	(39,700 sf)	216,020 sf	51,600 sf	240,820 sf
Retail (sf)	67,665 sf	31,500 sf	(4,465 sf)	(2,900 sf)	91,800 sf
Hotel (rooms)	80 rms	0	300 rms	0	380 rms
Residential (du)	257 dus	133 dus	192 dus	98	680 dus

Notes:

1. sf = square feet, dus = dwelling units, rms = rooms

Source: Perkins + Will, 2010.

SCOPE OF THE ANALYSIS

The operations of 34 study intersections, 32 roadway segments, and 4 freeway segments were evaluated for the following scenarios:

- Scenario 1:** *Existing Conditions* – Existing traffic conditions using volumes obtained from counts.
- Scenario 2:** *Existing Plus Project Conditions* – Existing volumes plus net new traffic generated by the anticipated development levels envisioned in the Specific Plan and presented in Table 1. This scenario is the basis from which project impacts are identified for California Environmental Quality Act (CEQA) purposes.
- Scenario 3:** *Cumulative (2035) No Project Conditions* – Cumulative conditions represent long range conditions and include existing peak-hour volumes multiplied by a twenty-year growth factor to represent regional growth plus traffic generated by approved and pending development projects in Menlo Park.
- Scenario 4:** *Cumulative (2035) Project Conditions* – Traffic volumes from Scenario 3 plus traffic generated by anticipated development levels envisioned in the Specific Plan. This scenario is the basis from which cumulative project impacts are identified for California Environmental Quality Act (CEQA) purposes.

11.19.13
Gita Dev
F1

CHAPTER E LAND USE + BUILDING CHARACTER

Development Standards								
		DEVELOPMENT INTENSITY			BUILDING HEIGHTS			
ZONING DISTRICT	AREA	LAND USE	FAR*	DU/ACRE	HEIGHT MAX.	FAÇADE HEIGHT MAX.		
			X(Y) = Base Allowable (Max. Allowable with Public Benefit Bonus)					
El Camino Real	El Camino Real North	ECR NW	El Camino Real North-West	Mixed Use/ Residential	1.10 (1.50)	25.0 (40.0)	38'	38'
		ECR NE-L	El Camino Real North-East - Low Density	Mixed Use	0.75 (1.10)	20.0 (30.0)	38'	30'
		ECR NE	El Camino Real North-East	Mixed Use	1.10 (1.50)	25.0 (40.0)	38' (Public Benefit Bonus - 48')	38'
		ECR NE-R	El Camino Real North-East - Residential Emphasis	Mixed Use/ Residential	1.10 (1.50)	32.0 (50.0)	38' (Public Benefit Bonus - 48')	38'
	El Camino Real South	ECR SW	El Camino Real South-West	Mixed Use & Mixed Use/ Residential	1.10 (1.50)	25.0 (40.0)	38'	30'
		ECR SE	El Camino Real South-East	Mixed Use & Mixed Use/ Residential	1.25 (1.75)	40.0 (60.0)	60'	38'
Station		Station Area West	Retail/ Mixed Use & Main Street Overlay	2.00 (2.25)	50.0 (60.0)	48'	38'	
	SA E	Station Area East	Retail/ Mixed Use & Main Street Overlay	1.35 (1.75)	50.0 (60.0)	60' (Alma Street - 48')	38'	
Downtown	DA	Downtown Adjacent	Office/ Residential	0.85 (1.00)	18.5 (25.0)	38'	30'	
		Downtown Santa Cruz Avenue	Retail/ Mixed Use & Main Street Overlay	2.00 (2.25)	25.0 (40.0)	38'	30'	

*Specific Plan limits the amount of general office allowed and the amount of medical office, based on community concerns, to the following:
 Office, General (inclusive of Medical and Dental Offices) - shall not exceed one half of the base FAR or public benefit bonus FAR
 Office, Medical and Dental - shall not exceed one third of the base FAR or public benefit bonus FAR
 FAR and DU/acre include both Base and Public Benefit Bonus standards, discussed in Section E.3.1 "Development Intensity".

Table E2. Development Standards by Zoning Districts

Note EIR assumptions:

Commercial Space 17% - 240,000sf
Housing 67% 952,000sf (1,400sf/unit average)
Hotel/Retail 16%

through development guidelines.

3.3.7 Illustrative Plan and Development Program

Figure 3-2 shows the Illustrative Plan of how the Plan area could potentially build out over the next 30 years in conformance with the guiding principles, urban design framework, and standards and design guidelines of the Specific Plan. The Plan permits development of up to 474,000 square feet of non-residential development and up to 680 dwelling units.

At full build-out, the precise location of development and the precise types of non-residential development that will result from the Specific Plan are necessarily uncertain. This EIR analyzes the maximum development resulting from Plan adoption and has reviewed the development that is the most reasonably foreseeable, as envisioned in the Illustrative Plan, based on studies of market demand, the location of opportunity sites, and assessment of the development potential of each property given the Guiding Principles, Urban Design Framework, land uses, development regulations, and design guidelines. ~~The net new development is projected as analyzed includes:~~

Residences	680 dwelling units
Retail Space	91,800 square feet
Commercial Space	240,820 square feet
Hotel	380 rooms
Parking Spaces	3,670 spaces (public and private)
Resident Population	1,537
Employment	1,357 jobs ¹

Any proposal for development in excess of more than 680 residential units or more than 474,000 square feet of non-residential development after approval of the Specific Plan will require an amendment to the Specific Plan and concurrent environmental review. (See *Maximum Allowable Development* in Section 3.7.2 of this chapter.) In addition, the City will use an Initial Study to

¹ The Draft Menlo Park El Camino Real/Downtown Specific Plan contained an error in the number of new jobs which would be corrected in the final Specific Plan. The corrected number of 1,357 new jobs has been used throughout the environmental evaluation contained in this EIR.



Loma Prieta Chapter serving San Mateo, Santa Clara & San Benito Counties

November 18, 2013

Honorable Members of the Menlo Park City Council
Menlo Park, via e-mail

Re: Downtown/EI Camino Real Specific Plan Modifications

Dear Council Members,

The Sierra Club has been a strong supporter of Menlo Park's Specific Plan. Recently, two major development proposals – 500 EI Camino and the Greenhart development- have resulted in our taking a closer look at the Specific Plan and the EIR. This closer examination of the plan has exposed a misalignment between its goals and the Development Standards formulae.

The allowable ratio of Office FAR in Chapter E3.1 (pg E 15) Development Standards does not support the Guiding Principles, which support housing, and is not in line with the EIR.

1. The Specific Plan EIR assumed the Office Space / Housing balance would be 1:4 and the EIR impacts are based on this assumption.

EIR assumptions:
Commercial Space: 240,000 sf
Housing: 680 units = 952,000 sf
(1,400sf gross sf /unit average)

Ratio of sf is 1: 4 for office/housing
i.e Office is 20% of total area

EIR assumptions:
Resident Population: 1,537 residents
Employment: 1,357 jobs
i.e. workers/residents is approx. 1:1

However, the first two projects of the SP – 500 EICamino and Greenhart- are both using a 1: 1 ratio of Office Space to Housing Space, as allowed on pag E15, instead of a 1: 4 ratio of Office: Housing as the EIR assumed.

At the time the Development standards chart was done, no one noticed, realized or understood that the footnote allowing office to be 50% of FAR was in conflict with the goals of the Specific Plan ¹ for a jobs housing balance..

Proposal: Recognize that the chart on pag E15 needs to be revised. **Office would have to be 20% of allowable FAR** to align with the Jobs-Housing balance envisioned and on which the EIR is based.

2. The Specific Plan is meant to provide a framework "for the next several decades."

However, the first two projects, together, come close to using up almost the total maximum allowable commercial space of the entire Specific Plan. They also exceed, by almost 100%, the amount of office space studied in the EIR.

¹ Specific Plan -Footnote on page E15 *"**Specific Plan limits the amount of general office allowed and the amount of medical office, based on community concerns, to....."*

	<p><u>This is an indication of how far the development proposals are straying from the downtown envisioned by the public and in the public process.</u></p> <p><u>Proposal:</u> <u>Change office development standards to 20% (or, at most, possibly 25% ²) of base FAR, maximum, to bring the development of these major sites into alignment with the goals of the Specific Plan to balance housing and jobs, and residents with workers.</u></p> <p>The basic issue is to recognize that it takes 3 to 4 times more space to live than it does to work, generating the 1:4 Housing:Office ratio that is the goal for the Specific Plan and on which the EIR is based.</p>
<p>3. Smaller downtown and ECR lots are more likely to be developed as Offices only</p>	<p>Multi-unit, high-density housing is practical only on larger lots. As a result, the housing opportunities in the SP are mostly in the few larger sites. Therefore, it is important to ensure that the anticipated housing occurs on these sites. Otherwise the needed housing cannot realistically happen and the City will have a problem with providing housing for all the jobs it will be creating.</p>
<p>4. Multi-Unit High density Housing is only achievable in the Specific Plan area</p>	<p>West of 101, neighborhoods have strongly resisted any multi-unit housing. Realistically, the Specific Plan area is the only place where multi-unit housing can be achieved in this part of the city. This is also important for the Housing Element.</p>
<p>5. Housing minimizes the serious traffic impacts to El Camino</p>	<p>Providing mostly housing, instead of offices or medical offices, along El Camino would automatically minimize traffic – especially peak hour traffic which is of greatest concern to adjacent neighborhoods.</p>
<p>6. Village character and vibrancy is a guiding principle</p>	<p>Achieving a balance between residents and office workers assures that the downtown will be vibrant 24/7 with office workers patronizing the stores and restaurants during the day at lunch and residents enlivening downtown facilities during the day as well as on the evenings and weekends.</p>
<p>7. Medical Office Use creates high traffic and high parking needs</p>	<p><u>Proposal:</u> <u>Modify the SP to remove Medical Office use along El Camino Real or at least from the SE and SW quadrants to eliminate a source of heavy traffic in this most vulnerable segment of El Camino.</u></p>
<p>8. Office/Housing balance allows effective shared parking</p>	<p>Ensuring a balance of residents and office workers on the large sites provides the best opportunity for effective shared parking. Unused parking is a costly overhead expense as well</p>

² Sierra Club Loma Prieta Chapter has, in an earlier letter to Planning Commission, suggested 25% of base FAR as the maximum allowable office space.

as a waste of precious downtown space. Much of the residential parking can be used by office workers during the day and would revert to resident use at night.


Proposal: Add shared parking as a required approach in mixed use complexes.

It is our observation that the City cannot have it both ways - a jobs-housing balance as articulated and supported by the public process and also 50% FAR for office. It has to decide which direction it wants change to happen in the downtown and El Camino area.

We respectfully request that this potential adjustment to the Specific Plan be considered so that the public vision, so carefully developed and articulated thru the participatory public process, be achieved and possible delays to the development of downtown be averted.

We would like to see the Specific Plan move forward with certainty for the city, the developers and the public.

Respectfully submitted:



Gita Dev
Sustainable Land Use Committee
Sierra Club, Loma Prieta Chapter

Cc Mike Ferreira, Conservation Chair, Sierra Club Loma Prieta Chapter
Kenneth Rosales, Conservation Program Coordinator
Gladwyn DeSouza, Chair, Sustainable Land Use and Transportation Committees

Rogers, Thomas H

From: Sandie Pugh <sandie2052@yahoo.com>
Sent: Monday, August 04, 2014 2:38 PM
To: _Planning Commission
Subject: Greenheart development

Questions

Schools/roads - with the 200-220 rental units 1-3 beds, assuming an average of 1 child per unit, what provisions are being made to provide space in the school/ high schools? Since rental units provide no property tax revenue directly, how will roads (400 new cars?)& school expenses be covered? Property taxes for owners are fixed at assessment & limited to a 2% annual increase. Only a portion of those taxes go to schools, roads or infrastructure . Are there sufficient developer fees to cover the lifetime of the use? % of various other taxes sufficient?

How does opening up Garwood effect adjacent existing residential not currently impacted by this new traffic and traffic patterns (Encinal School other schools?) Restaurant traffic? Open breakfast, lunch & dinner? Where will the diners park? Traffic and parking are already wretched!

So many issues seem undefined with this and other planned development along El Camino.

The pictures look green & pretty, but all those heritage trees gone, all that auto pollution, all this combined density.

Sandra Pugh
Merrill Properties Inc
530 Oak Grove Ave
License # 00799291
650-851-2052 home
650-465-4499 mobile

Rogers, Thomas H

From: Mendoza, Jonathan S <JSMendoza@sfwater.org>
Sent: Wednesday, August 13, 2014 10:41 AM
To: Rogers, Thomas H
Cc: Naras, Joe; Herman, Jane; Wilson, Joanne; Palm, Rebecca; Russell, Rosanna S; Feng, Stacie
Subject: Public Notice - 1300 El Camino Real, Menlo Park

Dear Mr. Rogers,

Thank you for the public notice regarding the proposed project at 1300 El Camino Real in Menlo Park. I understand that the developer, Greenheart Land Company, is proposing to redevelop a 6.4 acre site on El Camino Real and Oak Grove Avenue with up to 210,000 square feet of commercial space and up to 220 dwelling units. The current parcel at 1300 El Camino Real is adjacent to a Right-of-Way (ROW) easement for the SFPUC's Palo Alto Pipeline which is part of the Hetch Hetchy Regional Water System. The Palo Alto Pipeline and easement continue in the northwest to southeast direction approximately parallel to the Caltrain tracks. The easement is also located on 550 Derry Lane and below the public ROW of Derry Lane.

The SFPUC would like more information about the lot merger/lot line adjustment and the heritage tree removal proposed as part of this project.

Lot Merger/Lot Line Adjustment

- Which parcels will be merged? Please provide the addresses and APNs of all parcels to be included in the merger. Also, please notify the developer of any SFPUC easement on or adjacent to the proposed project area. We strongly encourage the developer to survey the area so the proposed project does not encroach on our ROW.

Heritage Tree Removal

- Where are the trees located? (i.e. El Camino Real side of the property, closer to SFPUC pipeline/Caltrain tracks, etc.)
- What species and size of trees will be removed?
- Will the root stem be removed? Depending on the location and type of tree species, the SFPUC may request that the judicious use of an herbicide be used to inhibit the growth of the roots near our water pipeline.

As a general precaution to protect our pipelines and any other underground utilities in the area, the SFPUC requests that the City of Menlo Park (or the Project Manager at the project site) request an Underground Service Alert of the area to mark where the pipeline is located. In addition, the SFPUC requests that no construction or other type of development, staging of construction equipment, parking or driving of vehicles take place over the pipeline and right-of-way.

Thank you for your time and attention. Please let me know if you have any questions.

Regards,

Jonathan S. Mendoza
Land and Resources Planner
Natural Resources and Lands Management Division / Water Enterprise
San Francisco Public Utilities Commission

Hetch Hetchy Regional Water System
1657 Rollins Road
Burlingame, CA 94010-2310
O: 650.652.3215
F: 650.652.3219
E: jsmendoza@sfgwater.org

For more information on the Natural Resources and Lands Management Division, go to:
<http://www.sfgwater.org/index.aspx?page=134>

Hetch Hetchy Regional Water System

Operated by San Francisco Water, Power and Sewer | Services of the San Francisco Public Utilities Commission



**Hetch Hetchy
Regional Water System**
Services of the San Francisco Public Utilities Commission

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POLICE DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-160

Agenda Item #: D-2

CONSENT CALENDAR: **Approve a Memorandum of Understanding with the Menlo Park Fire District Regarding the Installation and Use of Police Communications Equipment at District Fire Stations 1, 2 and 4, and Authorize the City Manager to Sign the Agreement**

RECOMMENDATION

Staff recommends that the City Council approve a Memorandum of Understanding with the Menlo Park Fire District regarding the installation and use of police communications equipment at District Fire Stations 1, 2, and 4, and authorize the City Manager to sign the agreement.

BACKGROUND

For several decades, the Menlo Park Police Department has relied on the use of space at various Menlo Park Fire District stations to install communications equipment. This equipment has been placed on existing radio antennas and radio equipment rooms and allows uninterrupted and necessary police radio communications throughout the City of Menlo Park and surrounding jurisdictions for Menlo Park Police personnel.

Menlo Park Fire District representatives met with Menlo Park Police representatives and advised that they were desirous of an agreement and MOU regarding the communications equipment on their property, in an ongoing effort to codify verbal agreements that had been entered upon in the past.

ANALYSIS

The communications equipment installed at District Fire Stations is essential for the continued safe operation of police services throughout the City of Menlo Park and surrounding jurisdictions. The proposed MOU simply codifies existing verbal agreements that have been completed in the past.

The attached MOU has been approved by the Menlo Park Fire District Board and has been signed by Menlo Park Fire Chief Schapelhouman.

IMPACT ON CITY RESOURCES

As there are no new costs associated with the MOU, there will be no impact of city resources.

POLICY ISSUES

None

ENVIRONMENTAL REVIEW

Not applicable

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. Memorandum of Understanding with the Menlo Park Fire District

Report prepared by:

Dave Bertini

Police Commander

**MEMORANDUM OF UNDERSTANDING BETWEEN THE MENLO PARK FIRE
PROTECTION DISTRICT AND THE CITY OF MENLO PARK REGARDING THE
INSTALLATION AND USE OF POLICE COMMUNICATIONS AT DISTRICT FIRE
STATIONS NO. 1, 2 AND 4**

The Menlo Park Fire Protection District (hereinafter, “**District**”), a Fire Protection District in the County of San Mateo, whose jurisdiction includes the City of Menlo Park (hereinafter, “**City**”), a municipal corporation, agree to this Memorandum of Understanding (“**MOU**”) as of _____, 2014 (“**Effective Date**”). District and City may be referred to individually as “**Party**” and collectively as “**Parties**.”

I. Purpose.

- A.** This MOU is entered into by the Parties based on the following facts, circumstances and understandings:
1. The District owns real property at 300 Middlefield Road, Menlo Park CA (“**Fire Station No. 1**”), 2290 University Avenue, East Palo Alto CA (“**Fire Station No. 2**”), and 3322 Alameda De Las Pulgas, Menlo Park CA (“**Fire Station No. 4**”) (collectively, the “**Premises**”).
 2. The City provides local law enforcement services within portions of the District’s boundaries and desires to install the public safety communications equipment described more particularly in Exhibit A attached hereto (the “**Communications Equipment**”) on the Premises to enhance City public safety communications capabilities.
 3. District is willing to allow the City to install and maintain the City Communications Equipment at specified locations set forth in Exhibit A (collectively, the “**Sites**”) on the Premises subject to the terms and conditions set forth in this MOU.

II. Term.

This MOU shall commence on the Effective Date hereof and will continue to remain in effect for five (5) years unless terminated by either Party as provided in Paragraph VII of this MOU, provided, however, this MOU shall continue in effect on a year-to-year basis following the expiration of five years, unless or until terminated by either party upon not less than sixty (60) days’ notice to the other party.

III. Permitted Uses; City and District Responsibilities.

- A.** The Sites identified on the Premises in Exhibit A may be used by the City solely for the purposes of installing, maintaining and operating the Communications Equipment.
- B.** The City may install, place, attach and affix to the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries and related equipment identified in Exhibit A at the designated Sites on the Premises.
- C.** City may perform construction, maintenance, repairs, additions to, and replacement of Communications Equipment as necessary and appropriate for its ongoing business. The City shall be responsible for all work necessary to prepare, modify, and maintain that portion of the Premises required for the City's Communication Equipment.
- D.** Under no circumstances shall City's use of the Premises interfere with the District's use of the Premises as a fire station.
- E.** City shall provide compensation in the amount of One Dollar (\$1.00) to District for use of District Premises under the terms of this MOU.
- F.** District shall not be responsible for any damage to City's Communications Equipment in the event of any actions pursuant to Paragraph IV hereof. Repairs for damage caused by the City or the City's agents to the District's premises, property or equipment will be the responsibility of the City.
- G.** Following initial installation of the Communications Equipment, any modification, maintenance, improvements, removal, or additions to the Premises and or Communications Equipment by City must be approved by the District. Maintenance or any other work to be performed by City at the Premises must be approved and scheduled with the District in writing at least fifteen (15) days in advance, unless an emergency situation exists. District shall provide access to the Premises upon reasonable request. The District may deny requested modification, improvements, removal, or additions in the sole and exclusive discretion of the District.
- H.** This MOU is not an interest in real property, but a revocable license.
- I.** City is responsible for ensuring that its employees and agents conduct work in compliance with District approved safety plan and all other federal, state and local laws.

IV. Interference with Communications.

- A. City hereby agrees that any Communications Equipment the City installs or operates on the Premises shall not interfere with any communications configurations, frequencies, operating equipment or other operations of District.
- B. District shall have the right to remove or disable any City Communications Equipment that interferes with District communications configurations, frequencies, operating equipment or other operations at the City's sole expense and without advance notice to City; provided however, that District will endeavor to provide such notice when possible.

V. Insurance.

- A. During the Term of this MOU, any of the City's agents not otherwise an employee of the City and assigned by City to install, maintain or perform work on the Premises shall maintain the following insurance:
 - 1. Worker's Compensation insurance in the amount meeting all applicable requirements of California law;
 - 2. Commercial General Liability Insurance having minimum coverage limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate; and
 - 3. Automobile Insurance (symbol 1) having minimum coverage limits of not less than one million dollars (\$1,000,000).
- B. The City shall deliver to District certificates of insurance evidencing such coverage and naming District as an additional insured. Policy forms, endorsements and insurance carriers provided by City to District to satisfy the requirements of this Section shall be subject to District's reasonable approval authority.
- C. Coverage afforded hereunder shall not be cancelled or otherwise reduced in coverage without thirty (30) days advance written notice to District

VI. Indemnity.

- A. City agrees to indemnify, hold harmless and defend District and all its successors and assignees, and its officers, directors, agents and employees from any and all claims, demands, loss, damages, actions, causes of action, suits, expenses and or liability whatsoever, including attorney's fees and costs of suit arising from or occasioned by any act, omission, or negligence of the City or its agents, officers, servants or employees, in the performance of this MOU.

- B. District agrees to indemnify, hold harmless and defend City and all its successors and assignees, and its officers, directors, agents and employees from any and all claims, demands, loss, damages, actions, causes of action, suits, expenses and or liability whatsoever, including attorney's fees and costs of suit arising from or occasioned by any act, omission, or negligence of the District or its agents, officers, servants or employees, in the performance of this MOU.

VII. Termination.

- A. This MOU may be terminated by either Party upon the provision of sixty (60) days advance written notice to the other for cause, unless the event or condition constituting "cause" is cured or resolved prior to the expiration of such notice period. Cause for termination hereof shall be:
 - 1. Failure to comply with the terms hereof.
 - 2. Communication Equipment which interferes with the use and performance of the other Party's Communication Equipment.
 - 3. Federal or State regulations regarding the Communication Equipment renders the MOU impractical and undesirable.
 - 4. Any other circumstances that impair or degrades the performance and usability of the Communication Equipment or interferes with the use of the premises and fire station.
- B. Upon termination, City agrees to remove all Communications Equipment and restore the Premises to District's satisfaction. In the event City fails to comply with this requirement, District is authorized, upon the provision of fifteen (15) days advance written notice to remove all City Communications equipment at the City's sole expense. Any dispute between the Parties under the terms hereof shall be resolved by mediation or if unsuccessful, by binding arbitration.

VIII. Miscellaneous Provisions.

- A. Governing Law. The rights and obligations of the Parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of California. Venue for any action arising from this MOU shall lie in San Mateo Superior Court or the appropriate federal district court for the Northern District of California.
- B. Entire Agreement. This MOU contains the full and entire agreement between and among the Parties with respect to the entire subject matter hereof and supersedes any and all previous or contemporaneous agreements and discussions, whether written or oral. Any and all prior or contemporaneous discussions, negotiations, writings, commitments and/or undertakings are merged herein, and no representations by and Party not embodied herein shall be valid or binding.

- C. Amendment. This MOU may be amended only by a subsequent writing signed by all Parties to the MOU.
- D. Severability. The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other of the provisions of this MOU.
- E. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above herein.
- F. Assignment. Neither Party will assign or transfer any interest in this MOU without the prior written consent of the other Party which shall not be unreasonably withheld or delayed, and any attempt by Party to assign this MOU or any rights, duties or obligations arising hereunder without such consent shall be void and of no effect.
- G. Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered, or sent by national overnight courier service, or sent by facsimile transmission if also sent by one of the other methods provided in this Section, or sent by registered or certified mail, return receipt requested, and shall be deemed delivered upon the earlier date of (a) the date of delivery to the address of the person to receive such notice or (b) three (3) business days after the date of posting the United States Postal Service at the following addresses:
1. If to District:

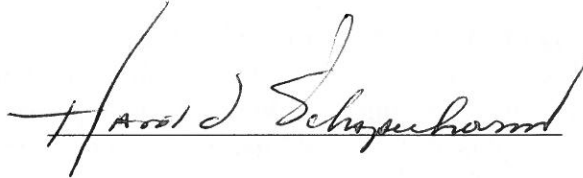
Menlo Park Fire Protection District
170 Middlefield Road,
Menlo Park CA 94025
Attn: Fire Chief
 2. If to City:

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: Chief of Police

H. Authority to Execute. Each person signing this MOU warrants and represents that, to the extent he or she is executing this MOU for and on behalf of an entity, he or she has been fully empowered and properly authorized to execute this Agreement for and on behalf of said entity and instructed by those having the requisite authority to cause said entity to make and enter into this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date set forth above.

Date: 8-20-2014



Harold Schupbach

Date: _____

EXHIBIT A

Fire Station No. 1: Two UHF radio base stations, power supplies, antennas and associated telephone line multiplexers.

Fire Station No. 2: One UHF radio receiver, power supply, antenna and associated telephone line multiplexer.

Fire Station No. 4: One UHF radio receiver, power supply, antenna and associated telephone line multiplexer.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-161

Agenda Item #: D-3

CONSENT CALENDAR: **Authorize the Public Works Director to Accept the Work Performed by CB&I to Remove and Replace the Landfill Gas Flare at Bedwell Bayfront Park**

RECOMMENDATION

Staff recommends authorizing the Public Works Director to accept the work performed by CB&I for the Landfill Gas Flare Replacement Project.

BACKGROUND

The City operates a closed landfill at Bedwell-Bayfront Park at 1600 Marsh Road near the intersection with Bayfront Expressway. The landfill was closed in 1982 and a system of pipes and wells was installed soon thereafter to collect methane gas. In 1982, Fortistar was awarded a gas lease to build, maintain, and operate a gas to energy plant. The gas was piped to a gas recovery plant and power was generated and sold to the electrical grid. A gas flare was installed in 1982, so that in case the plant had to shut down for repairs or PG&E could not accept energy, the gas could be discharged via the flare. The amount of gas produced by the landfill has decreased, and it is no longer profitable for Fortistar to operate the plant. Fortistar notified the City that it would stop operating the plant as of March 31, 2013.

On June 12, 2013, the City Council awarded a contract for the Landfill Gas Flare Replacement Project to CB&I. The project consisted of demolishing and replacing the outdated gas flare facility to comply with current air quality regulations. Fortistar continued to operate the gas to energy plant through November 30th, when the new flare became operational. Fortistar continues to maintain and monitor the gas collection and control system (GCCS) to ensure compliance with Bay Area Air Quality Management District regulations.

ANALYSIS

The work for the Landfill Gas Flare Replacement Project has been completed in accordance with the plans and specifications. A notice of completion will be filed accordingly. The project was completed under the approved project budget.

Contractor: CB&I
180 Promenade Circle, Suite 320
Sacramento, CA 95834

IMPACT ON CITY RESOURCES

Construction Contract Budget

Construction Contract	\$ 467,940
Contingency	<u>28,760</u>
Total Construction Budget	\$ 496,700

Construction Expenditures

Construction Contract (CB&I did not use full amount)	\$ 423,807
Change Orders	<u>48,173</u>
Total Project Cost	\$ 471,980

Two change orders were approved to manage extra costs associated with unforeseen conditions.

POLICY ISSUES

There are no policy issues associated with this action.

ENVIRONMENTAL REVIEW

The project is categorically exempt under Class I of the current State of California Environmental Quality Act Guidelines.

[Click here to enter text.](#)

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

None

Report prepared by:
Virginia Parks
Assistant Engineer

Report prepared by:
Ruben Niño
Assistant Public Works Director



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-162

Agenda Item #: D-4

CONSENT CALENDAR: **Authorize the Public Works Director to Accept the Work Performed by American Air Conditioning, Plumbing, and Heating for the Menlo Park Public Library Boiler Replacement Project**

RECOMMENDATION

Authorize the Public Works Director to accept the work performed by American Air Conditioning, Plumbing, and Heating for the Menlo Park Public Library Boiler Replacement Project.

BACKGROUND

On June 3, 2014, the City Council awarded a contract for the Menlo Park Public Library Boiler Replacement Project to American Air Conditioning, Plumbing, and Heating. The project consisted of removing an old boiler and expansion tank, installing a new boiler and expansion tank, and modifying the copper pipe connections as needed. Also included, modifying the exhaust flue and relocating the domestic refill water feed for the boiler.

ANALYSIS

The work for the Menlo Park Public Library Boiler Replacement Project has been completed in accordance with the plans and specifications. A notice of completion will be filed accordingly. The project was completed within the approved project budget.

Contractor: American Air Conditioning, Plumbing, and Heating
820 Aladdin Avenue
San Leandro, CA 94577

IMPACT ON CITY RESOURCES

Construction Contract Budget

Construction contract	\$	74,466
Contingency		9,000
Total Construction Budget	\$	83,466

Construction Expenditures

Construction Contract	\$ 74,466
Change Orders	<u>2,804</u>
Total Project Cost	\$ 77,270

The remaining balance of \$6,196 will be credited to the project balance. The above expenditures are only costs associated with the construction contract with American Air Conditioning, Plumbing, and Heating.

POLICY ISSUES

There are no policy issues associated with this action. The one-year construction warranty period starts upon City's acceptance.

ENVIRONMENTAL REVIEW

The project is categorically exempt under Class I of the current State of California Environmental Quality Act Guidelines.

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

None

Report prepared by:
Carl Thomas
Facilities Supervisor

Ruben Niño
Assistant Public Works Director



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-163

Agenda Item #: D-5

CONSENT CALENDAR: **Approve an Encroachment Agreement with MCImetro Access Transmission Services LLC to Install Fiber Optic Network Facilities within the Public Right-of-Way**

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (Attachment A) approving an Encroachment Agreement (Attachment B) with MCImetro Access Transmission Services LLC to install Fiber Optic Network Facilities within the Public Right-of-Way.

BACKGROUND

The City has received an application from MCImetro Access Transmission Services LLC to install fiber optic network facilities in the public right-of-way. MCImetro Access Transmission Services LLC has submitted construction drawings to the Engineering Division for review.

The Telecommunications Act of 1996 (TA), and the Public Utilities Code (PUC) Section 7901 allows telecommunication companies the right to demand approval for encroachment permits in the pursuit of the installation of communications equipment. To illustrate, PUC § 7901.1 states that municipalities cannot deny access to a public road or right-of-way based on withholding landowner's consent except to specify the location and or manner of installation. Consequently, staff has performed thorough research and review of various approaches that cities have taken to granting Encroachment Permits or Agreements for the use of the public right-of-way for fiber optic cable systems. Staff's research confirms that telephone companies are allowed to install any type of cable system for telephone systems in the public right-of-way without interference or the right to require a Franchise Agreement by municipalities.

MCImetro Access Transmission Services LLC has been adjudicated by the California PUC as a telephone company, thus it falls within coverage of applicable state, and federal codes, and acts. Council has previously approved fiber optic network facilities services encroachment agreements with other companies.

This agreement is similar to the agreement previously approved by the Council on

February 1, 2000 with Williams Communications, Inc., for fiber optic cable. There are provisions in the agreement that require MCImetro Access Transmission Services LLC to obtain an encroachment permit for all work and each job within the public right-of-way and pay all processing, field marking, engineering and inspection fees. MCImetro Access Transmission Services LLC shall maintain accurate records of field locations for the fiber optic network facilities and supply them to the City upon completion of the construction. Insurance requirements are also a stipulation of the agreement.

ANALYSIS

The attached agreement prepared and reviewed by the City Attorney for MCImetro Access Transmission Services LLC addresses all the City's primary concerns and gives the City the maximum protection that the City is permitted by law. It is consistent with agreements previously approved by City Council with other companies. It will ensure that facilities constructed within the public right-of-way by MCImetro Access Transmission Services LLC meet all of the City's standards and requirements.

IMPACT ON CITY RESOURCES

The staff time associated with each and every encroachment permit associated with this agreement is fully recoverable through fees collected from the applicant.

POLICY ISSUES

The recommendation does not represent any change to existing City policy.

ENVIRONMENTAL REVIEW

Environmental review is not required for this action.

PUBLIC NOTICE

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

ATTACHMENTS

- A. Resolution
- B. Encroachment Agreement

Report prepared by:
Ebby Sohrabi
Senior Civil Engineer

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE ENCROACHMENT AGREEMENT WITH MCIMETRO
ACCESS TRANSMISSION SERVICES LLC

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 therefor;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park does hereby approve that certain Encroachment Agreement with MCImetro Access Transmission Services LLC, to install fiber optic network facilities in the public right-of-way;

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to execute said Agreement with MCImetro Access Transmission Services LLC, on behalf of the City and that the City Clerk attest thereto.

I, PAMELA I. AGUILAR, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ninth day of September, 2014 by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Menlo Park on this ninth day of September, 2014.

Pamela I. Aguilar
City Clerk

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ENCROACHMENT AGREEMENT
BETWEEN THE CITY OF MENLO PARK
AND MCImetro ACCESS TRANSMISSION SERVICES LLC,
FOR THE INSTALLATION OF FIBER OPTIC NETWORK FACILITIES
WITHIN THE PUBLIC RIGHT-OF-WAY

This Encroachment Agreement ("Agreement") is dated for identification this ____ day of September, 2014, by and between the CITY OF MENLO PARK (herein termed "City") and MCImetro Access Transmission Services LLC (herein termed "MCImetro").

RECITALS

WHEREAS, MCImetro a limited liability company duly organized and existing under the laws of the State of Delaware and authorized by the Public Utilities Commission of the State of California or the Federal Communications Commission, or both, under Certificates of Public Convenience and Necessity to provide local service, intraLATA service, interLATA services and high speed and high capacity digital private line services within all LATAs in California and with conditional dedicated nonswitched access to and from interLATA carriers' points of presence; and

WHEREAS, on December 20, 1995, MCImetro received a Certificate of Public Convenience and Necessity to operate as a telephone corporation to provide local services, intraLATA services, interLATA services and private line high speed and high capacity digital services from the Public Utilities Commission of the State of California (herein termed "PUC"); and

WHEREAS, MCImetro desires to construct, install, and maintain Fiber Optic Network Facilities (as defined herein) within the City's Public Right-of-Way (as defined herein) and/or public utility and/or service easements within City.

NOW, THEREFORE, in consideration of the recitals and the mutual problems contained herein, City and MCImetro agree as follows:

DEFINITIONS

City -- Means the City of Menlo Park, a municipal corporation of the State of California, and includes the duly elected or appointed officers, agents, employees, and volunteers of the City of Menlo Park, individually or collectively.

Fiber Optic Network Facilities or Facilities -- Means fiber optic cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by MCImetro or to be located by MCImetro in the Public Right-of-Way of City and used or useful for the transmission of Telecommunications Services.

LATA -- Means "local access and transport area."

Laws -- Means any order, certificate, judicial decision, statute, constitution, ordinance, resolution, rule, tariff, administrative order, or other requirement of any municipality, county,

state, federal, or other agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way including, without limitation, any regulation or order of an official entity or body. A reference to "Laws" shall include, without limitation, any lawful provision of the Menlo Park Municipal Code or any other City ordinance or regulation.

MCImetro – Means MCImetro Access Transmission Services LLC and its lawful successors or assigns.

Public Right-of-Way -- Means the surface, the air space above the surface, and the area below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may thereafter exist that are under the jurisdiction of the City. This term shall not include any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any person.

PW Director -- Means the individual designated as the Director of Engineering Services of the City, including any individual expressly designated to exercise functions with respect to the rights and obligations of the PW Director under this Agreement and any other individual, person, division, department, bureau, or agency of the City as may, from time to time, exercise functions equivalent or similar to those now exercised by the PW Director.

Telecommunications Services -- Means all communications services permitted under Laws.

LIMITATIONS AND RESTRICTIONS

1. Subject to the provisions of this Agreement and all applicable Laws, the City hereby licenses and permits MCImetro to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace the Fiber Optic Network Facilities in, under, over, across and along the Public Right-of-Way for the purposes of providing Telecommunications Services. Any work performed pursuant to the rights granted to MCImetro under this Agreement shall be subject to the prior review and reasonable approval of the PW Director, which review and approval shall not be unreasonably withheld, delayed or denied.

2. Except as permitted by applicable Laws or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, MCImetro shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the approval of the owner(s) of the affected property or properties.

3. Both the City and MCImetro shall comply with all applicable Laws in the exercise and performance of their respective rights and obligations under this Agreement. Each party preserves all of its rights under all Laws.

4. This Agreement is not a grant by the City of any property interest but is made subject and subordinate to the prior and continuing right of the City to use all the Public Right-of-Way in the performance of its duties, including, but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary

sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television, and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across, and in said Public Right-of-Way. The preceding sentence shall not be construed to give City the right to damage or destroy MCImetro's Fiber Optic Network Facilities.

5. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the Public Right-of-Way which are recorded in the public record or of which City notifies MCImetro in writing on or before the date of this Agreement, and it is understood that MCImetro, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights.

6. The construction, installation, operation, maintenance, and removal of said Fiber Optic Network Facilities shall be accomplished without cost or expense to City subject to reasonable approval of the PW Director in such a manner as not to endanger personnel or property, or unreasonably obstruct travel on any road, walk, or other access thereon within said Public Right-of-Way.

COMPLIANCE WITH STANDARDS

7. MCImetro agrees to keep said Fiber Optic Network Facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of the PW Director.

SERVICES

8. MCImetro provides Telecommunications Services in California pursuant to all Laws, including federal law and its Certificates of Public Convenience and Necessity received from the PUC. The type of services MCImetro offers to its customers through the Fiber Optic Network Facilities in Public Right-of-Way consists of communications services, including voice, data, video, dial tone, and teleconferencing, which are presently permitted by Laws. If the nature and character of MCImetro's service changes to include additional services, including community antenna television systems or commercial video programming, MCImetro shall give City as much advance written notice as practicable, up to and including three (3) months' prior notice, of its intent to change the service provided by way of the Fiber Optic Network Facilities installed under this Agreement, and comply with the City's lawful requirements. MCImetro acknowledges that any expansion or changes in the regulatory authority over such services may, if mandated by law, require MCImetro to enter into a new Agreement consistent with the requirements of a City ordinance regulating such services or the expansion or change in services, if such service changes fall under the lawful regulation, jurisdiction, and authority of City in accordance with Laws.

NO FRANCHISE RIGHTS CREATED

9. Nothing in this Agreement shall be construed as granting or creating any franchise rights.

RESERVATION OF RIGHTS

10. The City is uncertain as to its legal ability to regulate and to impose taxes, charges and fees on the provision or use of fiber optics infrastructure and technology and related activities and services that may be provided pursuant to the installation subject to this

Agreement. Therefore, the City reserves any and all rights it may have now or in the future to legally regulate or otherwise condition the use of the fiber optics infrastructure and technology and related activities and services to be provided pursuant to the installation subject to this Agreement.

The City's agreement hereto is not a waiver of and is without prejudice to any right City may have under law to regulate, tax or impose fees or charges on MCImetro or any right MCImetro may have under the law to provide services through the fiber optic infrastructure pursuant to state or federal laws, rules or regulations. MCImetro shall be subject to any future taxes, fees or charges that the City lawfully imposes on the fiber optics infrastructure and fiber optic services in the future. Nothing herein shall affect in any way City's power or right to impose or collect any tax or fee on users or providers of the services to be provided by MCImetro. Nothing herein is intended to impose regulations or conditions on MCImetro that City is preempted from imposing by state or federal laws.

REMOVAL AND RELOCATION

11. Subject to the provisions of this Section 11, MCImetro shall remove or relocate, without cost or expense to City, any Fiber Optic Network Facilities installed, used, and maintained under this Agreement if and when made necessary by any City required lawful change of grade, alignment, or width of any street, including the construction, maintenance, or operation of any underground subway or viaduct by City and/or the construction, maintenance, or operation of any other City underground or aboveground facilities. In the event all or any portion of said Public Right-of-Way occupied by said Fiber Optic Network Facilities shall be needed by City or in the event the existence of said Fiber Optic Network Facilities shall be considered detrimental to City governmental activities, including, but not limited to, interference with City construction projects, or it conflicts vertically and/or horizontally with any proposed City installation, MCImetro shall remove and relocate said Fiber Optic Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by City. Said removal or relocation shall be completed within ninety (90) days of notification by City; provided that if removal or relocation cannot reasonably be accomplished within ninety (90) days, then MCImetro shall commence such removal or relocation within such ninety (90) days and thereafter continue the same diligently until completion thereof. In the event said Fiber Optic Network Facilities are not removed or relocated within the period of time specified in the preceding sentence, City may cause the same to be done at the sole expense of MCImetro.

12. MCImetro shall, at its sole cost and expense, replace aerial and/or aboveground Fiber Optic Network Facilities, if any, with underground facilities in accordance with the same Rule No. 32 that applies to Pacific Bell, as it now reads or may hereinafter be amended.

13. If any portions of the Fiber Optic Network Facilities covered under this Agreement are no longer used by MCImetro, or are abandoned for a period in excess of one (1) year, MCImetro shall notify City and shall either promptly vacate and remove the Facilities at its own expense or, at City's discretion, may abandon some or all the Facilities in place. After such removal or abandonment, MCImetro shall have no further obligations to the City.

14. When removal or relocation are required under this Agreement, MCImetro shall, after the removal or relocation of the Fiber Optic Network Facilities, at its own cost, repair and return the Public Right-of-Way or public utility or service easements on which the Facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Should

MCImetro remove the Fiber Optic Network Facilities from the Public Right-of-Way, MCImetro shall, within ten (10) days after such removal, give notice thereof to City specifying the right-of-way affected and the location thereof as well as the date of removal. Before proceeding with removal or relocation work, MCImetro shall obtain a street excavation permit from the City.

CONSTRUCTION PERMIT AND FEES

15. MCImetro shall apply for an encroachment permit for all work and each job within the Public Right-of-Way. MCImetro shall furnish detailed plans of the work and other such information as required by the PW Director and shall pay all processing, field marking, engineering, and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of submission of the permit. Said improvements shall be constructed and installed in accordance with the Menlo Park City Code, the requirements of the PW Director, existing easements and right-of-way grants benefiting other utility companies, and as further provided for in the provisions of this Agreement.

PERFORMANCE BOND

16. Prior to the issuance of an Encroachment Permit, MCImetro shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of MCImetro within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of MCImetro's obligations under this Agreement. City shall have the right to draw against the surety bond in the event of a default by MCImetro or in the event that MCImetro fails to meet and fully perform any of its obligations; provided that MCImetro is first given written notice of any intent to draw against the bond and an opportunity to cure. Following completion of the work by MCImetro and its inspection and acceptance by the PW Director, the performance bond shall remain in effect to the extent of ten percent (10%) of the value of the work to guarantee and assure that faithful performance of MCImetro's obligations under this Agreement for a period of one (1) year from the City's acceptance of the work. City shall have the right to draw against the bond in the event of a default by MCImetro or in the event that MCImetro fails to meet and fully perform any of its obligations. The form of the performance bond shall be furnished and reasonably approved by the City.

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY

17. MCImetro shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks or to any private property or improvements to the extent attributable to its installation, maintenance, repair or removal of its Fiber Optic Network Facilities in Public Right-of-Way and shall repair, replace and restore in kind any such damaged facilities at its sole expense and to the approval of City.

18. If Public Right-of-Way to be used by MCImetro has preexisting installation(s) placed in said Right-of-Way, MCImetro shall assume the responsibility to verify the location of the preexisting installation and notify City and any third party of MCImetro 's proposed installation. The cost of any work required of such third party or City to provide adequate space or required clearance to accommodate MCImetro 's installation shall be borne solely by MCImetro.

RECORDS AND FIELD LOCATIONS

19. MCImetro shall maintain accurate maps and improvement plans of said Fiber Optic Network Facilities located within the City of Menlo Park. The maps and plans are to accurately show in detail the location, size, depth and description of all Facilities as constructed. Prior to City acceptance of the work, MCImetro shall deliver to the office of the Engineering Department free of charge such maps and plans of all Fiber Optic Network Facilities installed within said Public Right-of-Way. When required by the City for the purpose of confirming the location of Facilities to accomplish the design or construction of public facilities by City, MCImetro shall, at its sole cost and expense, expose by potholing to a depth of one (1) foot below the bottom of its subsurface Fiber Optic Network Facilities, within thirty (30) days of receipt of a written request from City to do so. To the fullest extent permitted by Law, City agrees to keep such maps and plans confidential or, in the event of a required disclosure under Laws, to notify MCImetro of the need for disclosure in order to allow MCImetro sufficient time to obtain a nondisclosure agreement from the party seeking disclosure or, in the case of a judicial or administrative requirement, a protective order.

20. MCImetro shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Fiber Optic Network Facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

HOLD HARMLESS AND INDEMNIFICATION

21. MCImetro for itself, its agents, contractors and employees, agrees to indemnify, defend and hold harmless City, its officers, employees, and agents and any successors to City's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") to the extent arising directly out of the activities of MCImetro described in this Agreement, except to the extent arising from the City's or its officers', employees', agents', contractors' and subcontractors' willful actions or negligent acts or omissions.

INSURANCE

22. MCImetro shall obtain and maintain at all times during the term of this Agreement comprehensive general and automobile liability insurance protecting MCImetro in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence, including bodily injury and property damage, as a combined single limit or equivalent. Such insurance shall include City, as defined above, as additional insured parties, as its or their interest may appear. Coverage shall be in accordance with the limits specified and the provisions indicated herein. Claims made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage.

23. MCImetro shall file the required original Certificate of Insurance with endorsements with City, subject to City's reasonable approval, and shall clearly state:

- a) Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts.
- b) That any cancellation notice is unqualified as to the acceptance of liability for failure to notify City; and
- c) That MCImetro 's insurance is primary.

The Certificate, with endorsements and notices shall be mailed to: City of Menlo Park, Engineering Department, 701 Laurel Street, Menlo Park, California, 94025.

24. Workers Compensation Insurance: MCImetro shall obtain and maintain at all times during the term of this Agreement statutory Workers Compensation and employer's liability insurance as required by law but at least in an amount not less than One Hundred Thousand Dollars (\$100,000) and shall furnish City with a certificate showing proof of such coverage.

25. Insurance Companies: Insurance companies must be admitted or authorized to do business in California and rated at least B+: IX in Best's Insurance Guide. Nonadmitted insurance companies will be considered if they are rated at least A:X in the latest Best 's Insurance Guide.

26. Deductible and Self-Insured Retentions and Proof of Insurance: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be stated on Certificates of Insurance, and the Certificate of Insurance must be sent to and reasonably approved by the City.

MISCELLANEOUS

27. This Agreement shall not be assigned by MCImetro without the approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that MCImetro may assign the rights granted hereunder to a parent, corporate successor, subsidiary, joint venture partner, limited liability company member, or other affiliate of MCImetro, now or hereinafter existing, by only notice to City of such assignment.

28. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understanding (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

SEVERABILITY

29. If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this agreement.

THIRD-PARTY MODIFICATIONS

30. This Agreement shall be subject to such changes or modifications as may be required or authorized by any regulatory commission in the exercise of its lawful jurisdiction.

TERMINATION

31. This Agreement may be terminated by the City in the event MCImetro breaches any of its obligations under this Agreement, City notifies MCImetro of such breach in writing, and MCImetro fails to fully cure any such breach within six (6) months after MCImetro 's receipt of such notice, or, if such cure cannot reasonably be effected within said six (6) months, MCImetro fails to commence such cure within said six (6) month period and thereafter diligently continue to cure the default until completion thereof.

32. A failure on the part of any party to perform any material obligation imposed upon such party shall constitute a default and a material breach of this Agreement. Each party shall be entitled to exercise all rights and remedies in the event of a breach, subject to Paragraph 29 above, and hereby reserves all rights under applicable Laws.

33. MCImetro may terminate this Agreement at any time upon prior written notice to City. Such termination by MCImetro shall not relieve it of any obligation to the City regarding any existing breach of this Agreement. Within ninety (90) days after such termination MCImetro shall, at its election unless directed to do so by the City, remove its fiber from the Public Right-of-Way and repair and restore such Right-of-Way to ameliorate all effects caused by such removal. Notwithstanding such termination, MCImetro 's obligations under Paragraph 19 hereof regarding third-party claims arising out of the work or improvements owned or installed by MCImetro shall survive the termination of this Agreement.

NOTICE

34. MCImetro 's Network Operations Control Center shall be available to City staff 24 hours a day, seven (7) days a week, regarding problems or complaints resulting from the Fiber Optic Network Facilities installed pursuant to this Agreement and may be contacted by telephone at:

1-800-MCI-WORK

regarding such problems or complaints. Any service of process shall be made to MCImetro's registered agent on file with the Office of the Secretary of State of California.

35. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems if followed by United States mail or private delivery systems as follows:

To City at:	City of Menlo Park Attention: Director of Engineering Services 701 Laurel Street Menlo Park, California 94025 FAX Number: (650) 858-3478
To MCImetro at:	MCImetro Access Transmission Services LLC

Attention: Lynn Carson
Assistant General Counsel
2400 N. Glenville Drive
Richardson, Texas 75082

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date and year first written herein:

CITY OF MENLO PARK

MCImetro Access Transmission
Services LLC

Mayor

By: Robert H. Bohne
Title: Director

ATTEST:

WITNESS

City Clerk

APPROVED AS TO FORM:

City Attorney

APPROVED

City Manager

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-165

Agenda Item #: D-6

CONSENT CALENDAR: **Adopt an Amended Resolution of Intention to Abandon a Public Utility and Emergency Access Easements Within the Property at 721 - 851 Hamilton Avenue**

RECOMMENDATION

Staff recommends that City Council adopt an amended Resolution of Intention to abandon Public Utility and Emergency Access Easements within the property at 721 - 851 Hamilton Avenue

BACKGROUND

On July 15, 2014, the City Council adopted a Resolution of Intention to Abandon Public Utility and Emergency Access Easements Within the Property at 721 - 851 Hamilton Avenue portion. In that resolution, dates were specified for upcoming Public Hearings to be held by the Planning Commission and the City Council. The item was heard by the Planning Commission on August 18, 2014 as was scheduled. However, the City Council Public Hearing date needs to be changed. An Amended Resolution of Intention is required to set the new date.

ANALYSIS

The previously adopted Resolution of Intention set a Public Hearing date of September 23, 2014 for the City Council. This Public Hearing date has since become unavailable. The City Council Public Hearing is now scheduled for October 7, 2014.

Public Hearing	Original Resolution	Amended Resolution
City Council	September 23, 2014	October 7, 2014

IMPACT ON CITY RESOURCES

The proposed action will not have a direct financial impact on the City. The applicant has paid the required processing fees.

POLICY ISSUES

There are no specific policy issues with this action.

ENVIRONMENTAL REVIEW

The project is categorically exempt under Class 5 of the current California Environmental Quality Act (CEQA) Guidelines.

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

Report prepared by:
Ebby Sohrabi
Senior Civil Engineer

RESOLUTION NO.

**RESOLUTION OF THE CITY OF MENLO PARK TO AMEND THE
RESOLUTION OF INTENTION TO ABANDON OF PUBLIC UTILITY
AND EMERGENCY ACCESS EASEMENTS WITHIN THE PROPERTY
AT 721 - 851 HAMILTON AVENUE**

WHEREAS, on July 15, 2014, the City Council of the City of Menlo Park adopted Council Resolution No. 6215 declaring the intention of said City Council to abandon the Public Utility and Emergency Access Easements within the property at 721 - 851 Hamilton Avenue in the City of Menlo Park; and

WHEREAS, the dates set by the previously approved Resolution of Intention for the Public Hearing to be held by the City Council necessitate being changed; and

WHEREAS, the City Council will hold a Public Hearing on this subject on October 7, 2014 at approximately 7:00 p.m. as required by law.

NOW, THEREFORE, BE IT RESOLVED that an Amended Resolution of Intention of the City Council of the City of Menlo Park, is hereby established, to consider the abandonment of a public utility and emergency access easements within the property at 721-851 Hamilton Avenue.

I, PAMELA I. AGUILAR, 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 the ninth day of September, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of City of Menlo Park on this ninth day of September, 2014.

Pamela I. Aguilar
City Clerk

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-137

Agenda Item #: D-7

CONSENT CALENDAR: **Adopt a Resolution Authorizing the Installation of Stop Signs on Monte Rosa Drive at Eastridge Avenue**

RECOMMENDATION

Staff recommends the City Council adopt a resolution authorizing the installation of stop signs on Monte Rosa Drive at its intersection with Eastridge Avenue to make this intersection an all-way stop controlled intersection.

BACKGROUND

Monte Rosa Drive and Eastridge Avenue are both residential roadways with a prima facie speed of 25 mph. At the intersection of Eastridge Avenue and Monte Rosa Drive, Eastridge Avenue is controlled by stop signs while Monte Rosa Drive is uncontrolled.

Sidewalks are present at all approaches to the intersection but there are no marked crosswalks at any of the approaches. There are no parking restrictions at the approaches to the intersection with parked cars observed near the intersection, especially near the northeast corner.

To address a concern about limited visibility at the intersection, especially for drivers stopped on Eastridge Avenue when making either left or right turn onto Monte Rosa Drive, the stop limit lines on Eastridge Avenue were previously moved (a few years ago) to the nearest possible location relative to the intersection per the California Manual on Uniform Traffic Control Devices (Ca-MUTCD).

ANALYSIS

Staff received the following traffic safety concerns from a Menlo Park resident about the intersection of Monte Rosa Drive with Eastridge Avenue:

- Due to parked cars and landscaping on Monte Rosa Drive, it was difficult on Eastridge Avenue to see the approaching vehicles on Monte Rosa Drive.
- It was not apparent for drivers on Eastridge Avenue that vehicles on Monte Rosa Drive are not required to stop.
- La Entrada school children have difficult time crossing at this intersection.

In response to the abovementioned traffic safety concerns, staff performed an engineering study in accordance with the Ca-MUTCD warrants for all-way stop control installation as follows:

- 1) The Ca-MUTCD defines minimum requirements for traffic volumes, pedestrian volumes, and bicycle volumes to warrant an all-way stop controlled intersection. Based on field observations, the intersection of Monte Rosa Drive and Eastridge Avenue would not meet these minimum volume requirements.
- 2) In staff's review of the collision history at the intersection using the Statewide Incident Traffic Reporting System database, for the three-year period between 2010 and 2012, there were 0 reported collisions.
- 3) Based on field observations and as illustrated by the attached sight triangle diagrams (Attachments B and C), there were visibility obstructions at the intersection for drivers stopped on Eastridge Avenue due to the following:
 - Parked cars on Monte Rosa Drive near the intersection
 - Presence of hedges and trees near the intersection
 - Existing vertical curve on Monte Rosa Drive at its intersection with Blueridge Avenue
 - Existing horizontal curve on the Monte Rosa Drive east approach

Section 2B.04, "Right of Way at Intersections", of the Ca-MUTCD states that "In addition, the use of YIELD or STOP signs should be considered at the intersection of two minor streets or local roads where the intersection has more than three approaches and where one or more of the following conditions exist: a.) The combined vehicular, bicycle, and pedestrian volume entering the intersection from all approaches averages more than 2,000 units per day; b.) The ability to see conflicting traffic on an approach is not sufficient to allow a road user to stop or yield in compliance with the normal right-of-way rule if such stopping or yielding is necessary".

In addition, Section 2B.07, "Multi-way Stop Application", of the Ca-MUTCD stipulates that multi-way stops be considered as an option on "Locations where a road user, after stopping, cannot see conflicting traffic and is not able to negotiate the intersection unless conflicting cross traffic is also required to stop."

On June 11, 2014, on the basis of the above mentioned visibility obstruction issues at the intersection of Monte Rosa Drive and Eastridge Avenue and provisions from the Ca-MUTCD on multi-way stop sign application related to obstructed visibility, staff recommended the Transportation Commission recommend to City Council the approval of installing stop signs on Monte Rosa Drive at its intersection with Eastridge Avenue to make this intersection an all-way stop controlled intersection. Ultimately, the Transportation Commission unanimously passed a motion to approve staff's recommendation.

Public outreach was achieved by staff mailing neighborhood meeting notices regarding this item to the impacted residents two weeks prior to the Transportation Commission June 11, 2014 meeting. The majority of e-mails and voice mail messages received by staff from residents who could not come to this meeting indicated support for stop signs

on Monte Rosa Drive. At the June 11, 2014 meeting, a Menlo Park resident who lives near the intersection, spoke before the Transportation Commission and indicated his support for stop signs on Monte Rosa Drive.

IMPACT ON CITY RESOURCES

Sufficient funds are available in the operating budget designation for the City's signing and striping program for the installation of the stop signs and posts and appurtenant striping and pavement markings on Monte Rosa Drive at its intersection with Eastridge Avenue.

POLICY ISSUES

The installation of stop signs on Monte Rosa Drive at its intersections with Eastridge Avenue is consistent with several policies in the 1994 City General Plan Circulation and Transportation Element, which seeks to maintain a circulation system using the Roadway Classification System that will provide for a safe and efficient movement of people and goods throughout Menlo Park for residential and commercial purposes.

ENVIRONMENTAL REVIEW

The installation of stop signs on Monte Rosa Drive at its intersection with Eastridge Avenue is categorically exempt under Class I of the current State of California Environmental Quality Act Guidelines. Class 1 allows for minor alterations of existing facilities, including existing highways and streets, sidewalks, gutters, bicycle and pedestrian access, and similar facilities as long as there is negligible or no expansion of use.

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
- B1. Sight Triangle at the South Leg of Eastridge Avenue at Monte Rosa Drive
- B2. Sight Triangle at the North Leg of Eastridge Avenue at Monte Rosa Drive (Left Turn from Stop on Eastridge Avenue)

Report prepared by:

René Baile

Transportation Engineer

Nikki Nagaya

Interim Transportation Manager

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RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO
PARK AUTHORIZING THE INSTALLATION OF STOP SIGNS ON
MONTE ROSA DRIVE**

WHEREAS, staff received complaints from a resident about traffic safety concerns due to obstructed visibility and drivers' confusion at the intersection of Monte Rosa Drive and Eastridge Avenue;

WHEREAS, at the June 11, 2014 Transportation Commission meeting, the commission heard these traffic safety concerns and staff's recommendation to address these concerns and ultimately, unanimously passed a motion to support staff's recommendation for the installation of stop signs on Monte Rosa Drive at its intersection with Eastridge Avenue to make this intersection an all-way stop controlled intersection; and,

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

NOW, THEREFORE, BE IT RESOLVED, the City Council of Menlo Park does hereby authorize the installation of stop signs on Monte Rosa Drive at its intersection with Eastridge Avenue to make this intersection an all-way stop controlled intersection.

I, Pam Aguilar, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ninth day of September, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ninth day of September, 2014.

Pamela Aguilar
City Clerk

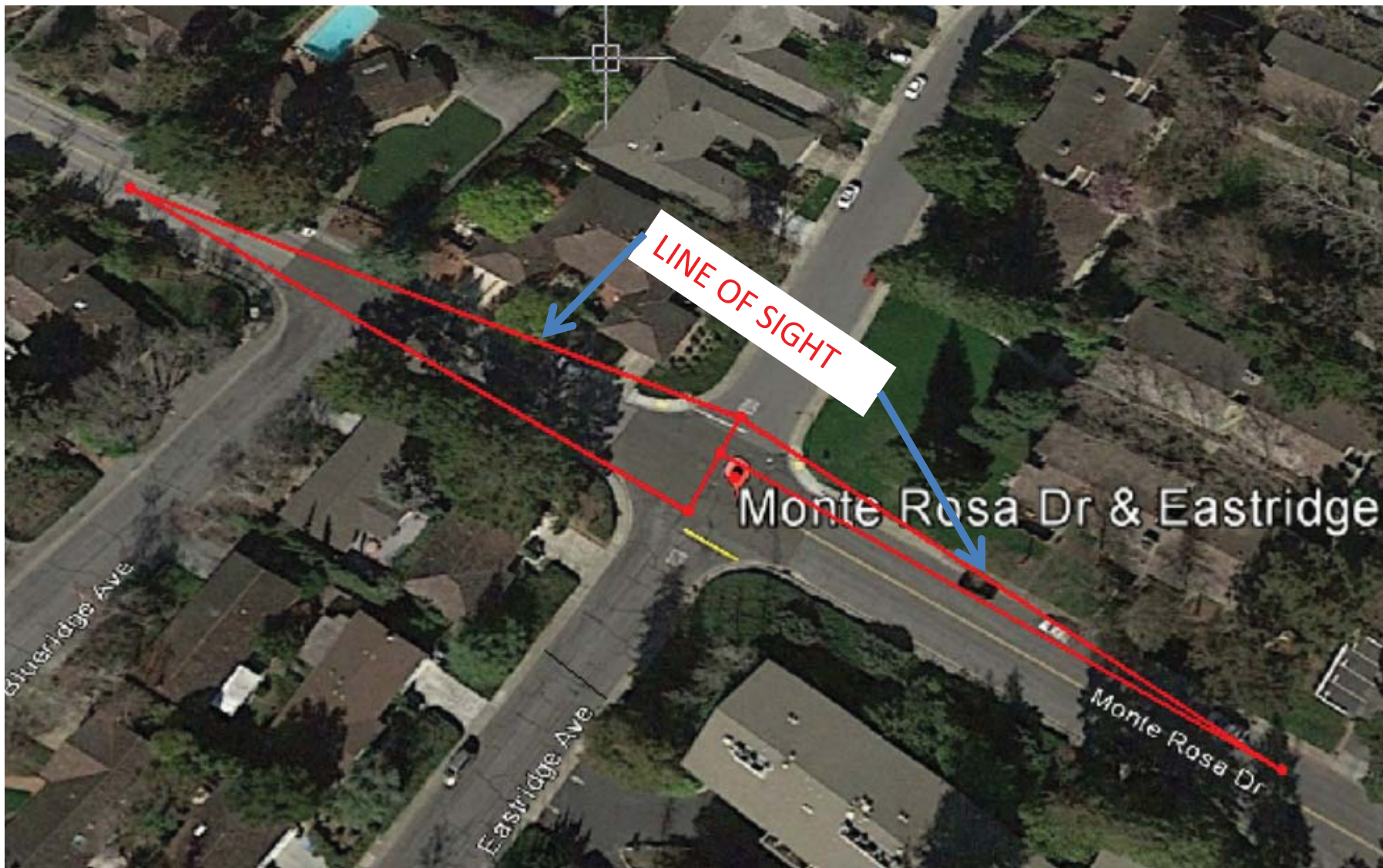
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ATTACHMENT B1: SIGHT TRIANGLE AT THE SOUTH LEG OF EASTRIDGE AVENUE AT MONTE ROSA DRIVE



— SIGHT TRIANGLE FOR 25 MPH VEHICLE SPEED ON MONTE ROSA DRIVE

ATTACHMENT B2: SIGHT TRIANGLE AT THE NORTH LEG OF EASTRIDGE AVENUE AT MONTE ROSA DRIVE



— SIGHT TRIANGLE FOR 25 MPH VEHICLE SPEED ON MONTE ROSA DRIVE



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014

Staff Report #: 14-166

Agenda Item #: D-8

CONSENT CALENDAR: Waive the Second Reading and Adopt an Ordinance to Continue Implementing the State Water Resources Control Board’s Mandatory Regulations upon Expiration of the Urgency Ordinance which was Adopted on August 26, 2014

RECOMMENDATION

Staff is recommending adopting an ordinance to continue implementing the State Water Resources Control Board’s (SWRCB) regulations upon expiration of the urgency ordinance which was adopted on August 26, 2014.

BACKGROUND

The SWRCB regulations became law on July 28, 2014, and will remain in effect for up to 270 days, up to April 25, 2015. The SWRCB can determine if these regulations are no longer necessary due to changed conditions and they can renew the regulations if drought conditions continue. The new law consists of 3 components:

1. Restricting outdoor irrigation activities
2. Implementing the City’s Water Shortage Contingency Plan (WSCP) Stage 3. See Attachment A for the WSCP in its entirety.
3. Submitting monthly reports to the SWRCB.

Restricted Outdoor Irrigation Activities
1. Applying potable water to any driveway or sidewalk.
2. Using potable water to water outdoor landscapes in a manner that causes runoff onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
3. Using a hose that dispenses potable water to wash a motor vehicle, unless the hose is fitted with a shut-off nozzle.
4. Using potable water in a fountain or decorative water feature, unless the water is recirculated. Recycled water is not mandated, but encouraged for fountain use.

City's WSCP Stage 3

	Prohibited Activities	Clarification
1	No new or expanded irrigation systems	New irrigation systems cannot be installed. Existing irrigation systems cannot be expanded.
2	Prohibition against noncommercial vehicle washing	Prohibits noncommercial vehicle washing unless the hose is fitted with a shut-off nozzle or the vehicle is washed at a car wash facility that utilizes a water recirculating system.
3	Prohibition against filling swimming pools and using ornamental fountains	Prohibits filling new swimming pools. Prohibits using ornamental fountains or decorative water features, unless the water is recirculated.
4	Limited new water service connections	On a case-by-case basis, the Public Works Director, or his designee, shall determine if a new water service connection shall be allowed.
5	Prohibition against use of potable water for construction dust control	Prohibits using potable water for construction dust control.
6	Controls on groundwater use	The Public Works Director, or his designee, shall establish an outreach program for customers with private wells to educate on water conservation.

	Action	Clarification
7	30% reduction for residential, commercial, industrial & public customers	Residential, commercial, industrial, and public water customers shall reduce their water use by 30% from the same period during a previous year (as determined by the Public Works Director, or his designee).
8	45% reducing in dedicated irrigation accounts	Customers with dedicated irrigation accounts shall reduce their irrigation water use by 45% from the same period during a previous year (as determined by the Public Works Director, or his designee).

On August 19, 2014, the City Council held a study session to discuss implementing the State Water Resources Control Board's (SWRCB) emergency mandatory regulations for water conservation.

On August 26, 2014, the City Council took the following actions. Attachment B is the staff report from that meeting.

1. Adopted an urgency ordinance to enact chapter 7.35 of the Menlo Park Municipal Code allowing City Council to adopt by resolution a Water Conservation Plan consistent with any emergency water regulations adopted by the State Water Resources Control Board (SWRCB) or drought-related actions imposed by the San Francisco Public Utilities Commission (SFPUC); and
2. Introduced an ordinance to continue implementing the State Water Resources Control Board's (SWRCB) regulations upon expiration of the urgency ordinance.

ANALYSIS

Menlo Park Municipal Code

The urgency ordinance to enact chapter 7.35 of the Menlo Park Municipal Code became effective on August 26, 2014 and remains in effect for up to 45 days, up to October 10, 2014. In order to continue implementing the new SWRCB regulations beyond the 45 days of the urgency ordinance expiration, staff is recommending that the City Council adopt the ordinance to continue implementing the State Water Resources Control Board's (SWRCB) regulations upon expiration of the urgency ordinance. This ordinance would take effect 30 days after adoption, on October 9, 2014, prior to the urgency ordinance expiration on October 10, 2014.

IMPACT ON CITY RESOURCES

The new SWRCB regulations involve implementing an outreach program, monitoring, and reporting to the State which is above and beyond staff's current workload. A discussion of anticipated staff needs will be addressed in a future City Council meeting.

POLICY ISSUES

The City has permanent water use restrictions in place and has already increased water conservation efforts in response to the dry conditions. The recommended action is consistent with those policy efforts and the strategies outlined in the 2010 UWMP that expires on April 25, 2015 unless the SWRCB revises, renews, or terminates the regulations.

ENVIRONMENTAL REVIEW

Council's adoption of the proposed ordinance and resolution is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

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. Water Shortage Contingency Plan (from the 2010 Urban Water Management Plan)
- B. August 26, 2014 City Council Study Session Staff Report
- C. Ordinance to Continue Implementing State Water Board's New Regulations Upon Expiration of Urgency Ordinance

Report prepared by:

Pam Lowe, P.E.

Associate Civil Engineer

Water Shortage Contingency Plan

Every five years, the City must develop and update its Urban Water Management Plan (UWMP) and submit it for approval to the California Department of Water Resources. The UWMP addresses changing conditions related to water sources, water availability, water demands, and water reliability for the next 20 to 25 years. The Water Shortage Contingency Plan (WSCP), developed as part of the UWMP, describes the water supplier's response and planning for changes or shortages in water supply. It compares supply and demand under normal, single-dry, and multiple-dry years and describes stages and actions to be undertaken in response to water supply shortages of up to 50%.

Below is the City's WSCP (Table 5.11 from the 2010 UWMP). The City is currently implementing all of the voluntary Stage 2 actions. The current 2010 UWMP can be viewed in its entirety at <http://www.menlopark.org/150/Urban-Water-Management-Plan>.

Water Shortage Contingency Rationing Stages* to Address Water Supply Shortages (Table 5.11 from the 2010 UWMP)

Stage No.	Water Supply Conditions	% Shortage					
1 Ongoing	Water Waste Prohibitions including <ul style="list-style-type: none"> • Repair of defective irrigation systems • No flooding of gutter, driveways and streets • Restaurant water served on request • Water use for cooling must be recycled • Prohibition against sidewalk and building washing 	NA					
2 Voluntary	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Increase in public information budgets</td> <td rowspan="4" style="text-align: center; vertical-align: middle;">Up to 20%</td> </tr> <tr> <td style="padding: 2px;">Increased enforcement of the water waste prohibition</td> </tr> <tr> <td style="padding: 2px;">Restaurant water served on request</td> </tr> <tr> <td style="padding: 2px;">10% reduction across all customer classes</td> </tr> </table>	Increase in public information budgets	Up to 20%	Increased enforcement of the water waste prohibition	Restaurant water served on request	10% reduction across all customer classes	
Increase in public information budgets	Up to 20%						
Increased enforcement of the water waste prohibition							
Restaurant water served on request							
10% reduction across all customer classes							
3 Mandatory	All Stage 2 Prohibitions and <ul style="list-style-type: none"> • No new or expanded irrigation systems • Prohibition against noncommercial vehicle washing • Prohibition against filling swimming pools and using ornamental fountains • Limited new water service connections • Prohibitions against use of potable water for construction dust control • Controls on groundwater use 30% reductions for residential, commercial, industrial & public	25% to 35%					

Stage No.	Water Supply Conditions	% Shortage
	customers	
	45% reducing in dedicated irrigation accounts	
4 Mandatory	All Stage 2 and 3 Prohibitions	40% to 50%
	50% reductions for residential, commercial, industrial & public customers	
	75% reductions in dedicated irrigation accounts	

* One of the stages of action must be designed to address a 50 percent reduction in water supply.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: August 26, 2014

Staff Report #: 14-158

Agenda Item #: F-2

REGULAR BUSINESS:

Adopt an Urgency Ordinance to Implement the State Water Resources Control Board's Emergency Mandatory Regulations for Water Conservation; Adopt a Resolution to Establish a Water Conservation Plan; Introduce an Ordinance to Continue the Mandatory Regulations upon Expiration of the Urgency Ordinance; and Approve a New Environmental Programs Specialist Position and Outreach Program in the Amount of \$155,000 to be Covered by the Water Fund

RECOMMENDATION

Staff is recommending the following:

1. Adopt an urgency ordinance to
 - a. Enact chapter 7.35 of the Menlo Park Municipal Code allowing City Council to adopt by resolution a Water Conservation Plan consistent with any emergency water regulations adopted by the State Water Resources Control Board (SWRCB) or drought-related actions imposed by the San Francisco Public Utilities Commission (SFPUC).
 - b. Suspend Chapter 7.34 on Water Rationing (Ordinance 821) to the extent it is inconsistent with Chapter 7.35.
 - c. Suspend Chapter 7.38 on Water Conservation (Ordinance 849) to the extent it is inconsistent with Chapter 7.35.
2. Adopt a resolution to establish a Water Conservation Plan that will implement Stage 3 of the City's WSCP and the additional requirements of the new SWRCB regulations.
3. Introduce an ordinance to continue implementing the SWRCB's regulations upon expiration of the urgency ordinance.
4. Approve a new Environmental Programs Specialist position and outreach program in the amount of \$155,000 to be covered by the Water Fund.

BACKGROUND

The SWRCB regulations became law on July 28, 2014, and will remain in effect for up to 270 days, up to April 25, 2015. The SWRCB can determine if these regulations are no longer necessary due to changed conditions and they can renew the regulations if drought conditions continue. The new law consists of 3 components:

1. Restricting outdoor irrigation activities
2. Implementing the City's Water Shortage Contingency Plan (WSCP) Stage 3. See Attachment A for the WSCP in its entirety.
3. Submitting monthly reports to the SWRCB.

Restricted Outdoor Irrigation Activities	
1.	Applying potable water to any driveway or sidewalk.
2.	Using potable water to water outdoor landscapes in a manner that causes runoff onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
3.	Using a hose that dispenses potable water to wash a motor vehicle, unless the hose is fitted with a shut-off nozzle.
4.	Using potable water in a fountain or decorative water feature, unless the water is recirculated. Recycled water is not mandated, but encouraged for fountain use.

City's WSCP Stage 3

	Prohibited Activities	Clarification
1	No new or expanded irrigation systems	New irrigation systems cannot be installed. Existing irrigation systems cannot be expanded.
2	Prohibition against noncommercial vehicle washing	Prohibits noncommercial vehicle washing unless the hose is fitted with a shut-off nozzle or the vehicle is washed at a car wash facility that utilizes a water recirculating system.
3	Prohibition against filling swimming pools and using ornamental fountains	Prohibits filling new swimming pools. Prohibits using ornamental fountains or decorative water features, unless the water is recirculated.
4	Limited new water service connections	On a case-by-case basis, the Public Works Director, or his designee, shall determine if a new water service connection shall be allowed.
5	Prohibition against use of potable water for construction dust control	Prohibits using potable water for construction dust control.
6	Controls on groundwater use	The Public Works Director, or his designee, shall establish an outreach program for customers with private wells

		to educate on water conservation.
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	Action	Clarification
7	30% reduction for residential, commercial, industrial & public customers	Residential, commercial, industrial, and public water customers shall reduce their water use by 30% from the same period during a previous year (as determined by the Public Works Director, or his designee).
8	45% reducing in dedicated irrigation accounts	Customers with dedicated irrigation accounts shall reduce their irrigation water use by 45% from the same period during a previous year (as determined by the Public Works Director, or his designee).

On August 19, 2014 the City Council held a study session to discuss implementing the State Water Resources Control Board's (SWRCB) emergency mandatory regulations for water conservation. Attachment B is the staff report from that meeting.

The Council specifically requested that staff provide the costs involved to hire additional staff in order to meet the new regulations, and to develop a strategic communication plan to educate the community on water conservation.

ANALYSIS

Menlo Park Municipal Code

Staff recommends eliminating the outdated chapters in the Menlo Park Municipal Code regarding water conservation and adding a new chapter to provide flexibility to meet the new SWRCB regulations and any future requirements of the SWRCB or from SFPUC. The two existing Municipal Code chapters that address water conservation, Chapter 7.34 Water Rationing and Chapter 7.38 Water Conservation, conflict with each other and should be deleted. Staff recommends that the City Council adopt an urgency ordinance (Attachment C) which would become effective on the same day it is adopted and would remain in effect for up to 45 days. As the new law will remain in effect up to April 25, 2015, staff also recommends introducing an ordinance (Attachment D) that would continue implementing the new SWRCB regulations beyond the 45 days of the urgency ordinance expiration.

Effective Dates:

August 26, 2014	Adopt an urgency ordinance, in effect for 45 days until October 10, 2014
August 26, 2014	Introduce an ordinance that would replace the urgency ordinance
September 9, 2014	Adopt an ordinance that would the replace urgency ordinance which would take effect 30 days later, on October 9, 2014
October 10 2014	Urgency ordinance expires, new ordinance goes into effect

Staff will return to City Council on September 9, 2014 to adopt the ordinance that would replace the urgency ordinance.

Water Conservation Plan

Staff recommends adopting a resolution (Attachment E) to establish a Water Conservation Plan that will implement Stage 3 of the City’s WSCP, the additional outdoor irrigation activities restricted by the new SWRCB regulations, and enforcement.

Recommended Enforcement

Violation	Enforcement
1 st	Warning only. Educate customer on proper water conservation practices.
2 nd	\$50 fine
3 rd	\$100 fine
4 th	\$200 fine, and review by the Public Works Director (or his designee) to determine if a flow restricting device should be installed
5 th	\$500 fine, and review by the Public Works Director (or his designee) to determine if water service should be discontinued
6 th	\$500 fine, water service shall be discontinued

Recommended Charges for Installation or Removal of Flow Restricting Devices

Meter Size	Installation Cost	Removal Cost
5/8” to 2”	\$ 155.00	\$ 155.00
3” or larger	Actual Cost	Actual Cost

Recommended Charges for Disconnecting and Reconnecting Service

Meter Size	Cost to Disconnect Service	Cost to Reconnect Service
All sizes	\$ 155.00	\$ 155.00

Next Step – Revise the Water Shortage Contingency Plan

The current WSCP’s Stage 3 requires a 45% water use reduction for dedicated irrigation accounts and a 30% water use reduction for all other customers. In order to better reflect the SWRCB’s 20% conservation goal, staff will revise the WSCP, which is part of the 2010 Urban Water Management Plan (UWMP), as follows:

1. At least 60 days prior to a public hearing, notify the public and other agencies that the UWMP will be reviewed and possibly amended.
2. Make the amended UWMP available for public inspection.

3. Publish the time and place of the public hearing in a newspaper at least twice at least 5 days apart.
4. Hold a public hearing to adopt the amended UWMP.
5. Make the revised UWMP available for public review within 30 days of adoption.

Staff estimates that a revised WSCP could go into effect in 90 days. On the same date to adopt the UWMP, staff will also ask City Council to approve a resolution to establish an updated Water Conservation Plan to reflect the revised WSCP.

Sample Schedule:

Complete draft WSCP	September 2014
Notify public that UWMP will be reviewed and updated	September 2014
Public Hearing to adopt UWMP	November 2014
Adopt resolution to update Water Conservation Plan	November 2014
Implement Revised WSCP	November 2014

IMPACT ON CITY RESOURCES

The new SWRCB regulations involve implementing an outreach program, monitoring, and reporting to the State which is above and beyond staff’s current workload. In order to effectively implement this new program, staff is recommending hiring an Environmental Programs Specialist to manage the newly required activities. The duties of this new staff person would include:

- Develop an outreach program with costs and timelines (explained in more detail below)
- Coordinate with Code Enforcement
- Work with Global Water (City’s contract water billing company) to enhance the water bill format
- Develop a database to track enforcement activities
- Evaluate water use savings
- Meet with customers as needed
- Coordinate with other local water agencies
- Submit monthly reports to SWRCB
- Educate customers that have private wells

The annual cost for a new Environmental Programs Specialist is about \$98,000 including benefits. The additional costs to implement an extensive outreach program are detailed in the table below. The costs were estimated modeling the City’s current Environmental Programs budget and activities for energy conservation, hazardous waste, clean air, solid waste, and water pollution prevention, and they reflect anticipated outreach activities for water conservation to implement the City’s WSCP Stage 3. If the drought continues and the City is required to implement a higher WSCP stage, the estimated costs below would increase.

Outreach Program – Estimated Costs

Activity	Details	Annual Cost	
Intro Letter on City Letterhead	Mailed to every water customer in the water district to introduce new regulations, \$2,030	\$2,030	
Brochures	Mailed to every water customer in the water district to explain regulations and educate 2 mailings (\$15,750 each), fall and spring, hire marketing firm to design	\$31,500	
Newspaper Ads	2 full-page ad 5x8, \$1,800 4 half-page ads 5x4 size, \$1,000 3 ads 5x3 size, \$750 each	\$9,850	
Direct Mailers Letters or postcards	Mailed to every water customer in the water district 4 mailers (\$2,030 each)	\$8,120	
Robocalls, City recorded messages	4 times (\$420 per 40 second message)	\$1,680	
Doorhangers	Provide as needed to customers violating water restrictions \$2 each (2,000 pieces)	\$4,000	
Chamber of Commerce Weekly E-Newsletter	Develop text	Included in staff costs \$97,959	
Community Meetings	Coordinate		
Facebook	Develop text and maintain		
Garbage Bill Inserts	Develop text		
Green Ribbon Citizens Committee Calendar and Email	Develop text and maintain		
Hotline # and Email	Setup and maintain daily		
Local TV Channel	Slide ads displayed on government (ch. 26 & 29) and/or public access (ch. 27, 28, & 30) channels		
Menlo Focus	Develop text		
NextDoor.com	Develop text and maintain		
Patch.com Calendar	Develop text and maintain		
Post Flyers in Community	Starbucks, Library kiosk, Onetta Harris Community Center, Admin Bldg., Employee lounge, Cheeky Monkey Toys, Rec Center, Gymnasium, Family Gym, Downtown kiosks		
Twitter	Develop text and maintain		
Website, includes Press Releases, City Calendar, and News/Event List Serve	Develop and maintain		
			\$155,139

Total annual costs to hire an Environmental Programs Specialist and implement an outreach program would be approximately \$155,000. The actual cost would be lower during this fiscal year since the fiscal year has already begun. The cost of the new position and operating expenses would be fully funded by the Water Fund. If the operating budget is unable to cover those expenses, a budget amendment will be done at mid-year. Since the extent and impact of the drought is not yet known, staff will provide an update regarding the continuing need for this position during the annual budget process.

POLICY ISSUES

The City has permanent water use restrictions in place and has already increased water conservation efforts in response to the dry conditions. The recommended action is consistent with those policy efforts and the strategies outlined in the 2010 UWMP that expires on April 25, 2015 unless the SWRCB revises, renews, or terminates the regulations.

ENVIRONMENTAL REVIEW

Council's adoption of the proposed ordinance and resolution is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

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. Water Shortage Contingency Plan (from the 2010 Urban Water Management Plan)
- B. August 19, 2014 City Council Study Session Staff Report
- C. Urgency Ordinance to Implement State Water Board's New Regulations
- D. Ordinance to Continue Implementing State Water Board's New Regulations Upon Expiration of Urgency Ordinance
- E. Resolution to Adopt Water Conservation Plan

Report prepared by:
Pam Lowe, P.E.
Associate Civil Engineer

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Water Shortage Contingency Plan

Every five years, the City must develop and update its Urban Water Management Plan (UWMP) and submit it for approval to the California Department of Water Resources. The UWMP addresses changing conditions related to water sources, water availability, water demands, and water reliability for the next 20 to 25 years. The Water Shortage Contingency Plan (WSCP), developed as part of the UWMP, describes the water supplier's response and planning for changes or shortages in water supply. It compares supply and demand under normal, single-dry, and multiple-dry years and describes stages and actions to be undertaken in response to water supply shortages of up to 50%.

Below is the City's WSCP (Table 5.11 from the 2010 UWMP). The City is currently implementing all of the voluntary Stage 2 actions. The current 2010 UWMP can be viewed in its entirety at <http://www.menlopark.org/150/Urban-Water-Management-Plan>.

Water Shortage Contingency Rationing Stages* to Address Water Supply Shortages (Table 5.11 from the 2010 UWMP)

Stage No.	Water Supply Conditions	% Shortage
1 Ongoing	Water Waste Prohibitions including <ul style="list-style-type: none"> • Repair of defective irrigation systems • No flooding of gutter, driveways and streets • Restaurant water served on request • Water use for cooling must be recycled • Prohibition against sidewalk and building washing 	NA
2 Voluntary	Increase in public information budgets Increased enforcement of the water waste prohibition Restaurant water served on request 10% reduction across all customer classes	Up to 20%
3 Mandatory	All Stage 2 Prohibitions and <ul style="list-style-type: none"> • No new or expanded irrigation systems • Prohibition against noncommercial vehicle washing • Prohibition against filling swimming pools and using ornamental fountains • Limited new water service connections • Prohibitions against use of potable water for construction dust control • Controls on groundwater use 30% reductions for residential, commercial, industrial & public	25% to 35%

Stage No.	Water Supply Conditions	% Shortage
	customers	
	45% reducing in dedicated irrigation accounts	
4 Mandatory	All Stage 2 and 3 Prohibitions	40% to 50%
	50% reductions for residential, commercial, industrial & public customers	
	75% reductions in dedicated irrigation accounts	

* One of the stages of action must be designed to address a 50 percent reduction in water supply.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: August 19, 2014

Staff Report #: 14-147

Agenda Item #: SS-1

STUDY SESSION:

Discuss Implementing the State Water Resources Control Board's Emergency Mandatory Regulations for Water Conservation

RECOMMENDATION

Discuss implementing the State Water Resources Control Board's emergency mandatory regulations for water conservation considering the following staff suggestions:

1. Adopt an urgency ordinance to
 - a. Enact chapter 7.35 of the Menlo Park Municipal Code allowing City Council to adopt by resolution a Water Conservation Plan consistent with any emergency water regulations adopted by the SWRCB or drought-related actions imposed by the SFPUC.
 - b. Suspend Chapter 7.34 on Water Rationing (Ordinance 821) to the extent it is inconsistent with Chapter 7.35.
 - c. Suspend Chapter 7.38 on Water Conservation (Ordinance 849) to the extent it is inconsistent with Chapter 7.35.
2. Adopt a resolution to establish a Water Conservation Plan that will implement Stage 3 of the City's WSCP and the additional requirements of the new SWRCB regulations.
3. Introduce an ordinance to continue implementing the SWRCB's regulations upon expiration of the urgency ordinance.

BACKGROUND

State Water Resources Control Board (SWRCB) Emergency Mandatory Regulations

On January 17, 2014, in response to the ongoing dry conditions, Governor Brown issued a drought emergency proclamation and asked for all Californians to reduce water use by 20%.

On January 31, 2014, the San Francisco Public Utilities Commission (SFPUC) asked its retail and wholesale customers, including the Menlo Park Municipal Water District (City),

to voluntarily curtail water consumption by 10%. The City responded to the voluntary request and has reduced consumption by approximately 10.3% between February and June 2014, as compared to the same period in 2013. The City has a long standing commitment to water conservation and recently stepped up efforts in response to the dry year conditions.

Some examples include:

1. Notified restaurants asking them to serve water to customers only upon request and provided free tabletop tent cards.
2. Adjusted the City's irrigation controllers to reduce watering by 10%.
3. Replaced old sprinkler heads around the Civic Center with new more efficient heads.
4. Placed electronic board signs on Santa Cruz Avenue and Willow Road informing drivers to conserve water.
5. Turned off all City decorative fountains.
6. Stopped all power washing of sidewalks.
7. Expanded the High-Efficiency Toilet (HET) rebate program to provide two rebates.
8. Provided information on the City's Water Conservation programs in the quarterly water bill inserts.
9. Implemented Conserve-A-Scape, a new landscape design assistance program to support Lawn Be Gone participants in designing a water-efficient landscape.
10. Provided free monthly water budget reports to the large landscape irrigation customers through the Large Landscape Program.
11. Offered the Landscape Audit/Analysis program for commercial and multi-family water customers.

On April 25, 2014, Governor Brown issued an Executive Order directing the SWRCB to adopt emergency drought regulations, as it deems necessary. On July 15, 2014, the SWRCB passed a resolution adopting emergency regulations adding new sections to Title 23 of the California Code of Regulations (Attachment A, and a Fact Sheet is Attachment B). The Office of Administrative Law adopted the emergency regulations, and the new law became effective on July 28, 2014, and will remain in effect for up to 270 days, up to April 25, 2015. The SWRCB can determine if these regulations are no longer necessary due to changed conditions and they can renew the regulations if drought conditions continue.

The emergency regulations prohibit the following activities, except where necessary to address an immediate health and safety need, or to comply with a term or condition in a permit issued by a state or federal agency. It also enables local agencies to fine violators up to \$500 a day.

Prohibited Activities
1. Applying potable water to any driveway or sidewalk.
2. Using potable water to water outdoor landscapes in a manner that causes runoff onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
3. Using a hose that dispenses potable water to wash a motor vehicle,

Prohibited Activities
unless the hose is fitted with a shut-off nozzle.
4. Using potable water in a fountain or decorative water feature, unless the water is recirculated. Recycled water is not mandated, but encouraged for fountain use.

In addition, urban water suppliers, including the City of Menlo Park, must also implement the following:

Urban Water Suppliers
<p>Conservation</p> <p>Implement all requirements and actions of the stage of its Water Shortage Contingency Plan (WSCP) that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water.</p> <p>Or, as an alternative, submit a request to the SWRCB’s Executive Director to approve an alternate allocation-based rate structure that would achieve a level of water conservation that would be superior to that achieved by implementing limitations on outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days/week.</p> <p>Water suppliers that do not have a WSCP, or that have been notified by the Department of Water Resources that its WSCP does not meet the requirements of Water Code Section 10632, must within 30 days of when the emergency regulations became effective limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week or implement other mandatory use restrictions that provide a comparable level of savings.</p> <p>Monthly Reporting Requirement</p> <p>To promote water conservation, each urban water supplier shall prepare and submit monthly reports to the SWRCB. The SWRCB is in the process of preparing templates for monthly reports that urban water suppliers must submit by the 15th of each month. At a minimum, the reports will likely include the items below:</p> <ol style="list-style-type: none"> 1. The amount of potable water produced or purchased from wholesalers in the preceding calendar month with a comparison to the same calendar month in 2013. 2. Beginning October 15, 2014, an estimate of the gallons of water per person per day used by residential customers.

The SWRCB can issue cease and desist orders against water agencies that don’t impose mandatory conservation measures upon their retail customers. Water agencies that violate cease and desist orders are subject to civil liability of up to \$10,000 a day.

Menlo Park Municipal Water District

The Menlo Park Municipal Water District (City) is an urban water supplier that purchases 100% of its water from SFPUC and supplies water to approximately 4,300

homes and businesses in the City through two service areas: the eastern service area and the western service area. California Water Service (CalWater) provides water to the middle area of the City. Other smaller water suppliers within City boundaries include O'Connor Tract Cooperative Water District (approximately 300 connections in the Willows neighborhood), and the Palo Alto Mutual Water Company (approximately 500 connection in Menlo Park and East Palo Alto).

Menlo Park Municipal Code

The Menlo Park Municipal Code contains two chapters that address water conservation. The chapters contradict each other and neither conforms to the new SWRCB regulations.

Chapter 7.34 Water Rationing (Ordinance 821), adopted by City Council on March 26, 1991, implemented a Water Rationing Plan during the 1998-1993 drought which included allotments and banking for each water user, excess use charges if users went above their allotments, flow restrictor installations if necessary, and an appeals process (Attachment C).

On April 21, 1993, the City Council adopted an ordinance suspending Chapter 7.34 and adding Chapter 7.38, Water Conservation (Ordinance 849) to provide regulations and restrictions on water use (Attachment D). It lists prohibited activities that correlate to the City's Water Shortage Contingency Plan (WSCP) Stage 1 voluntary actions. The WSCP is described in Attachment E.

ANALYSIS

State Regulations Implementation

Pursuant to the SWRCB's emergency regulations, the City must either implement all requirements and actions of the stage of its WSCP that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water (Stage 3), or submit a request to the SWRCB Executive Director to approve an alternate allocation-based rate structure that would achieve a level of water conservation that exceeds a two days/week watering schedule.

Staff is recommending implementing Stage 3 of the WSCP in lieu of the option to create an allocation-based rate structure. Implementing Stage 3 appears to be the best alternative for the following reasons:

1. Compliance with the SWRCB can be achieved by implementing Stage 3 of the WSCP.
2. During the 1988-1993 drought the City created an allocation-based rate structure which included allotments for each customer, banking provisions, excess use charges if allotments were exceeded, and an appeals process. Creating these processes were time consuming and impacted staff resources significantly. This increases the administration cost which further increases the rate payers cost.

3. Creation of such a structure as an alternative to implementing the WSCP would require application to and approval by the SWRCB Executive Director.
4. The new SWRCB regulations are already in effect, and the City must be in compliance as soon as possible.

For all of the foregoing reasons, staff is recommending implementing stage 3 of the WSCP. Additionally, staff is recommending the deletion of Chapter 7.34 of the Menlo Park Municipal Code which codified the 1988-1993 drought allocations, which is discussed later in this report.

Water Shortage Contingency Plan - Stage 3

	Prohibited Activities	Clarification
1	No new or expanded irrigation systems	New irrigation systems cannot be installed. Existing irrigation systems cannot be expanded.
2	Prohibition against noncommercial vehicle washing	Prohibits noncommercial vehicle washing unless the hose is fitted with a shut-off nozzle or the vehicle is washed at a car wash facility that utilizes a water recirculating system.
3	Prohibition against filling swimming pools and using ornamental fountains	Prohibits filling new swimming pools. Prohibits using ornamental fountains or decorative water features, unless the water is recirculated.
4	Limited new water service connections	On a case-by-case basis, the Public Works Director, or his designee, shall determine if a new water service connection shall be allowed.
5	Prohibition against use of potable water for construction dust control	Prohibits using potable water for construction dust control.
6	Controls on groundwater use	The Public Works Director, or his designee, shall establish an outreach program for customers with private wells to educate on water conservation.

In addition, the City must implement the following:

	Action	Clarification
7	30% reduction for residential, commercial, industrial & public customers	Residential, commercial, industrial, and public water customers shall reduce their water use by 30% from the same period during a previous year (as determined by the Public Works Director, or his designee).
8	45% reducing in dedicated irrigation accounts	Customers with dedicated irrigation accounts shall reduce their irrigation water use by 45% from the same period during a previous year (as determined by the Public Works Director, or his designee).

Because Stage 2 of the WSCP does not meet the SWRCB emergency regulations relative to restrictions on outdoor irrigation of ornamental landscapes or turf with potable

water, staff is recommending implementing Stage 3. Stage 3 significantly exceeds the intent of Governor Brown's emergency regulation to reduce water use by 20% and the SWRCB regulations. In addition it places a significant financial burden on business and residential customers in achieving a 30% water use reduction and irrigation customers in achieving a 45% water use reduction.

Recommend Revising Menlo Park Municipal Code

Staff recommends eliminating the outdated chapters in the Menlo Park Municipal Code regarding water conservation and adding a new chapter to provide flexibility to meet the new SWRCB regulations and any future requirements of the SWRCB or from SFPUC. The two existing Municipal Code chapters that address water conservation, Chapter 7.34 Water Rationing and Chapter 7.38 Water Conservation, conflict with each other and the new regulations and should be deleted. The new SWRCB regulations became effective on July 28, 2014. The City should be in compliance with the new law as soon as possible. Staff recommends that the City Council adopt an urgency ordinance which would become effective on the same day it is adopted and would remain in effect for up to 45 days. As the new law will remain in effect up to April 25, 2015, staff also recommends introducing an ordinance that would continue implementing the new SWRCB regulations beyond the 45 days of the urgency ordinance expiration.

Staff anticipates returning to Council at its next meeting (August 26, 2014) to recommend the following:

4. Adopt an urgency ordinance (Attachment F) to
 - a. Enact chapter 7.35 of the Menlo Park Municipal Code allowing City Council to adopt by resolution a Water Conservation Plan consistent with any emergency water regulations adopted by the SWRCB or drought-related actions imposed by the SFPUC.
 - b. Suspend Chapter 7.34 on Water Rationing (Ordinance 821) to the extent it is inconsistent with Chapter 7.35.
 - c. Suspend Chapter 7.38 on Water Conservation (Ordinance 849) to the extent it is inconsistent with Chapter 7.35.
5. Adopt a resolution (Attachment G) to establish a Water Conservation Plan that will implement Stage 3 of the City's WSCP and the additional requirements of the new SWRCB regulations.
6. Introduce an ordinance (Attachment H) to continue implementing the SWRCB's regulations upon expiration of the urgency ordinance.

Effective Dates:

August 26, 2014	Adopt urgency ordinance, in effect for 45 days until October 10, 2014
August 26, 2014	Introduce ordinance that would replace urgency ordinance
September 9, 2014	Adopt ordinance that would replace urgency ordinance and goes into effect 30 days later, on October 9, 2014
October 10 2014	Urgency ordinance expires, new ordinance goes into effect

The new law was signed on July 28, 2014 and will expire April 25, 2015. The SWRCB can determine if these regulations are no longer necessary due to changed conditions and can renew the regulations if drought conditions continue. When this occurs, or if SFPUC, imposes drought-related actions to its retailers (as it did in the 1988-1993 drought), staff will return to Council to adopt a resolution to implement any new regulations or requirements.

Monthly Reporting Requirement

The first monthly report was due to the SWRCB by August 15th. Staff is working with Global Water, the company that provides water billing services to the City, to receive prior water use consumption data in a timely matter so that data can be submitted to the SWRCB.

Status of 2015 Urban Water Management Plan

The UWMP was last updated in 2010. The next UWMP must be completed by the end of 2015, however, there is current legislation to extend the deadline to summer 2016. Staff is currently in the process of hiring a consultant to develop the 2015 UWMP, which would include reviewing and updating the Water Shortage Contingency Plan.

Option to Amend the 2010 Urban Water Management Plan in Order to Revise the Water Shortage Contingency Plan

Regardless of the fact that staff will be developing the 2015 UWMP within the next two years, if the City Council so chooses, staff can amend the 2010 UWMP and update the Water Shortage Contingency Plan to revise the mandatory stages to clarify required conservation measures and better reflect the needs of the community. In order to do so, the following must occur:

1. At least 60 days prior to a public hearing, notify the public and other agencies that the UWMP will be reviewed and possibly amended.
2. Make the amended UWMP available for public inspection.
3. Publish the time and place of the public hearing in a newspaper at least twice at least 5 days apart.
4. Hold a public hearing to adopt the amended UWMP.
5. Make the revised UWMP available for public review within 30 days of adoption.

Staff estimates that at the earliest a revised WSCP could go into effect in January 2015. Because of this timeframe, the uncertainty on how long the SWRCB regulations will be in effect, and the fact that staff will be updating the 2015 UWMP and WSCP within the next two years, staff does not recommend revising the current 2010 UWMP (and WSCP) at this time.

Sample Schedule:

Complete draft WSCP	October 2014
Notify public that UWMP will be reviewed and updated	October 2014

Public Hearing to adopt UWMP
Implement Revised WSCP

January 2015
January 2015

As an example, staff created a revised WSCP that expands the mandatory stages. If the City Council chooses to amend the WSCP, the rationing stages could be revised in their entirety.

EXAMPLE ONLY
Water Shortage Contingency Plan
Rationing Stages* to Address Water Supply Shortages

Stage No.	Water Use Regulations	% Shortage
1	<ul style="list-style-type: none"> • Flooding or runoff of potable water is prohibited. • A shut-off valve is required for hoses used to wash vehicles, sidewalks, buildings, etc. • Broken or defective plumbing and irrigation systems must be repaired or replaced within a reasonable period. 	NA
2	<p>All Stage 1 and</p> <ul style="list-style-type: none"> • Restaurants and other food service operations shall serve water to customers only upon request. • Landscape irrigation shall not be allowed between 10:00 a.m. and 6:00 p.m., except for drip irrigation, soaker hoses and hand watering. • Using potable water in a fountain or decorative water feature, unless the water is recirculated • Increase public information outreach • Increase enforcement activities 	Up to 20%
3	<p>All Stage 2 and</p> <ul style="list-style-type: none"> • Potable water shall not be used to operate, clean, fill or maintain levels in decorative fountains or ponds. • Newly constructed pools, spas and hot tubs may not be filled. 	20% to 30%
4	<p>All Stage 3 and</p> <ul style="list-style-type: none"> • No new landscaping installed at new construction sites. 	30% to 40%
5	<p>All Stage 4 and</p> <ul style="list-style-type: none"> • No new water service hookups. • Turf irrigation prohibited. • Once-through cooling systems must be converted to recycling systems. • The washing of all vehicles is prohibited outside of a commercial washing facility that recycles its water. • Irrigation by sprinklers is prohibited at all times. 	40% to 50%

* One of the stages of action must be designed to address a 50 percent reduction in water supply.

Enforcement

Per Municipal Code 1.12.010, the City can issue infractions as shown below.

Municipal Code 1.12.010 Infractions

Violation	Fine
1 st	up to \$50 fine
2 nd	up to \$200 fine (within 1 year from 1 st violation)
3 rd	up to \$500 fine (within 1 year from 1 st violation)
4 th	a misdemeanor (within 1 year from 1 st violation)

Prohibited Activities

For violations of any resolution adopted pursuant to Menlo Park Municipal Code Chapter 7.35, staff is recommending the following fines.

Recommended Enforcement

Violation	Enforcement
1 st	Warning only. Educate customer on proper water conservation practices.
2 nd	\$50 fine
3 rd	\$100 fine
4 th	\$200 fine, and review by the Public Works Director (or his designee) to determine if a flow restricting device should be installed
5 th	\$500 fine, and review by the Public Works Director (or his designee) to determine if water service should be discontinued
6 th	\$500 fine, water service shall be discontinued

Recommended Charges for Installation or Removal of Flow Restricting Devices

Meter Size	Installation Cost	Removal Cost
5/8" to 2"	\$ 155.00	\$ 155.00
3" or larger	Actual Cost	Actual Cost

Recommended Charges for Disconnecting and Reconnecting Service

Meter Size	Cost to Disconnect Service	Cost to Reconnect Service
All sizes	\$ 155.00	\$ 155.00

30% reduction for non-irrigation accounts (residential, commercial, industrial & public)

Staff recommends a proactive approach to educate residents and businesses on their indoor and outdoor water use. Staff may use several approaches such as providing comparisons to previous use, creating educational pieces that will be mailed to each customer, limiting the time of day that customers may irrigate their landscaping, meeting with customers to offer support and guidance, or provide incentives.

45% reduction for dedicated irrigation accounts

Staff recommends a proactive approach to educate customers with dedicated irrigation accounts. Staff may use several approaches such as providing comparisons to previous use, targeting those customers that have exceeded their water budgets that were developed as part of the City's Large Landscape Program, creating educational pieces that will be mailed to each customer, limiting the time of day that customers may irrigation their landscapes, meeting with customers to offer support and guidance, or providing incentives.

Implementation in Other Agencies

Within Menlo Park City boundaries, CalWater, O'Connor Tract Cooperative Water District, and Palo Alto Mutual Water Company also provide water to residents and businesses. Due to the nature of the SWRCB regulations and the requirement for an agency to implement their own WSCP at the mandatory stage, agencies may be implementing different mandatory water conservation restrictions. CalWater and the City of East Palo Alto will be required to implement their own WSCPs, and O'Connor Tract and Palo Alto Park Mutual will be required to implement a 2 days per week watering schedule or other mechanism since they do not have WSCPs.

As we perform outreach on how the City implements the new SWRCB regulations, it will be important to provide clear messages to water users that water restrictions will be dependent on who provides them with water. Staff has met with CalWater and hopes to coordinate a consistent message, however, as of the writing of this report, CalWater had not yet decided how they would implement the new regulations.

Next Steps

On August 26, 2014, staff will return to Council to adopt an urgency ordinance and the 2014 Water Conservation Plan, and introduce an ordinance to continue implementing the Water Board's regulations upon expiration of the urgency ordinance.

Following Council approval, staff will coordinate with different City departments to ensure law enforcement and other involved City staff are informed of the Water Board's request to increase enforcement of water use violations. Staff will also implement a public outreach effort to notify City customers of the new restrictions.

IMPACT ON CITY RESOURCES

Staff anticipates this new requirement will require additional staff time and may require hiring additional staff personnel. It may also require hiring new or paying overtime for existing staff for enforcement activities. Staff anticipates additional costs will be covered by the Water Fund.

POLICY ISSUES

The City has permanent water use restrictions in place and has already increased water conservation efforts in response to the dry conditions. The recommended action is consistent with those policy efforts and the strategies outlined in the 2010 UWMP that expires on April 25, 2015 unless the SWRCB revises, renews, or terminates the regulations.

ENVIRONMENTAL REVIEW

Council's adoption of the proposed ordinance and resolution is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

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 No. 2014-0038, State Water Resources Control Board
- B. Fact Sheet, State Water Resources Control Board
- C. Ordinance 821 (Chapter 7.34 Water Rationing) adopted on March 26, 1991
- D. Ordinance 849 (Chapter 7.38, Water Conservation) adopted on April 21, 1993
- E. Water Shortage Contingency Plan (from the 2010 Urban Water Management Plan)
- F. Urgency Ordinance to Implement State Water Board's New Regulations
- G. Resolution to Adopt 2014 Water Conservation Plan
- H. Ordinance to Continue Implementing State Water Board's New Regulations Upon Expiration of Urgency Ordinance

Report prepared by:

Pam Lowe, P.E.

Associate Civil Engineer

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**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2014-0038**

TO ADOPT AN EMERGENCY REGULATION
FOR STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an [executive order](#) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The [National Integrated Drought Information System](#) reported that nearly 80% of the state was reported to be under "extreme" drought conditions at the end of June;
2. The executive order refers to the [Governor's Proclamation No. 1-17-2014](#), issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State's dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California's rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on;
4. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
5. Over 400,000 acres of farmland are expected to be fallowed, thousands of people may be out of work, communities risk running out of drinking water, and fish and wildlife will suffer.

6. Many Californians have taken bold steps over the years and in this year to reduce water use; nevertheless, the dire nature of the current drought requires additional conservation actions from residents and businesses. Some severely affected communities have implemented water rationing, limiting water use in some cases to only 50 gallons per person per day, foregoing showers, laundry, toilet flushing, and all outdoor watering.
7. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required ;
8. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water;
9. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).
10. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
11. The emergency regulations set a minimum standard requiring only modest lifestyle changes across the state. Many communities are already doing more and have been for years. They should be commended, but can and should do more. Others are not yet doing so and should at least do this, but should do much more given the severity of the drought;
12. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
13. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation;
14. As discussed above, the State Water Board is adopting the emergency regulation because of emergency drought conditions, the need for prompt action, and current limitations in the existing enforcement process;

15. Disadvantaged communities may require assistance in increasing water conservation and state agencies should look for opportunities to provide assistance in promoting water conservation;
16. Nothing in the regulations or in the enforcement provisions of the regulations, preclude a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulations adopted by this resolution and local agencies retain their enforcement discretion in enforcing the regulations, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 863, 864, and 865, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes;
4. These regulations shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulations due to continued drought conditions as described in Water Code section 1058.5;
5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulations and their effect;
6. Directs State Water Board staff to condition funding upon compliance with the emergency regulations, to the extent feasible;
7. Directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations; and
8. Directs State Water Board staff in developing an electronic reporting portal to include data fields so that local agencies may provide monthly reporting data on (i) conservation-related implementation measures or enforcement actions taken by the local agency and (ii) substitution during the drought of potable water with recycled water to extend water supplies.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board commends water suppliers that have increased conservation messaging and adopted innovative strategies to enhance customer awareness of water use, such as applications that let customers compare their water use to water use by others; reduce system losses, such as fixing system leaks which can deplete supplies by 10 percent or more; and establish incentives to reduce demand, such as tiered or drought rate structures. The State Water Board also commends all Californians that have already been working to maximize their conservation efforts, both at home and at work;
10. The State Water Board calls upon water suppliers to take the following actions:

Educate customers and employees

- Retail water suppliers should provide notice of the regulations in English and Spanish in one or more of the following ways: newspaper advertisements, bill inserts, website homepage, social media, notices in public libraries;
- Wholesale suppliers should include reference to the regulations in their customer communications;
- All water suppliers should train personnel on the regulations;
- All water suppliers should provide signage where recycled or reclaimed water is being used for activities that the emergency regulations prohibit with the use of potable water, such as operation of fountains and other water features;
- All water suppliers should redouble their efforts to disseminate information regarding opportunities and incentives to upgrade indoor fixtures and appliances;
- All water suppliers should use education and the tools available through the Save Our Water website (<http://saveourwater.com>); and
- All water suppliers should educate and prepare their boards and councils on the drought response actions contained in the emergency regulations and in this resolution, and to make sure that drought response items are placed on agendas as early as possible;

Increasing local supplies

- All water suppliers should accelerate the completion of projects that will conserve potable water by making use of non-potable supplies, such as recycled water, "greywater," and stormwater collection projects;
- All water suppliers should improve their leak reporting and response programs and request that police and fire departments and other local government personnel report leaks and water waste that they encounter during their routine duties/patrols;
- Smaller water suppliers – those with fewer than 3,000 service connections – should take proactive steps to secure their communities' water supplies and educate their customers about water conservation and the status of their supply reserves;
- All water suppliers should conduct water loss audits and make leak detection and repair a top priority for the duration of the drought; and
- All urban water suppliers should evaluate their rate structures and begin to implement needed changes as part of planning for another dry year. Information and assistance on setting and implementing drought rates is available from the Alliance for Water Efficiency. (<http://www.allianceforwaterefficiency.org/>).

11. The State Water Board calls on all Californians to take the following additional actions:
 - Further reduce water demand, whether by using less water in daily routines indoors and out, retrofitting appliances and installing greywater and rainwater catchment systems; and
 - Check residential and business water bills to see if there are high charges that may indicate a leak and to fix the leak, if they are able, or contact their local water utility if they need assistance.

12. The State Water Board encourages its staff, the Department of Water Resources, the Public Utilities Commission, urban water suppliers, and other local agencies to look for opportunities to encourage and promote new technologies that reduce water usage, including through timely access to water usage information and behavioral response.

13. The State Water Board encourages all state and local agencies to look for additional opportunities to minimize potable water use in outdoor spaces.

14. The State Water Board encourages investor-owned utilities to expeditiously submit applications for implementation of the regulations to the California Public Utilities Commission.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 15, 2014.

AYE: Chair Felicia Marcus
 Vice Chair Frances Spivy-Weber
 Board Member Steven Moore
 Board Member Dorene D'Adamo

 NAY: None

 ABSENT: Board Member Tam M. Doduc

 ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board

PROPOSED TEXT OF EMERGENCY REGULATIONS

Article 22.5. Drought Emergency Water Conservation

Sec. 863 Findings of Drought Emergency

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist;

(4) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and

(5) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105.

Sec. 864 Prohibited Activities in Promotion of Water Conservation

(a) To promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks; and

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

(b) The taking of any action prohibited in subdivision (a) of this section, in addition to any other applicable civil or criminal penalties, is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105.

PROPOSED TEXT OF EMERGENCY REGULATIONS

Sec. 865 Mandatory Actions by Water Suppliers

(a) The term “urban water supplier,” when used in this section, refers to a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b)(1) To promote water conservation, each urban water supplier shall implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water.

(2) As an alternative to subdivision (b)(1), an urban water supplier may submit a request to the Executive Director for approval of an alternate plan that includes allocation-based rate structures that satisfies the requirements of chapter 3.4 (commencing with section 370) of division 1 of the Water Code, and the Executive Director may approve such an alternate plan upon determining that the rate structure, in conjunction with other measures, achieves a level of conservation that would be superior to that achieved by implementing limitations on outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.

(c) To promote water conservation, each urban water supplier that does not have a water shortage contingency plan or has been notified by the Department of Water Resources that its water shortage contingency plan does not meet the requirements of Water Code section 10632 shall, within thirty (30) days, limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week or shall implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

(d) In furtherance of the promotion of water conservation each urban water supplier shall prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. Beginning October 15, 2014, the monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves. In its initial monitoring report, each urban water supplier shall state the number of persons it serves.

(e) To promote water conservation, each distributor of a public water supply, as defined in Water Code section 350, that is not an urban water supplier shall, within thirty (30) days, take one or more of the following actions:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(2) Implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105; 350; 10617; 10632.

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Mandatory Water Conservation Regulation Go Into Effect

An [emergency regulation](#) to increase conservation practices for all Californians became effective July 29, 2014. The new conservation regulation targets outdoor urban water use. In some areas of the State, 50 percent or more of daily water use is for lawns and outdoor landscaping. This regulation establishes the minimum level of activity that residents, businesses and water suppliers must meet as the drought deepens and will be in effect for 270 days unless extended or repealed.

Prohibitions for ALL urban water users in California:

- The application of potable water to any driveway or sidewalk.
- Using potable water to water outdoor landscapes in a manner that causes runoff to adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots or structures.
- Using a hose that dispenses potable water to wash a motor vehicle, unless the hose is fitted with a shut-off nozzle.
- Using potable water in a fountain or decorative water feature, unless the water is recirculated. Recycled water is not mandated, but encouraged for fountain use.

Requirements for Urban Water Suppliers (serving >3000 connections):

- Implement water shortage contingency plans to a level where restrictions on outdoor irrigation are mandatory.
- Urban water suppliers without a plan, or without an adequate plan, must either mandate that outdoor irrigation be reduced to no more than twice a week or implement other mandatory use restrictions that provide a comparable level of savings.
- Report monthly water production beginning August 15. Include an estimate of the gallons per capita per day used by residential customers beginning with the October 15 report.

Requirements for Other Water Suppliers (serving <3000 connections):

- Mandate that outdoor irrigation be reduced to no more than twice a week or implement other mandatory use restrictions that provide a comparable level of savings.

Assessing Compliance

- Individual Prohibitions – evaluating alleged violations and taking enforcement action is primarily a local discretionary action.
- Water Suppliers – compliance will be evaluated based on multiple factors including implementation of the required actions, the content of the monthly reports (Urban Water Suppliers), and other relevant information.

Tips for Implementing the New Regulations

- Notify and educate staff, ratepayers and the community at large about the prohibitions.
- Inform ratepayers of the requirements of the stage of the Water Shortage Contingency Plan required by the regulations.
- Access the water conservation resources clearinghouse, a partnership of the State of California and the Association of California Water Agencies at either <http://www.saveourh2o.org/> or <http://saveourwater.com/>

Contact Information

- Report State Agency water waste at <http://www.saveourh2o.org/report-water-waste>
- Contact the State Water Board's drought hotline for questions on drought-related activities including general questions on the emergency regulations: (916) 341-5342.

More information on the emergency regulation can be found at the [Conservation Regulation Portal](#).

(This fact sheet was last updated July 29, 2014)

Chapter 7.34 WATER RATIONING

Sections:

- 7.34.010 Emergency declared—Rationing instituted.
- 7.34.020 Definitions.
- 7.34.030 Application.
- 7.34.040 Regulations and restrictions for all customers.
- 7.34.050 Allotment.
- 7.34.060 Exceptions.
- 7.34.070 Water use in excess of allocation—Remedies and charges.

7.34.010 Emergency declared—Rationing instituted.

- (a) A water shortage emergency condition prevails within the area served by Menlo Park municipal water department (hereafter called the water department) and throughout the city.
- (b) The San Francisco water department, at the direction of the San Francisco public utilities commission, has requested that all resale customers, including the water department immediately institute a revised water rationing program designed to effect further reduction in water usage.
- (c) The rules, regulations and restrictions set forth in this chapter are intended to conserve groundwater and the water supply of the water department for the greatest public benefit with particular regard to domestic use, sanitation and fire protection.
- (d) The specific uses prohibited or restricted by this chapter are nonessential, if allowed would constitute wastage of groundwater and the water department water, and should be prohibited pursuant to the water department power under Water Code Section 350 et seq., Water Code Section 71640 et seq., and the common law.
- (e) The actions taken hereinafter are exempt from the provisions of Sections 21000 et seq., of the Public Resources Code as a project undertaken as immediate action necessary to prevent or mitigate an emergency pursuant to Title 14, California Administrative Code Section 15269. (Ord. 821 § 1, 1991).

7.34.020 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. The "water department" is an agency of the city, a municipal corporation.
- B. "Customer" means any person using water supplied by the water department.
- C. "Director" means the director of public works of the city.
- D. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

E. The "water rationing plan" means any current water rationing plan adopted by resolution of the city council. (Ord. 821 § 2, 1991).

7.34.030 Application.

The provisions of this chapter shall apply to all customers using water, both in and outside the city. (Ord. 821 § 3, 1991).

7.34.040 Regulations and restrictions for all customers.

- (a) Broken or defective plumbing, sprinkler, watering or irrigation systems which permit the escape or leakage of water shall be repaired.
- (b) No new irrigation services will be permitted and additional water will not be allowed for expansion of existing irrigation facilities.
- (c) No use of water shall be allowed which results in flooding or runoff in gutters, driveways, or streets.
- (d) A hose without a positive shutoff valve shall not be used for washing cars, buses, boats, trailers or other vehicles, nor for washing building structures or parts thereof.
- (e) Filling of any existing or new swimming pools with water is prohibited.
- (f) Sidewalks, walkways, driveways, patios, parking lots, tennis courts or other hard-surfaced areas shall not be cleaned using water from hoses or by use of water directly from faucets or other outlets.
- (g) A water service connection for new construction shall not be allowed, except as provided in the water plan.
- (h) The use and operation of decorative water fountains shall be discontinued.
- (i) Restaurants shall serve water to customers only on request.
- (j) Potable water shall not be used for consolidation of backfill, dust control or other nonessential construction purposes.
- (k) Water used for cooling must be recycled to the extent possible.
- (l) Groundwater may be used for the purposes mentioned in subsections (b), (d), (e), (h) and (j) only to the extent that recycled or reclaimed water is not available and such use has been approved by the San Mateo public health department.
- (m) Verified water waste as determined by the department will serve as prima facie evidence that the allocation assigned to the water account is excessive; therefore the allocation will be subject to review and possible reduction, including termination of service. (Ord. 821 § 4, 1991).

7.34.050 Allotment.

The director shall allot water to customers of the water department in accordance with the water rationing plan. (Ord. 821 § 5, 1991).

7.34.060 Exceptions.

Consideration for exceptions regarding allotments of water or any of the regulations and restrictions set forth herein shall be as follows:

- (1) In the case of a rationing allocation, it must be shown that the allocation is not sufficient to meet public health or safety needs. In the case of water use restrictions, it must be shown that there are no alternatives to the use of water from the Menlo Park water system.
- (2) A written application for exceptions shall be made to the water department;
- (3) Appeals must be based on a documented change in circumstances.
- (4) Water use under this exception procedure must be efficiently used without waste.
- (5) Appeals of rationing allocations determined to contain false information shall result in a reduction in the allocation and the installation of a flow-restricting device in the service line of the customer.
- (6) Approval of exceptions may require verification that all appropriate conservation measures are in place and may require an on-site conservation inspection prior to approval.
- (7) Denials of applications may be appealed to the director of public works whose decisions will be final.
- (8) The only grounds for granting such applications are: prior to granting permission for an exception, the water department must be satisfied that all practical water conservation measures have been adopted by the applicant. (Ord. 821 § 6, 1991).

7.34.070 Water use in excess of allocation—Remedies and charges.

- (a) **Excess Water Uses Charge.** Charges for excess water consumption shall be as set forth in the water rationing plan.
- (b) **Installation of Restricting Device.** The city may, after one written warning, install a flow-restricting device on the service line of any customer observed by its personnel to be violating any of the regulations or exceeding water allocations hereinabove set forth. In the event that further violations occur, the water department may discontinue service.
- (c) **Charges for Installation And Removal of Flow-Restricting Devices.** Charges for the installation and removal of flow-restricting devices shall be as stated in the water rationing plan. The first installation shall be for a minimum of five (5) days. The second installation shall be for a minimum of ten (10) days.
- (d) **Discontinuance of Water Services and Charges for Reactivation of Service.** Continued water consumption in excess of the allotment may result in the discontinuance of water service by the water department. Charges for reactivating service shall be as stated in the water rationing plan. (Ord. 821 § 7, 1991).

The Menlo Park Municipal Code is current through Ordinance 1007, passed June 3, 2014.

Disclaimer: The City Clerk's Office has the official version of the Menlo Park Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Chapter 7.38 WATER CONSERVATION

Sections:

- 7.38.010 Findings and determinations.
- 7.38.020 Definitions.
- 7.38.030 Regulations and restrictions on water use.

7.38.010 Findings and determinations.

The city council finds and determines that:

- (1) The rules, regulations and restrictions set forth in this chapter are intended to conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation and fire protection.
- (2) The specific uses prohibited or restricted by this chapter are nonessential and if allowed would constitute wastage of water and should be prohibited pursuant to the water department power under Water Code Section 350 et seq., Water Code Section 71640 et seq., and the common law. (Ord. 849 § 1, 1993).

7.38.020 Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "Water department" means an agency of the city.
- (2) "Customer" means any person using water within the city.
- (3) "Director" means the director of engineering services of the city.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind. (Ord. 849 § 2, 1993).

7.38.030 Regulations and restrictions on water use.

It is resolved by the city council that in order to conserve the water supply for the greatest public benefit, and to reduce the quantity of water used by the city's customers, that wasteful use of water should be eliminated. Customers of the city shall observe the following regulations and restrictions on water use:

- (1) Broken or defective plumbing, sprinkler, watering or irrigation systems which permit the escape or leakage of water shall be repaired.
- (2) No use of water shall be allowed which results in flooding or runoff in gutters, driveways or streets.
- (3) A hose without a positive shut-off valve shall not be used for washing cars, buses, boats, trailers or other vehicles, nor for washing building structures or parts thereof.

- (4) A hose without a positive shut-off valve shall not be used for washing sidewalks, walkways, driveways, patios, parking lots, tennis courts or other hard-surfaced areas.
- (5) Restaurants shall serve water to customers only on request.
- (6) Water used for cooling must be recycled to the extent possible. (Ord. 849 § 3, 1993).

The Menlo Park Municipal Code is current through Ordinance 1007, passed June 3, 2014.

Disclaimer: The City Clerk's Office has the official version of the Menlo Park Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Water Shortage Contingency Plan

Every five years, the City must develop and update its Urban Water Management Plan (UWMP) and submit it for approval to the California Department of Water Resources. The UWMP addresses changing conditions related to water sources, water availability, water demands, and water reliability for the next 20 to 25 years. The Water Shortage Contingency Plan (WSCP), developed as part of the UWMP, describes the water supplier's response and planning for changes or shortages in water supply. It compares supply and demand under normal, single-dry, and multiple-dry years and describes stages and actions to be undertaken in response to water supply shortages of up to 50%.

Below is the City's WSCP (Table 5.11 from the 2010 UWMP). The City is currently implementing all of the voluntary Stage 2 actions. The current 2010 UWMP can be viewed in its entirety at <http://www.menlopark.org/150/Urban-Water-Management-Plan>.

Water Shortage Contingency Rationing Stages* to Address Water Supply Shortages (Table 5.11 from the 2010 UWMP)

Stage No.	Water Supply Conditions	% Shortage
1 Ongoing	Water Waste Prohibitions including <ul style="list-style-type: none"> • Repair of defective irrigation systems • No flooding of gutter, driveways and streets • Restaurant water served on request • Water use for cooling must be recycled • Prohibition against sidewalk and building washing 	NA
2 Voluntary	Increase in public information budgets Increased enforcement of the water waste prohibition Restaurant water served on request 10% reduction across all customer classes	Up to 20%
3 Mandatory	All Stage 2 Prohibitions and <ul style="list-style-type: none"> • No new or expanded irrigation systems • Prohibition against noncommercial vehicle washing • Prohibition against filling swimming pools and using ornamental fountains • Limited new water service connections • Prohibitions against use of potable water for construction dust control • Controls on groundwater use 30% reductions for residential, commercial, industrial & public	25% to 35%

Stage No.	Water Supply Conditions	% Shortage
	customers	
	45% reducing in dedicated irrigation accounts	
4 Mandatory	All Stage 2 and 3 Prohibitions	40% to 50%
	50% reductions for residential, commercial, industrial & public customers	
	75% reductions in dedicated irrigation accounts	

* One of the stages of action must be designed to address a 50 percent reduction in water supply.

ORDINANCE NUMBER _____

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 7.35 [WATER CONSERVATION] AND SUSPENDING OF CHAPTERS 7.34 [WATER RATIONING] AND 7.38 [WATER CONSERVATION] OF TITLE 7 [HEALTH AND SANITATION] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. In accordance with California Government Code Section 65858, the City Council of the City of Menlo Park hereby finds and declares that this Ordinance is deemed necessary for the following reasons:

A. On April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme” drought conditions at the end of June 2014.

B. The executive order refers to the Governor’s Proclamation NO. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State’s dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California’s rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

C. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on.

D. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

E. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this year is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required.

F. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

G. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).

H. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.

I. Emergency regulations set a minimum standard requiring only modest lifestyle changes across the state.

J. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation.

K. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.

L. On July 28, 2014 the State Water Board adopted the emergency regulations which will expire on April 25, 2015 to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful practices.

M. To promote water conservation, the emergency regulations require each urban water supplier, which includes Menlo Park Water District, to implement all requirements and actions of the stage of its water shortage contingency plan that

imposes mandatory regulations on outdoor irrigation of ornamental landscapes and turf with potable water.

N. Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] of the City's Municipal Code are inconsistent with the requirements of the emergency regulations adopted by the State Water Board.

O. In light of the foregoing, the City Council finds the urgent enactment of Chapter 7.35 [Water Conservation] and the suspension of the Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] to the extent the Chapters are inconsistent with the urgent enactment of Chapter 7.35 [Water Conservation] appropriate.

SECTION 2. Chapter 7.34 [Water Rationing] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby suspended to the extent it is inconsistent with Chapter 7.35 [Water Conservation].

SECTION 3. Chapter 7.38 [Water Conservation] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby suspended to the extent it is inconsistent with Chapter 7.35 [Water Conservation].

SECTION 4. Chapter 7.35 [Water Conservation] is hereby added to Title 7 [Health and Sanitation] of the Menlo Park Municipal Code to read as follows:

**Chapter 7.35
Water Conservation**

Section 7.35.010 Purpose
Section 7.35.020 Water Conservation
Section 7.35.030 Penalty

Section 7.35.010 Purpose

The purpose of this Chapter is to promote water conservation and provide the City with the flexibility to respond to a drought emergency whether it be emergency regulations adopted by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission.

Section 7.35.020 Water Conservation

Upon the adoption of emergency water conservation regulations by the State Water Board and within the timelines prescribed by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission, the City Council of the City of Menlo Park shall adopt by resolution a Water Conservation Plan that mandates those water conservation measures.

Section 7.35.030 Penalty

Any violations of the Water Conservation Plan shall be an infraction or enforced as provided in the resolution adopted pursuant to Section 7.35.020.

SECTION 5. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 6. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act (CEQA) because it is a specific action necessary to prevent or mitigate an emergency, CEQA Guidelines Section 5269.

SECTION 7. This ordinance is declared to be an urgency measure adopted pursuant to the provisions of Government Code Section 65858. As set forth in the findings above, this ordinance is necessary for preserving the public safety, health, and welfare. Pursuant to Government Code Section 65858, this ordinance is effective immediately and shall be in full force and effect for 45 days from the date of its adoption. After notice pursuant to California Government Code Section 65090 and a public hearing, the City Council by four-fifths vote, may extend the effectiveness of this ordinance for 22 months and 15 days.

SECTION 8. This City Clerk shall cause this ordinance to be published in a newspaper of general circulation as required by state law.

INTRODUCED on the ___ day of _____, 2014.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2014, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

Mayor

ATTEST:

Pamela Aguilar
City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING WATER CONSERVATION PLAN PURSUANT TO CHAPTER
7.35 OF TITLE 7 OF THE MENLO PARK MUNICIPAL CODE**

WHEREAS, on April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme drought conditions at the end of June 2014; and

WHEREAS, Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports”; and

WHEREAS, on July 28, 2014 the State Water Board submitted an emergency action to adopt three sections and a new article in title 23 of the California Code of Regulations pertaining to drought emergency water conservation, which was approved by the Office of Administrative Law pursuant to sections 11346.1 and 11349.6 of the Government Code;

WHEREAS, the State Water Board’s emergency regulations “Regulations” became effective on July 28, 2014 pursuant to section 1058.5 of the Water Code; and

WHEREAS, the Regulations will expire on April 25, 2015; and

WHEREAS, the Regulations require each urban water supplier to implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water; and

WHEREAS, the Menlo Park Municipal Water District’s Water Shortage Contingency Plan (“WSCP”) Stage 3 must be implemented to comply with the Regulations; and

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve and adopt the following Water Conservation Plan, implementing Stage 3 of the Water Shortage Contingency Plan and incorporating the additional prohibited activities of the new State Water Board regulations:

1. Definitions.

For the purposes of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- a. “Water District” means the Menlo Park Municipal Water District, an agency of the City.
- b. “Customer” means any person using water supplied by the Water District.
- c. “Public Works Director” means the City of Menlo Park Public Works Director or his/her designee.

2. Prohibitions.

- a. Customers may not:
 - i. Apply potable water to any driveway or sidewalk;
 - ii. Use potable water to water outdoor landscapes in a manner that causes runoff onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
 - iii. Use a hose that dispenses potable water to wash a motor vehicle, unless the hose is fitted with a shut-off nozzle; and
 - iv. Use potable water in a fountain or decorative water feature, unless the water is recirculated.
- b. Customers are prohibited pursuant to the Water District’s Water Shortage Contingency Plan Stage 3 from:
 - i. Installing new irrigation systems or expanding existing irrigation systems;
 - ii. Noncommercial vehicle washing unless the hose is fitted with a shut-off nozzle or the vehicle is washed at a facility utilizing a water recirculating system;
 - iii. Filling new swimming pools;
 - iv. Using ornamental fountains or decorative water features, unless water is recirculated; and
 - v. Using potable water for construction dust control.

3. The Public Works Director shall:

- a. If requested by a Customer, determine if a new water service connection shall be allowed; and
- b. Establish an outreach program for customers with private wells.

4. Water Percentage Reductions.

- a. Residential, commercial, industrial, and public water customers shall reduce their water use by 30% from the same period during a previous year (as determined by the Public Works Director).
- b. Customers with dedicated irrigation accounts shall reduce their irrigation water use by 45% from the same period during a previous year (as determined by the Public Works Director).

5. Penalties.

If a Customer fails to comply with any of the prohibitions listed above, the following penalties may result:

Violation	Enforcement
1 st	Warning only. Educate customer on proper water conservation practices.
2 nd	\$50 fine
3 rd	\$100 fine
4 th	\$200 fine, and review by the Public Works Director (or his designee) to determine if a flow restricting device should be installed
5 th	\$500 fine, and review by the Public Works Director (or his designee) to determine if water service should be discontinued
6 th	\$500 fine, water service shall be discontinued

**Charges for Installation or
Removal of Flow Restricting Devices**

Meter Size	Installation Cost	Removal Cost
5/8" to 2"	\$ 155.00	\$ 155.00
3" or larger	Actual Cost	Actual Cost

Charges for Disconnecting and Reconnecting Service

Meter Size	Cost to Disconnect Service	Cost to Reconnect Service
All sizes	\$ 155.00	\$ 155.00

BE IT AND IT IS HEREBY FURTHER RESOLVED by the City Council of the City of Menlo Park that this Water Conservation Plan shall remain in effect as long as the Emergency Regulations are in effect and shall sunset when the emergence regulations are no longer in effect.

I, PAMELA AGUILAR, 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 City Council on _____, 2014, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City Council on this ____ day of _____, 2014.

PAMELA AGUILAR,
City Clerk

DRAFT

ORDINANCE NUMBER _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 7.35 [WATER CONSERVATION] TO TITLE 7 [HEALTH AND SANITATION] TO THE MENLO PARK MUNICIPAL CODE AND REMOVING CHAPTERS 7.34 [WATER RATIONING] AND 7.38 [WATER CONSERVATION] OF TITLE 7 [HEALTH AND SANITATION]

The City Council of the City of Menlo Park does hereby ordain as follows:

SECTION 1. The City Council of the City of Menlo Park hereby finds and declares as follows:

A. On April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme” drought conditions at the end of June 2014.

B. The executive order refers to the Governor’s Proclamation NO. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State’s dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California’s rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

C. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on.

D. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

E. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this year is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required.

F. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

G. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).

H. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.

I. Emergency regulations set a minimum standard requiring only modest lifestyle changes across the state.

J. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation.

K. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.

L. On July 28, 2014 the State Water Board adopted the emergency regulations which will expire on April 25, 2015 to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful practices.

N. To promote water conservation, the emergency regulations require each urban water supplier, which includes Menlo Park Water District, to implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory regulations on outdoor irrigation or ornamental landscapes and turf

with potable water.

O. Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] of the City's Municipal Code are inconsistent with the requirements of the emergency regulations adopted by the State Water Board.

P. In light of the foregoing, the City Council finds adding Chapter 7.35 [Water Conservation] to the Menlo Park Municipal Code and removing Chapter 7.34 [Water Rationing] and 7.38 [Water Conservation] is appropriate.

SECTION 2. DELETION OF CODE. Chapter 7.34 [Water Rationing] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby deleted in its entirety.

SECTION 3. DELETION OF CODE. Chapter 7.38 [Water Conservation] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby deleted in its entirety.

SECTION 4. ADDITION TO CODE. Chapter 7.35 [Water Conservation] is hereby added to Title 7 [Health and Sanitation] of the Menlo Park Municipal Code to read as follows:

**Chapter 7.35
Water Conservation**

Section 7.35.010	Purpose
Section 7.35.020	Water Conservation
Section 7.35.030	Penalty

Section 7.35.010 Purpose

The purpose of this Chapter is to promote water conservation and provide the City with the flexibility to respond to a drought emergency whether it be emergency regulations adopted by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission.

Section 7.35.020 Water Conservation

Upon the adoption of emergency water conservation regulations by the State Water Board and within the timelines prescribed by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission, the City Council of the City of Menlo Park shall adopt by resolution a Water Conservation Plan that mandates those water conservation measures.

Section 7.35.030 Penalty

Any violations of the Water Conservation Plan shall be an infraction or enforced as provided in the resolution adopted pursuant to Section 7.35.020.

SECTION 5. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or

unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 6. REGULATIONS AND RESTRICTIONS FOR ALL CUSTOMERS. It is resolved by the City Council that in order to conserve the water supply for the greatest public benefit, and to reduce the quantity of water used by the City's customers, that wasteful use be eliminated. Customers of the Water District shall observe the rules and regulations on water use as described in the current Water Conservation Plan.

SECTION 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 8. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the ___ day of _____, 2014.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2014, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

APPROVED:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

ORDINANCE NUMBER _____

**URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MENLO PARK ADDING CHAPTER 7.35 [WATER
CONSERVATION] TO TITLE 7 [HEALTH AND SANITATION] OF
THE MENLO PARK MUNICIPAL CODE AND SUSPENSION OF
CHAPTERS 7.34 [WATER RATIONING] AND 7.38 [WATER
CONSERVATION] OF TITLE 7 [HEALTH AND SANITATION]**

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. In accordance with California Government Code Section 65858, the City Council of the City of Menlo Park hereby finds and declares that this Ordinance is deemed necessary for the following reasons:

A. On April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme” drought conditions at the end of June 2014.

B. The executive order refers to the Governor’s Proclamation NO. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State’s dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California’s rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

C. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on.

D. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

E. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this year is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required.

F. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

G. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).

H. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.

I. Emergency regulations set a minimum standard requiring only modest lifestyle changes across the state.

J. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation.

K. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.

L. On July 28, 2014 the State Water Board adopted the emergency regulations which will expire on April 25, 2015 to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful practices.

M. To promote water conservation, the emergency regulations require each urban water supplier, which includes Menlo Park Water District, to implement all requirements and actions of the stage of its water shortage contingency plan that

imposes mandatory regulations on outdoor irrigation of ornamental landscapes and turf with potable water.

N. Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] of the City's Municipal Code are inconsistent with the requirements of the emergency regulations adopted by the State Water Board.

O. In light of the foregoing, the City Council finds the urgent enactment of Chapter 7.35 [Water Conservation] and the suspension of the Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] to the extent the Chapters are inconsistent with the urgent enactment of Chapter 7.35[Water Conservation] appropriate.

SECTION 2. Chapter 7.34 [Water Rationing] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby suspended to the extent it is inconsistent with Chapter 7.35 [Water Conservation].

SECTION 3. Chapter 7.38 [Water Conservation] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby suspended to the extent it is inconsistent with Chapter 7.35 [Water Conservation].

SECTION 4. Chapter 7.35 [Water Conservation] is hereby added to Title 7 [Health and Sanitation] of the Menlo Park Municipal Code to read as follows:

Chapter 7.35 Water Conservation

Section 7.35.010 Purpose
Section 7.35.020 Water Conservation
Section 7.35.030 Penalty

Section 7.35.010 Purpose

The purpose of this Chapter is to promote water conservation and provide the City with the flexibility to respond to a drought emergency whether it be emergency regulations adopted by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission.

Section 7.35.020 Water Conservation

Upon the adoption of emergency water conservation regulations by the State Water Board and within the timelines prescribed by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission, the City Council of the City of Menlo Park shall adopt by resolution a Water Conservation Plan that mandates those water conservation measures..

Section 7.35.030 Penalty

Any violations of the Water Conservation Plan shall be an infraction or enforced as provided in the resolution adopted pursuant to Section 7.35.030.

SECTION 5. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 6. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act (CEQA) because it is a specific action necessary to prevent or mitigate an emergency, CEQA Guidelines Section 5269.

SECTION 7. This ordinance is declared to be an urgency measure adopted pursuant to the provisions of Government Code Section 65858. As set forth in the findings above, this ordinance is necessary for preserving the public safety, health, and welfare. Pursuant to Government Code Section 65858, this ordinance is effective immediately and shall be in full force and effect for 45 days from the date of its adoption. After notice pursuant to California Government Code Section 65090 and a public hearing, the City Council by four-fifths vote, may extend the effectiveness of this ordinance for 22 months and 15 days.

SECTION 8. This City Clerk shall cause this ordinance to be published in a newspaper of general circulation as required by state law.

INTRODUCED on the ___ day of _____, 2014.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of _____, 2014, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

APPROVED:

Mayor

ATTEST:

Pamela Aguilar
City Clerk

ORDINANCE NUMBER _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 7.35 [WATER CONSERVATION] TO TITLE 7 [HEALTH AND SANITATION] TO THE MENLO PARK MUNICIPAL CODE AND REMOVING CHAPTERS 7.34 [WATER RATIONING] AND 7.38 [WATER CONSERVATION] OF TITLE 7 [HEALTH AND SANITATION]

The City Council of the City of Menlo Park does hereby ordain as follows:

SECTION 1. The City Council of the City of Menlo Park hereby finds and declares as follows:

A. On April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme” drought conditions at the end of June 2014.

B. The executive order refers to the Governor’s Proclamation NO. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State’s dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California’s rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

C. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on.

D. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

E. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this year is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required.

F. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

G. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).

H. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.

I. Emergency regulations set a minimum standard requiring only modest lifestyle changes across the state.

J. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation.

K. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.

L. On July 28, 2014 the State Water Board adopted the emergency regulations which will expire on April 25, 2015 to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful practices.

N. To promote water conservation, the emergency regulations require each urban water supplier, which includes Menlo Park Water District, to implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory regulations on outdoor irrigation or ornamental landscapes and turf

with potable water.

O. Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] of the City's Municipal Code are inconsistent with the requirements of the emergency regulations adopted by the State Water Board.

P. In light of the foregoing, the City Council finds adding Chapter 7.35 [Water Conservation] to the Menlo Park Municipal Code and removing Chapter 7.34 [Water Rationing] and 7.38 [Water Conservation] is appropriate.

SECTION 2. DELETION OF CODE. Chapter 7.34 [Water Rationing] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby deleted in its entirety.

SECTION 3. DELETION OF CODE. Chapter 7.38 [Water Conservation] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby deleted in its entirety.

SECTION 4. ADDITION TO CODE. Chapter 7.35 [Water Conservation] is hereby added to Title 7 [Health and Sanitation] of the Menlo Park Municipal Code to read as follows:

**Chapter 7.35
Water Conservation**

Section 7.35.010	Purpose
Section 7.35.020	Water Conservation
Section 7.35.030	Penalty

Section 7.35.010 Purpose

The purpose of this Chapter is to promote water conservation and provide the City with the flexibility to respond to a drought emergency whether it be emergency regulations adopted by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission.

Section 7.35.020 Water Conservation

Upon the adoption of emergency water conservation regulations by the State Water Board and within the timelines prescribed by the State Water Board, or drought-related actions imposed by the San Francisco Public Utilities Commission, the City Council of the City of Menlo Park shall adopt by resolution a Water Conservation Plan that mandates those water conservation measures.

Section 7.35.030 Penalty

Any violations of the Water Conservation Plan shall be an infraction or enforced as provided in the resolution adopted pursuant to Section 7.35.020.

SECTION 5. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or

unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 6. REGULATIONS AND RESTRICTIONS FOR ALL CUSTOMERS. It is resolved by the City Council that in order to conserve the water supply for the greatest public benefit, and to reduce the quantity of water used by the City's customers, that wasteful use be eliminated. Customers of the Water District shall observe the rules and regulations on water use as described in the current Water Conservation Plan.

SECTION 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 8. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the __ day of _____, 2014.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the __ day of _____, 2014, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

APPROVED:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING WATER CONSERVATION PLAN PURSUANT TO CHAPTER
7.35 OF TITLE 7 OF THE MENLO PARK MUNICIPAL CODE**

WHEREAS, on April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme drought conditions at the end of June 2014; and

WHEREAS, Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports”; and

WHEREAS, on July 28, 2014 the State Water Board submitted an emergency action to adopt three sections and a new article in title 23 of the California Code of Regulations pertaining to drought emergency water conservation, which was approved by the Office of Administrative Law pursuant to sections 11346.1 and 11349.6 of the Government Code;

WHEREAS, the State Water Board’s emergency regulations “Regulations” became effective on July 28, 2014 pursuant to section 1058.5 of the Water Code; and

WHEREAS, the Regulations will expire on April 25, 2015; and

WHEREAS, the Regulations require each urban water supplier to implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water; and

WHEREAS, the Menlo Park Municipal Water District’s Water Shortage Contingency Plan (“WSCP”) Stage 3 must be implemented to comply with the Regulations; and

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve and adopt the following Water Conservation Plan, implementing Stage 3 of the Water Shortage Contingency Plan and incorporating the additional prohibited activities of the new State Water Board regulations:

1. Definitions.

For the purposes of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. "Water District" means the Menlo Park Municipal Water District, an agency of the City.
- b. "Customer" means any person using water supplied by the Water District.
- c. "Public Works Director" means the City of Menlo Park Public Works Director or his/her designee.

2. Prohibitions.

- a. Customers may not:
 - i. Apply potable water to any driveway or sidewalk;
 - ii. Use potable water to water outdoor landscapes in a manner that causes runoff onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
 - iii. Use a hose that dispenses potable water to wash a motor vehicle, unless the hose is fitted with a shut-off nozzle; and
 - iv. Use potable water in a fountain or decorative water feature, unless the water is recirculated.
- b. Customers are prohibited pursuant to the Water District's Water Shortage Contingency Plan Stage 3 from:
 - i. Installing new irrigation systems or expanding existing irrigation systems;
 - ii. Noncommercial vehicle washing unless the hose is fitted with a shut-off nozzle or the vehicle is washed at a facility utilizing a water recirculating system;
 - iii. Filling new swimming pools;
 - iv. Using ornamental fountains or decorative water features, unless water is recirculated; and
 - v. Using potable water for construction dust control.

3. The Public Works Director shall:

- a. If requested by a Customer, determine if a new water service connection shall be allowed; and
- b. Establish an outreach program for customers with private wells.

4. Water Percentage Reductions.

- a. Residential, commercial, industrial, and public water customers shall reduce their water use by 30% from the same period during a previous year (as determined by the Public Works Director).
- b. Customers with dedicated irrigation accounts shall reduce their irrigation water use by 45% from the same period during a previous year (as determined by the Public Works Director).

5. Penalties.

If a Customer fails to comply with any of the prohibitions listed above, the following penalties may result:

Violation	Enforcement
1 st	Warning only. Educate customer on proper water conservation practices.
2 nd	\$50 fine
3 rd	\$100 fine
4 th	\$200 fine, and review by the Public Works Director (or his designee) to determine if a flow restricting device should be installed
5 th	\$500 fine, and review by the Public Works Director (or his designee) to determine if water service should be discontinued
6 th	\$500 fine, water service shall be discontinued

**Charges for Installation or
Removal of Flow Restricting Devices**

Meter Size	Installation Cost	Removal Cost
5/8" to 2"	\$ 155.00	\$ 155.00
3" or larger	Actual Cost	Actual Cost

Charges for Disconnecting and Reconnecting Service

Meter Size	Cost to Disconnect Service	Cost to Reconnect Service
All sizes	\$ 155.00	\$ 155.00

BE IT AND IT IS HEREBY FURTHER RESOLVED by the City Council of the City of Menlo Park that this Water Conservation Plan shall remain in effect as long as the Emergency Regulations are in effect and shall sunset when the emergence regulations are no longer in effect.

I, PAMELA AGUILAR, 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 City Council on _____, 2014, by the following vote:

AYES: Councilmembers:
 NOES: Councilmembers:
 ABSENT: Councilmembers:
 ABSTAIN: Councilmembers:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City Council on this ____ day of _____, 2014.

PAMELA AGUILAR,
City Clerk

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ORDINANCE NUMBER _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 7.35 [WATER CONSERVATION] TO TITLE 7 [HEALTH AND SANITATION] TO THE MENLO PARK MUNICIPAL CODE AND REMOVING CHAPTERS 7.34 [WATER RATIONING] AND 7.38 [WATER CONSERVATION] OF TITLE 7 [HEALTH AND SANITATION]

The City Council of the City of Menlo Park does hereby ordain as follows:

SECTION 1. The City Council of the City of Menlo Park hereby finds and declares as follows:

A. On April 25, 2014, the Governor of the State of California issued an executive order finding that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater production, and additional scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was under “extreme” drought conditions at the end of June 2014.

B. The executive order refers to the Governor’s Proclamation NO. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State’s dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California’s rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

C. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on.

D. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”

E. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this year is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required.

F. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

G. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).

H. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.

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K. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.

L. On July 28, 2014 the State Water Board adopted the emergency regulations which will expire on April 25, 2015 to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful practices.

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with potable water.

O. Chapter 7.34 [Water Rationing] and Chapter 7.38 [Water Conservation] of the City's Municipal Code are inconsistent with the requirements of the emergency regulations adopted by the State Water Board.

P. In light of the foregoing, the City Council finds adding Chapter 7.35 [Water Conservation] to the Menlo Park Municipal Code and removing Chapter 7.34 [Water Rationing] and 7.38 [Water Conservation] is appropriate.

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Water Conservation**

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Section 7.35.020	Water Conservation
Section 7.35.030	Penalty

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Section 7.35.020 Water Conservation

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Section 7.35.030 Penalty

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SECTION 5. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or

unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

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SECTION 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 8. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the __ day of _____, 2014.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the __ day of _____, 2014, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

APPROVED:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-168

Agenda Item #: D-9

CONSENT CALENDAR:

Approve a Resolution Making Findings Necessary to Authorize an Energy Services Contract for Power Purchase Agreements (PPA) at the Arrillaga Gymnasium, Arrillaga Gymnastics Center, Onetta Harris Center, and City Corporation Yard; Authorize the City Attorney to Finalize the Agreement and Authorize the City Manager to Execute the Agreement; and Amend the Existing Consulting Contract with Optony, Inc. to include Construction Management Services

RECOMMENDATION

Staff recommends that Council:

1. Approve a Resolution Making Findings Necessary to Authorize an Energy Services Contract for Power Purchase Agreement (PPA) at the Arrillaga Gymnasium, Arrillaga Gymnastics Center, Onetta Harris Center, and City Corporation Yard;
2. Authorize the City Attorney to Finalize the Agreement;
3. Authorize the City Manager to Execute the Agreement; and
4. Amend the existing consulting contract with Optony to include Construction Management Services.

BACKGROUND

Prior staff reports had indicated SolarCity as the preferred vendor for solar equipment and energy production in the City of Menlo Park as part of this project. However, due to an impasse in contract negotiations with SolarCity, they were disqualified and many participating cities chose to move to the bidder ranked second, Cupertino Electric. The following section provides additional background on the project history and contract negotiations.

These contracts are coming before Council as a result of participation in the Regional Renewable Energy Procurement (R-REP) project. R-REP is an initiative led by Alameda County to collaboratively purchase renewable energy systems with 19 public agencies throughout Alameda, Contra Costa, San Mateo, and Santa Clara Counties. The R-REP project includes 186 sites, totaling over 31 megawatts of renewable energy. Working collaboratively instead of individually has led to a significant reduction in renewable

energy system costs, transaction costs, administrative time, and enhanced leverage for public agencies in negotiations for renewable energy systems.

On November 27, 2012, the City Council signed a Memorandum of Understanding (MOU) with Alameda County to participate in the R-REP project by including the following City facilities in the bulk purchase of renewable power:

- Arrillaga Gymnasium
- Arrillaga Gymnastics Center
- Onetta Harris Community Center
- Corporation Yard
- Belle Haven Child Care Center

Proceeding with the procurement process, staff coordinated with Optony, Inc. to develop site feasibility reports in order for Alameda County to develop the Request for Proposals (RFP). The City saved significantly by joining this effort through reduced staffing costs as Alameda County prepared and coordinated additional financial analysis, bid documents, and vendor selection on behalf of Menlo Park.

All of the participating agencies sites were grouped into 11 bid bundles organized based upon the type of technology, system size, and geography. The R-REP RFQ/RFP was structured as an indefinite quantity, multiple award, and best value solicitation. In addition, the solicitation was conducted in accordance with Government Code Section 4217.10, et seq., and specifically, Section 4217.16, which authorizes public agencies to solicit proposals from qualified persons and to award a contract on the basis of the experience of the firm, the type of technology employed by the firm, the cost to the local agency, and any other relevant considerations, provided that the project deliver net cost savings to the public agency.

Following the RFQ/RFP, Menlo Park was grouped in the medium sized bundle. Initially SolarCity was the selected vendor and the City needed to formally enter into a contract with SolarCity by July 21st in order to remain eligible for a \$109,645 rebate (paid over the course of five years) through the California Solar Incentive (CSI) rebate program, which staff applied for last year. Securing the rebates required a \$15,000 deposit for all five sites which will be refunded to the City once construction is completed. Originally the City was set to receive a \$0.088/kWh government CSI rebate, but it has been reduced to a \$0.025/kWh commercial CSI rebate. Because the City is choosing to participate in a power purchase agreement (PPA), the vendor (not the City) is the legal owner of the system. Thus, the City no longer qualifies for the government rate.

In early June, during contract negotiations with SolarCity, Alameda County, staff, and the City Attorney were unable to come to an agreement over the terms and conditions in SolarCity's PPA. SolarCity materially changed the business terms offered in their initial response and required a condition that would allow them to terminate the contract if they were not able to obtain financing. Despite staff's efforts to remove such a

contingency, SolarCity refused. Staff then chose to pursue working with Cupertino Electric, who was ranked as the second bidder.

At risk for not meeting the July 21st rebate deadline, Alameda County and participating agencies were able to request rebate extensions from PG&E up to October 1st, 2014. This extension allowed the City the opportunity to work with Cupertino Electric on completing another round of site assessments. Attachment B includes the new solar installation layouts as proposed by Cupertino Electric and Attachment C includes the draft agreement as staff, the City Attorney, and Optony finalize negotiations with Cupertino Electric.

The Corporation Yard and the Belle Haven Childcare Center were considered small sites and were bundled in another package separate from the Arrillaga Gymnasium, Arrillaga Gymnastics, and Onetta Harris Community Center. Menlo Park and other participating agencies with smaller sites in this bundle never received a bid. Therefore, staff added these two sites as part of the complete package with Cupertino Electric. Based on further feasibility analyses on both of these sites, Optony determined that they were not sufficient under a PPA contract to warrant including (Attachment D).

It is important to note that the Arrillaga Gymnastics Center currently shares an energy meter with the Civic Center, so initial cost savings estimates for the Arrillaga Gymnastic Center are expected to increase if the meters are split, which will be further discussed during the construction phase.

ANALYSIS

Core Proposal

All sites will be a solar rooftop installation except for the Arrillaga Gymnastics Center. Carport designs will be presented to the Planning Commission for a recommendation to Council before Council makes a final approval on the design. The total combined system size for the Arrillaga Gymnasium, Arrillaga Gymnastics Center, Onetta Harris Community Center, and Corporation Yard is 390 KW or 583,432 kWh per year.

Economic Analysis

As directed by Council at the April 29, 2014 study session meeting, all sites will be developed under a PPA as opposed to a direct purchase or lease option. A PPA has less cost savings than direct purchase and leasing, but does not require cash up-front and reduces staff time for maintenance and operation of the system.

The benefit of a PPA is fixed energy pricing over the term of the contract that is typically lower than PG&E rates. This is a substantial benefit not only because of the cost savings, but it allows the City to appropriately budget energy consumption costs for facilities rather than trying to predict PG&E pricing, which has increased 60% between 2000 and 2010 (U.S. Energy Information Administration). PG&E prices are expected to continue to increase due to SB 1078 that requires PG&E and other utilities to achieve a 33% renewable power mix by 2020. Currently, PG&E is at a 20% renewable power mix. This will require installation of new infrastructure with costs passed on to rate payers.

Under the proposed PPA, Cupertino Electric would own the solar power systems installed on City property, and would be fully responsible for all ownership costs, including financing, maintenance, insurance, and system production, while the City

would pay Cupertino Electric for the energy produced and used by the City. The agreement with Cupertino Electric is 20 years with a price escalator of 2.5% per year. Based on the agreement with Cupertino Electric and assumptions about increases in PG&E rates in the future, the PPA is expected to generate modest annual savings for the City, as evidenced by Table 1. Through the first seven years of the agreement, savings range from \$11,800 to nearly \$22,000 annually, and over the term of the agreement with Cupertino Electric, the total savings are expected to be over \$461,000. It is important to note that the table includes the City's \$71,889 PG&E CSI rebate which has been reduced from the original \$109,645 rebate due to switching vendors and moving forward with four out of the five originally proposed sites. The cost savings drops in the sixth year due to the City only receiving the CSI rebate for only the first five years. In addition to anticipated cost savings, this project promotes energy-efficiency and sustainability while also stimulating the economy, creating jobs, and reducing fossil fuel emissions.

Table 1. Yearly Energy Cost Savings Over a Twenty-Five Year Period (All Sites Combined)

Year	Cost of PG&E	Cost of PPA	Savings / (Cost)
1	\$ 309,067	\$ 293,517	\$ 15,550
2	\$ 310,553	\$ 293,212	\$ 17,341
3	\$ 312,046	\$ 293,110	\$ 18,936
4	\$ 313,546	\$ 293,084	\$ 20,462
5	\$ 315,054	\$ 293,084	\$ 21,969
6	\$ 316,568	\$ 304,749	\$ 11,819
7	\$ 318,090	\$ 304,295	\$ 13,795
8	\$ 319,619	\$ 303,889	\$ 15,731
9	\$ 321,156	\$ 303,529	\$ 17,627
10	\$ 322,700	\$ 303,214	\$ 19,486
11	\$ 324,252	\$ 302,945	\$ 21,307
12	\$ 325,810	\$ 302,720	\$ 23,090
13	\$ 327,377	\$ 302,539	\$ 24,838
14	\$ 328,951	\$ 302,401	\$ 26,550
15	\$ 330,532	\$ 302,305	\$ 28,227
16	\$ 332,121	\$ 302,252	\$ 29,870
17	\$ 333,718	\$ 302,239	\$ 31,479
18	\$ 335,323	\$ 302,267	\$ 33,056
19	\$ 336,935	\$ 302,335	\$ 34,600
20	\$ 338,555	\$ 302,442	\$ 36,112
21	\$ 340,182	\$ 302,588	\$ 37,594
22	\$ 341,818	\$ 302,773	\$ 39,045
23	\$ 343,461	\$ 302,995	\$ 40,466
24	\$ 345,112	\$ 303,254	\$ 41,858
25	\$ 346,771	\$ 303,550	\$ 43,221
Total	\$ 8,189,317	\$ 7,525,289	\$ 664,028

IMPACT ON CITY RESOURCES

If the City proceeds with the PPA Agreements there would be no upfront cost to install the photovoltaic (PV) systems and no operation and maintenance costs. The City would pay for the energy produced by the PV systems, which would offset current costs paid to PG&E and produce cost savings to the City in the first year. In addition, should the City proceed with the installations, staff recommends extending the contract with Optony for construction management services to ensure that the PV systems will operate according to vendor specifications and agreed upon terms. Hiring Optony is expected to cost up to \$60,000 and is dependent on the number of sites approved (Attachment E). This cost has already been incorporated in the FY 14-15 budget. In addition, participation in R-REP will require an estimated forty hours of staff time to oversee consultant and vendor work over the course of five months and continued participation may delay other Climate Action Plan initiatives, such as development of Phase II of a sustainable building policy.

POLICY ISSUES

Installing renewable power on City facilities is consistent with the Climate Action Plan and 27% greenhouse gas (GHG) reduction target. It is estimated that this project could potentially reduce 419 tons of GHG emissions per year for the City, which over the life of the PPA agreements equates to 8,380 tons of GHG emissions or a 2% GHG reduction from the City's 2005 community-wide baseline. In addition, the project is consistent with sustainable budget practices by reducing operating costs.

ENVIRONMENTAL REVIEW

Installing PV rooftops and carports are exempt from California Environmental Quality Act (CEQA) review under Existing Facilities 15301. In addition, State legislation SB 226 (2011) exempts both PV rooftop and parking lot projects from environmental review.

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
- B. PV Installation Layouts
- C. Draft Power Purchase Agreements
- D. Site Financial Analysis Summaries
- E. Optony Scope of Work

Report prepared by:
Vanessa A. Marcadejas
Environmental Programs Specialist

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RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
MAKING FINDINGS NECESSARY TO AUTHORIZE AN ENERGY
SERVICES CONTRACT FOR POWER PURCHASE AGREEMENTS AT
THE ARRILLAGA GYMNASIUM, ARRILLAGA GYMNASTICS CENTER,
ONETTA HARRIS COMMUNITY CENTER, AND CITY CORPORATION
YARD**

WHEREAS, the City of Menlo Park participated in the Regional Renewable Energy Project (RREP), the largest collaborative group solar purchase ever undertaken in the United States; and

WHEREAS, Alameda County was the lead agency for the RREP and worked with the participating public agencies, and technical consultants to develop the RREP bid package, which was released in September 2013. The request for proposal (RFP) process was structured as an indefinite quantity, multiple award, best value solicitation and was conducted in accordance with Government Code Section 4217.10 *et seq.*; and

WHEREAS, the City of Menlo Park included five sites in the RREP RFP, including the Arrillaga Gymnasium, Arrillaga Gymnastics Center, Onetta Harris Community Center, Corporation Yard, and Belle Haven Childcare Center; and

WHEREAS, the City has entered into negotiations with Cupertino Electric, Inc. as the second ranked proposer after reaching an impasse over contract terms with the first ranked proposer; and

WHEREAS, the City of Menlo Park has received a \$71,889 incentive reservation from Pacific Gas and Electric's (PG&E) California Solar Initiative (CSI) to be applied to the Project, based upon the actual output of the system once constructed; and

WHEREAS, the City of Menlo Park recognizes that it is in the interest of regional, state, and national economy to stimulate the economy; create and retain jobs; reduce fossil fuel emissions; and reduce total energy usage and improve energy efficiency within our jurisdiction; and

WHEREAS, the project will effectively reduce electrical costs and help reduce greenhouse gas emissions associated with the production of electricity from conventional power plants; and

WHEREAS, California Government Code Section 4217.12, authorizes public agencies, including the City of Menlo Park, to enter into an energy service contract when the anticipated cost of the conservation services provided by an energy conservation facility will be less than the anticipated marginal cost of energy that would have been consumed in the absence of the project.

NOW, THEREFORE BE IT RESOLVED, that 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 do hereby make the following findings:

1. That the new photovoltaic (PV) systems to be installed at the Arrillaga Gymnastics Center, Arrillaga Gymnasium, Onetta Harris Community Center, and Corporation Yard includes the acquisition, design, construction, and installation of equipment that reduces energy use or makes for a more efficient use of energy and thereby qualifies as “conservation measures” as that term is defined in Government Code Section 4217.11 (c).
2. That the construction and installation of the PV systems, which will generate energy savings, are “conservation services” as that term is defined in Government Code Section 4217.11 (d).
3. That the proposed contract between the City of Menlo Park and Cupertino Electric, Inc. for the design, construction, and installation of the PV systems conservation measures qualifies as an “energy services contract” as that term is defined in Government Code Section 4217.11 (f).
4. That over its 25 year expected life span, the total cost of the PV systems at the Arrillaga Gymnastics Center, Arrillaga Gymnasium, Onetta Harris Community Center, and Corporation Yard will be less than the anticipated \$8,189,317 cost of electricity that would have been consumed by all sites in the absence of the PV systems.
5. That the terms of the award of contract to Cupertino Electric, Inc. for the design construction, and installation of the PV systems are in the best interest of the City of Menlo Park.

BE IT FUTHER RESOLVED that the City Attorney is hereby authorized to finalize the agreement to his satisfaction and the City Manager is authorized to execute the agreement.

I, Pamela Aguilar, City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the ninth day of September, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ninth day of September, 2014.

Pamela Aguilar
City Clerk

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PROJECT INFORMATION

PROJECT ADDRESS
600 ALMA STREET
MENLO PARK, CA 94025

LAT. 37.453N
LONG. 122.178W

PROJECT SUMMARY
PROPOSED LAYOUT OF
NEW FIXED-TILT
PHOTOVOLTAIC ARRAYS
ON EXISTING BUILDING.

TECHNOLOGY SUMMARY
PV MODULES:
JINKO 305W

PV INVERTER(S):
SUNGROW 36KW

GENERAL NOTES

1. THE PURPOSE OF THIS DRAWING IS TO ESTABLISH PRELIMINARY MODULE LAYOUT.
2. DIMENSIONS AND SCALE ARE SHOWN FOR REFERENCE ONLY. THIS DRAWING SHOULD NOT BE SCALED.
3. THIS DRAWING WAS DEVELOPED USING INFORMATION PROVIDED BY THE CLIENT. ALL DIMENSIONS, OBSTRUCTIONS, AND OTHER RELEVANT DATA SHALL BE FIELD VERIFIED.
4. ARRAY SIZES AND CLEARANCES DEVELOPED TO MEET OR EXCEED THE SOLAR PHOTOVOLTAIC INSTALLATION GUIDELINE, FINAL DRAFT, PUBLISHED BY CAL FIRE, DATED APRIL 22, 2008.

ARRAY SUMMARY

MODULE COUNT: 480
MODULE W DC: 305

TILT°: FLUSH W/ ROOF
AZIMUTH°: 210

KW DC STC: 146.6
KW CEC AC: 108

ANNUAL OUTPUT KWh:



MODULE AZIMUTH = 210°

0' 20' 40'
SCALE: 1" = 40'

CUPERTINO ELECTRIC INC.
Energy Alternatives
1132 NORTH SEVENTH STREET, SAN JOSE CA, 95112 | www.cei.com/energy

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PROJECT OWNER

PROJECT TITLE
ARRILLAGA FAMILY GYMNASIUM

JOB NO. XXXXXX		
DRAWN BY: ML CHECKED BY: XX		
REV.	DESCRIPTION	DATE
0	ISSUE FOR REVIEW	6/27/14
-	-	-
-	-	-
-	-	-

SHEET TITLE
CONCEPTUAL PV LAYOUT

SHEET NO.
PV.00



PROJECT INFORMATION

PROJECT ADDRESS
701 LAUREL STREET
MENLO PARK, CA 94025

LAT. 37.453N
LONG. 122.177W

PROJECT SUMMARY
PROPOSED LAYOUT OF
NEW FIXED-TILT
PHOTOVOLTAIC ARRAYS
ON EXISTING BUILDING.

TECHNOLOGY SUMMARY
PV MODULES:
JINKO 305W

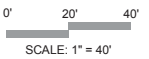
PV INVERTER(S):
SUNGROW 36KW

GENERAL NOTES

1. THE PURPOSE OF THIS DRAWING IS TO ESTABLISH PRELIMINARY MODULE LAYOUT.
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4. ARRAY SIZES AND CLEARANCES DEVELOPED TO MEET OR EXCEED THE SOLAR PHOTOVOLTAIC INSTALLATION GUIDELINE, FINAL DRAFT, PUBLISHED BY CAL FIRE, DATED APRIL 22, 2008.

ARRAY SUMMARY

MODULE COUNT: 480
MODULE W DC: 305
TILT*: 7° (CARPORT) & FLUSH W/ ROOF
AZIMUTH*: 125
KW DC STC: 146.4
KW CEC AC: 120
ANNUAL OUTPUT kWh:



MODULE AZIMUTH = 125°

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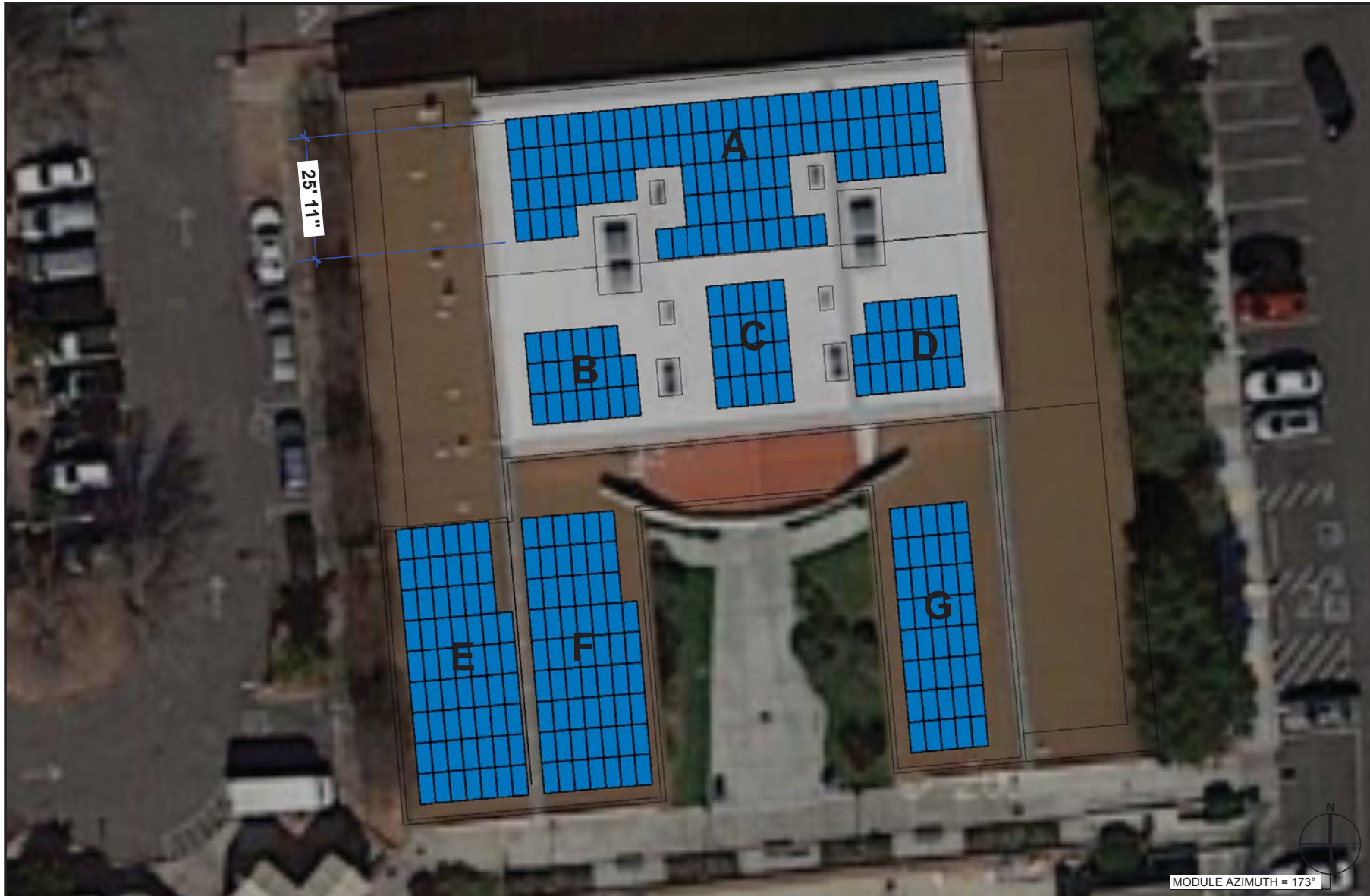
PROJECT OWNER

PROJECT TITLE
ARRILLAGA FAMILY GYMNASTICS CENTER

JOB NO. XXXX		
DRAWN BY: ML CHECKED BY: XX		
REV.	DESCRIPTION	DATE
0	ISSUE FOR REVIEW	6/27/14
-	-	-
-	-	-
-	-	-

SHEET TITLE
CONCEPTUAL PV LAYOUT

SHEET NO.
PV.00



PROJECT INFORMATION

100 TERMINAL AVE
MENLO PARK, CA 94025

PROJECT SUMMARY
PROPOSED LAYOUT OF
NEW FIXED-TILT
PHOTOVOLTAIC ROOFTOP
ARRAYS.

TECHNOLOGY SUMMARY
PV MODULES:
YINGLI 305W (OR EQUAL)

PV INVERTER(S):
SUNGROW 36 KW (OR
EQUAL)

GENERAL NOTES

1. THE PURPOSE OF THIS DRAWING IS TO ESTABLISH PRELIMINARY MODULE LAYOUT.
2. DIMENSIONS AND SCALE ARE SHOWN FOR REFERENCE ONLY. THIS DRAWING SHOULD NOT BE SCALED.
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4. ARRAY SIZES AND CLEARANCES DEVELOPED TO MEET OR EXCEED THE SOLAR PHOTOVOLTAIC INSTALLATION GUIDELINE, FINAL DRAFT, PUBLISHED BY CAL FIRE, DATED APRIL 22, 2008.

ARRAY SUMMARY

MODULE COUNT: 320
MODULE W DC: 305W
TILT°: 0
AZIMUTH°: 173
kW DC STC: 97.6
kW CEC AC: 72
ANNUAL OUTPUT kWh: 141,520



0' 10' 20'
SCALE: 1" = 20'

MODULE AZIMUTH = 173°

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PROJECT OWNER
ALAMEDA COUNTY

PROJECT TITLE
ONETTA HARRIS COMMUNITY CENTER

JOB NO. 12-1-10664-30
DRAWN BY: AT CHECKED BY: XX

REV.	DESCRIPTION	DATE
0	ISSUE FOR REVIEW	6/30/14
-	-	-
-	-	-
-	-	-

SHEET TITLE
CONCEPTUAL PV LAYOUT

SHEET NO.
PV 1.1



PROJECT INFORMATION

PROJECT ADDRESS
 333 BURGESS DR
 MENLO PARK, CA 94025

LAT. 37.454N
 LONG. 122.173W

PROJECT SUMMARY
 PROPOSED LAYOUT OF
 NEW FIXED-TILT
 PHOTOVOLTAIC ARRAYS
 ON EXISTING BUILDING.

TECHNOLOGY SUMMARY
 PV MODULES:
 JINKO 305W

PV INVERTER(S):
 SUNGROW 36KW

GENERAL NOTES

1. THE PURPOSE OF THIS DRAWING IS TO ESTABLISH PRELIMINARY MODULE LAYOUT.
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4. ARRAY SIZES AND CLEARANCES DEVELOPED TO MEET OR EXCEED THE SOLAR PHOTOVOLTAIC INSTALLATION GUIDELINE, FINAL DRAFT, PUBLISHED BY CAL FIRE, DATED APRIL 22, 2008.

ARRAY SUMMARY

MODULE COUNT: 160
 MODULE W DC: 305
 TILT*: FLUSH W/ ROOF
 AZIMUTH*: 210
 KW DC STC: 48.8
 KW CEC AC: 36
 ANNUAL OUTPUT KWH:



MODULE AZIMUTH = 213°

0' 15' 30'
 SCALE: 1" = 30'

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PROJECT OWNER
 PROJECT TITLE
MENLO PARK CORPORATION YARD (OPTION. 1)

JOB NO. XXXXX
 DRAWN BY: ML CHECKED BY: XX

REV	DESCRIPTION	DATE
0	ISSUE FOR REVIEW	6/30/14
-	-	-
-	-	-
-	-	-

SHEET TITLE
CONCEPTUAL PV LAYOUT

SHEET NO.
PV.00

<INSERT JURISDICTION NAME>

CONTRACT TITLE: POWER PURCHASE
AGREEMENT

CONTRACT

NUMBER: AWARD

DATE: XX

CONTRACT PERIOD: 20 Years from the Actual Commercial Operation Date

SERVICE: Electricity Service Provision

BUYER

CONTACT: TITLE:

BUYER TEL:

BUYER EMAIL:

SELLER NAME:

SELLER

CONTACT:

TITLE: SELLER

TEL: SELLER

EMAIL:

PURPOSE: To establish a service contract for delivery of electricity.

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS	1
ARTICLE 2: TERM.....	11
ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS	14
ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING.....	18
ARTICLE 5: BILLING AND PAYMENT.....	23
ARTICLE 6: REMOVAL OF GENERATING FACILITY	24
ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS.....	25
ARTICLE 8: FORCE MAJEURE	31
ARTICLE 9: DISPUTE RESOLUTION	34
ARTICLE 10: DEFAULT & REMEDIES.....	35
ARTICLE 11: REPRESENTATIONS, WARRANTIES AND COVENANTS	40
ARTICLE 12: ASSIGNMENT AND FINANCING	43
ARTICLE 13: OTHER TERMS & CONDITIONS	47

EXHIBITS

- Exhibit A – Technical and Warranty Requirements
- Exhibit B – Engineering and Construction Requirements
- Exhibit C – Operations Forecasts, Scheduling Protocols, & Monitoring
- Exhibit D – Form of Attestation
- Exhibit E – Insurance Requirements
- Exhibit F – Workforce Plan
- Exhibit G – Form of Certification

SCHEDULES

- Schedule 1 – Grant of Access Rights
- Schedule 2 – Early Termination Fee
- Schedule 3 – Notice Information
- Schedule 4 – Description of Generating Facility

- Schedule 5 – Project Site Description
- Schedule 6 – Contract Price
- Schedule 7 – Expected Annual Contract Quantity
- Schedule 8 – Project Milestones
- Schedule 9 - Project Management Reimbursement
- Schedule 10 - Cash Flow Tables Showing Value of Solar

DRAFT

This Regional Power Purchase Agreement is dated as of <INSERT DATE> (“Effective Date”), and is witnessed, acknowledged, and executed by authorized representatives of <INSERT VENDOR NAME>, a <INSERT LOCATION OF FIRM> limited liability company (“Seller”) and the <INSERT JURISDICTION NAME>, a <A POLITICAL SUBDIVISION OR OTHER RELEVANT NAME> of the State of California (“Buyer”), as evidenced by their signature on the last page of this document

RECITALS

- A. Buyer wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Buyer has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation led by the County of Alameda;
- C. Seller is in the business of designing, constructing and operating solar photovoltaic (“PV”) electric generating systems for the purpose of selling power generated by the systems to its Buyers;
- D. Buyer has selected Seller to design, construct, own and operate solar PV generating systems to be located on its property subject to the terms, conditions, covenants and provisions set forth herein (each, a “Facility” and collectively the “Generating Facilities”);
- E. Seller intends to construct, own, and operate renewable energy-powered Generating Facilities that shall qualify as an eligible renewable energy resource (“ERR”) under the State of California Renewable Portfolio Standard (“RPS”) and desires to sell electricity produced by such generating facility together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;
- F. Buyer desires to purchase electricity generated by Seller’s Generating Facilities, together with all Environmental Attributes pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: DEFINITIONS

References in this Agreement to the terms or phrases below have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of this Agreement, the more specific provision shall control.

- 1.1 “Actual Commercial Operation” means the date on which a Facility: (i) has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the specifications set forth in Exhibit A [Technical and Warranty Requirements], Exhibit C [Engineering & Construction Requirements], and Schedule 4 [Description of Generating Facility] of this Agreement; (ii) Seller has successfully completed the Commissioning Tests, (iii) PG&E has approved installation and given its “Permission to “Operate” notification, (iv) the Data Acquisition System has been commissioned and is transmitting data, and, (v) the Facility is capable of generating electricity for sale to the Buyer at the Project Site.
- 1.2 “Actual Commercial Operation Date” the date upon which Seller has notified Buyer in writing that it has satisfied the requirements of Actual Commercial Operation.
- 1.3 “Actual System Output” means the amount of energy recorded by the Seller’s metering equipment for a Facility during the relevant Measurement Period.
- 1.4 “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by such specified Person.
- 1.5 “Agreement” means this Regional Power Purchase Agreement, effective as of the Effective Date, and entered into by and between Buyer and Seller, and all exhibits, and schedules (each an “Exhibit” or “Schedule”, as applicable) attached hereto and incorporated herein.
- 1.6 “Anniversary Date” means the first anniversary of the Actual Commercial Operation Date and that same calendar date for each succeeding Contract Year.
- 1.7 “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Authority approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- 1.8 “Bankruptcy Event” means with respect to a Party, that either:

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (vi) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue un-stayed and in effect for a period of sixty (60) days.

1.9 “Business Day” means any day other than a Saturday, Sunday, public holidays recognized by California governmental entities or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.

1.10 “Buyer Act” means (i) an act of Buyer to repair the Project Site or the Project Site roof (as the case may be) for any reason not directly related to damage caused by the Facility, and such repair requires the partial or complete temporary disassembly or movement of the Facility, or (ii) any act or omission of Buyer or Buyer’s employees, Affiliates, agents, or subcontractors that results in a disruption or outage in Facility production.

1.11 “Buyout Date” has the meaning assigned to it in Section 2.2.

1.12 “Buyout Payment” has the meaning set forth in Section 2.2

1.13 “Buyer Address for Payments” means the address to which invoices to the Buyer should be sent, currently:

<INSERT PARTICIPATING AGENCY ADDRESS HERE>

1.14 “Buyer Address for Notices” means the addresses to which notices to the Buyer should be sent as set forth in Schedule 3 of this Agreement.

1.15 “Buyer Default” – has the meaning set forth in Section 10.3.

- 1.16 “California Renewables Portfolio Standard” means the California State Public Utilities Commission program that requires investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable energy resources to 33% of total procurement by 2020.
- 1.17 “California Solar Initiative” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the California State Public Utilities Commission and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.
- 1.18 “Commissioning Tests” means the tests set forth in Exhibit B [Engineering & Construction Requirements].
- 1.19 “Commencement of Work Date” means the date on which Seller begins site preparation (including, but not limited to, grading or clearing the site) of the Project Site or the physical construction work at the Project Site of a Facility.
- 1.20 “Commercial Operation Deadline” means the date set forth in Schedule 8, which reflects the current California Solar Initiative (CSI) Rebate construction deadline date, if applicable; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event or breach of this Agreement by Buyer, or to the extent the CSI construction deadline is extended for a Facility.
- 1.21 “Commercially Available Local Electric Utility Provided Energy” means the current applicable PG&E rate tariff time of use price in cents per kilowatt hour for the Project Site.
- 1.22 “Contract AC Power Rating” means the AC power rating for the Facility in a given Contract Year, as specified in Schedule 4 to this Agreement.
- 1.23 “Contract Capacity” means the maximum instantaneous output of the Facility in kilowatts AC measured at the Delivery Point.
- 1.24 “Contract Price” means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Delivered Energy, as specified in Article 4 and Schedule 6 to this Agreement .
- 1.25 “Contract Year” means each year beginning on the Actual Commercial Operation Date and succeeding anniversaries of such Date (“Anniversary Date”), and ending on the date immediately preceding the subsequent Anniversary Date.
- 1.26 “Data Acquisition System” means physical devices, data monitoring equipment and apparatus associated with real-time monitoring of the

quantities of AC energy generated by each Facility and complying with all requirements of Article 4.

- 1.27 “Daylight Hours” means hours that the inverter would normally be operating.
- 1.28 “Daylight Savings Adjustment” means the time periods that begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.
- 1.29 “Days” unless otherwise specified, shall mean calendar days.
- 1.30 “Degradation” means forecasted deterioration of the Facility calculated on an annual basis due to normal wear and tear and decreasing efficiency causing reductions in power output.
- 1.31 “Delivered Energy” the amount of Energy delivered by Seller as recorded by Seller’s Meters.
- 1.32 “Delivery Point” means the metering point at the load side of the transformer for each Facility, as specified in Schedule 4 of this Agreement [Description of Generating Facilities].
- 1.33 “Disruption Period” means the period of time that a Facility is not available due to a Buyer Act.
- 1.34 “Deemed Generated Energy” means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Delivery Point during each measurement period, determined by taking into account during the relevant measurement period the radiometers or like devices at the Facility, or if such monitoring equipment is unavailable during a relevant interval, then using available data or interpolated data determined in accordance with Prudent Industry Practices.
- 1.35 “EA Agency” means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.
- 1.36 “Early Termination Fee” means the fee associated with an early termination of this Agreement in the amount expressed in dollars per Watt of the Facility’s size in Watts-DC (\$/Wdc) as set forth in Schedule 2 of this Agreement [Early Termination Fee].

- 1.37 “Effective Date” means the date set forth in the first paragraph of this Agreement.
- 1.38 “Energy” means the electricity generated by each Facility pursuant to this Agreement, as expressed in units of kWh.
- 1.39 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from each Facility, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Environmental Attributes for purposes of this Agreement expressly excludes Existing Financial Incentives.
- 1.40 “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereunder.
- 1.41 “Environmental Laws” shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.
- 1.42 “Existing Financial Incentives” means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facilities or the Output generated by each Facility (including without limitation tax credits, accelerated depreciation, or bonus depreciation) that are in effect on the Effective Date and, (ii) any other financial incentives that result from the ownership and operation of the Generating Facilities or the Output that are in effect on the Effective Date.
- 1.43 “Expected Annual Contract Quantity” means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver from a Facility to

Buyer hereunder in a given Contract Year, as set forth in Schedule 7 of this Agreement [Expected Annual Contract Quantity].

- 1.44 “Expected Commercial Operation Date” means the date on which the Parties expect a Facility to achieve Actual Commercial Operation, established in accordance with Article 3.
- 1.45 “Facility” has the meaning set forth in the Recitals, as further described in Schedule 4.
- 1.46 “Fair Market Value” or “FMV” means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry would determine a photovoltaic system to have when negotiated in an arm’s-length, free market transaction between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.
- 1.47 “Financing Party” means, as applicable (i) any Person from whom Seller leases the Generating Facilities or (ii) any Person who has made or will make a loan to or otherwise provide capital to Seller with respect to the Generating Facilities.
- 1.48 “Force Majeure Event” has the meaning set forth in Article 8.
- 1.49 “Full Assignment” has the meaning set forth in Section 12.2.
- 1.50 “Generating Facilities” or “PV System” means each Seller electricity generating facility as more particularly described in Schedule 4 of this Agreement [Description of Generating Facilities], excluding the Project Sites, land rights, and interests in land.
- 1.51 “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any municipality, township or county, special district or any other entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.52 “Green Tag Reporting Rights” means the rights of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser’s discretion, and include those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, with “Green Tag” meaning one (1) MWh of Environmental Attributes.

- 1.53 “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, and by-products.
- 1.54 “Interconnection” means the interconnection of the Project Site electrical system to the Transmission System, including construction, installation, operation, and maintenance of all interconnection facilities.
- 1.55 “Interconnection Agreement” means the agreement between Buyer and the Local Electric Utility which sets forth the terms and conditions for Interconnection of the Facility and the Project Site electrical system to the Transmission System, as amended from time to time.
- 1.56 “Investment Tax Credit” or “ITC” means the federal tax credit associated with the ownership of eligible renewable energy projects as available under Section 48 of the Internal Revenue Code (26 U.S.C. Section 48).
- 1.57 “ISO Tariff” means the Federal Energy Regulatory Commission-approved tariff under which the California Independent System Operator (ISO) operates.
- 1.58 “Kiosk” means a single viewing station for the Buyer and the general public to view the production of electricity of the Generating Facilities as defined in Article 4.1(c)
- 1.59 “KW” means one kilowatt of power or nameplate capacity expressed as peak power DC (direct current).
- 1.60 “kWh” means one kilowatt of electricity supplied for one hour.
- 1.61 “Holidays” for the purposes of this Agreement are New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The dates will be those on which the holidays are legally observed.
- 1.62 “Interest Rate” means, for any date:

- (a) The per annum rate of interest equal to the “Prime Rate” published in The Wall Street Journal under “Money Rates” or such date (or if not published on such date on the most recent preceding day on which published); plus
- (b) Two percentage points (2%); provided, in no event may the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
- 1.63 “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer & Seller at the applicable Project Site.
- 1.64 “Local Electric Utility Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of PG&E, as these may be amended from time to time.
- 1.65 “Lost Output” means the Deemed Generated Energy calculated during Lost Output Events for the relevant Measurement Period.
- 1.66 “Lost Output Event” has the meaning set forth in Section 4.1(d).
- 1.67 “Measurement Period” has the meaning set forth in Section 4.1(d).
- 1.68 “Meter” or “Meters” means the physical metering devices, data acquisition equipment and apparatus associated with the meters owned by Seller and used to determine the quantities of Energy generated by each Facility and to record other related parameters required for the reporting of data to Seller.
- 1.69 “Metered Energy” means the amount of Energy measured at the Meter for each Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.
- 1.70 “Milestone” means a defined and significant event that will occur during the engineering, construction, and installation of the Facility, as identified in Exhibits A and B, and Schedule 8, including, without limitation, completion of Commissioning Tests, issuance of a PG&E permission to operate notification, commissioning of the Data Acquisition System, and the occurrence of the Actual Commercial Operation Date.
- 1.71 “MW” means one megawatt of power or nameplate capacity expressed as peak power DC (direct current).
- 1.72 “MWh” means one megawatt of electricity supplied for one hour.
- 1.73 “Outage” means a physical state in which all or a portion of the Facility is unavailable to provide Energy to the Delivery Point.
- 1.74 “Output” means (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.

- 1.75 “Parties” means Buyer and Seller, and each such Party’s respective successors and permitted assignees.
- 1.76 “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.77 “Permits” means local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of a Facility.
- 1.78 “Person” means an individual, corporation, partnership, Limited Liability Company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- 1.79 “PG&E” means Pacific Gas and Electric Company, who is the Local Electric Utility, as defined herein.
- 1.80 “Preliminary Requirements” has the meaning set forth in Section 3.7.
- 1.81 “Prevailing Wage” means the State of California Public Works Contract Requirements pursuant to sections 1770 et seq. of the California Labor Code.
- 1.82 “Project Site” means the real property, on which each Facility is to be built and located, as described in Schedule 5 to this Agreement (Project Site Description).
- 1.83 “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expediency; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expediency. Prudent Industry Practices include but are not limited to an optimum practice, method, selection of equipment or act.
- 1.84 “Purchase Date” means the 91st day of every year following the 6th year anniversary of the Actual Commercial Operation Date.
- 1.85 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code section 399.12(h) as may be amended from time to time or as further defined or supplemented by applicable law.
- 1.86 “Renewal Term” has the meaning set forth in Article 2.1.
- 1.87 “Requirements of Law” means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in

each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.

- 1.88 “Schedule” “Scheduled” or “Scheduling” means the actions of Seller, Buyer and /or their designated representatives, including each Party’s Local Electric Utility, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered for each interval on any given day on which the delivery of Energy is scheduled to occur during the Term at the Delivery Point.
- 1.89 “Seller” has the meaning set forth in the first paragraph of this Agreement, and for purposes of access rights and other rights necessary for Seller to perform its obligations hereunder, the term “Seller” includes Seller’s authorized agents, contractors and subcontractors.
- 1.90 “Seller Address” means: <INSERT SELLER ADDRESS HERE>.
- 1.91 “Seller Default” has the meaning set forth in Section 10.2(a).
- 1.92 “Seller’s Project Management Team” means individuals identified by Seller as responsible for oversight and contract management of all phases of project design/build, operations, maintenance, verification and billing account management.
- 1.93 “Solar Insolation” means the amount of solar energy in kWh per square meter falling on a particular location.
- 1.94 “Substantial Completion” means when (i) installation of all necessary components and systems of a Facility (except for completion of painting, final grading, and similar portions of the construction work not affecting the operability, safety, or mechanical and electrical integrity of the Facility) have been completed; (ii) the Facility is mechanically and electrically sound; and (iii) the Facility is ready for initial operation, adjustment, and testing.
- 1.95 “Taxes” has the meaning set forth in Section 5.2..
- 1.96 “Term” has the meaning set forth in Section 2.1.
- 1.97 “Transmission System” or “Local Electric Utility Electricity Grid” means the facilities used for the distribution and transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.
- 1.98 “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE 2: TERM

- 2.1 **TERM:** The term of this Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Actual Commercial Operation Date of the Facility (“Initial Term”, and together with any Renewal Terms, the “Term”), unless and until terminated earlier pursuant to the provisions of this Agreement. After the Initial Term, this Agreement may renew for a Facility, or all of the Generating Facilities, for additional five year terms (each a “Renewal Term”), if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the Initial Term, or any Renewal Term, as the case may be. For each renewed Facility, the Parties shall confer and agree on a schedule for the Contract Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity for any Renewal Term. The remainder of the terms and conditions shall remain substantially the same for each Renewal Term as for the Initial Term. If Seller consents to renewal of a Facility, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, this Agreement shall expire as to that Facility as of the last day of the Initial Term. No later than sixty 60 days after Seller provides consent to a Renewal Term, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Early Termination Fees, and Expected Annual Contract Quantity for such Renewal Term, Buyer shall confirm to Seller in writing of its intent to proceed with its option for a Renewal Term. Documentation of any such Renewal Term and changes to Contract Price, Early Termination Fees and Expected Annual Contract Quantity shall be in the form of an amendment to this Agreement. In the event Buyer does not provide such confirmation, this Agreement shall expire as of the last day of the Initial Term or applicable Renewal Term for such Facility. Upon expiration of the Initial or Renewal Term, Seller shall cause the Facility to be removed from the Project Site pursuant to Article 10.5(a). All timelines for action pursuant to this Section 2.1 may be extended at the Parties’ mutual written agreement.
- 2.2 **BUYER’S EXERCISE OF PURCHASE OPTION:** So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase (the “Purchase Option”) a Facility for a purchase price equal to its FMV (the “Buyout Payment”), at any point after ninety-one (91) days after each of the sixth (6th), tenth (10th), or fifteenth (15th) anniversary of the Actual Commercial Operation Date of the Facility, or ninety (90) days prior to the end of Initial Term or Renewal Term, if applicable. If Buyer chooses to exercise the Purchase Option, the following steps shall be followed by the Parties:
- (a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the Facility on a date certain (such date, the “Buyout Date”).

- (b) For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in Article 2.2 (a), the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV as of the Buyout Date. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Facility on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the FMV be less than the aggregate of: (i) the net present value (using a discount rate of nine percent 9%) of the projected payments over the Term, had the Term remained effective for the full initial Term, and (ii) any and all other amounts previously accrued under this Agreement and owed by Buyer to Seller as of the date of Facility title transfer. Within sixty (60) days of the selection of such appraiser, s/he shall evaluate and determine the FMV of the applicable Facility as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be borne by Buyer.
- (c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall, no later than sixty (60) days from the date of notice referred to in Article 2.2 (a), retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry. Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall mutually select a third nationally recognized independent, third-party appraiser with experience in the solar photovoltaic industry, whose services shall be equally paid for by the Parties. Within sixty (60) days of the selection of such third appraiser, the three appraisers shall evaluate and determine the FMV of the Facility and shall submit their reports to both Parties. The appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers' valuations shall be deemed to be the FMV of the Facility. If no such valuation may be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the Facility. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.
- (d) No later than sixty (60) days after determination of the FMV of the Facility, Buyer shall confirm to Seller in writing of its intent to proceed with its option to purchase the Facility at the Buyout Payment determined pursuant to this Article 2.2. In the event Buyer does not provide such written confirmation, the provisions of this Agreement shall be applicable as if Buyer had not exercised the Purchase Option.

- (e) If Buyer confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (i) cause title and ownership of the Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (ii) to the extent such warranties are assignable, assign all warranties for the Facility to Buyer. Buyer shall pay the Buyout Payment to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Buyer by Seller for payments under this Agreement. Upon such execution of documents and payment of the Buyout Payment, as to the Facility this Agreement shall terminate automatically and Buyer shall own the Facility and all Environmental Attributes and Existing Financial Incentives, if any, relating to the Facility. For the avoidance of doubt, payment of the Buyout Payment shall be in lieu of and instead of any payments described in Article 4 accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with the Buyer to give prompt effect to this transfer.
- (f) All other personal property of the Seller not included in the Buyer's purchase shall be removed by Seller from the Project Site within ninety (90) days of the Buyout Date at no cost to Buyer.

2.3 TERMINATION: Buyer may terminate this Agreement as to any Facility prior to the expiration of the Initial Term without cause upon sixty (60) days' prior written notice. If Buyer elects to terminate this Agreement without cause for a Facility, Buyer shall pay to Seller the applicable Early Termination Fee. The Early Termination Fee shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a combined (Federal and State) effective tax rate of forty one (41%), for the loss or recapture of (a) during the first five years following the Actual Commercial Operation Date, the investment tax credit equal to thirty percent (30%) of the Facility value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the Facility value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Buyer with a detailed calculation of such compensation if such a claim is made), (d) other fixed financing costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of nine percent (9%) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. However, if Buyer terminates this Agreement for reasons otherwise specified in this Agreement including, but not limited to: (i) termination for CEQA compliance (Section 3.6); (ii) termination for Force Majeure (Article 8); and (iii) termination for failure of the Preliminary Requirements (Section 3.9), Buyer is not liable to the Seller for the Early Termination Fee. In the event that Buyer terminates this Agreement without cause, Seller shall, within one hundred eighty (180) calendar days of the

notice of termination from Buyer, or Buyer's payment of the Early Termination Fee, if applicable, shall cause the applicable Facility to be disconnected and removed from the Project Site, and shall remediate and restore the Project Site to the condition preceding the installation of the Facility as set forth in Section 10.5.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

- 3.1 All elements of engineering, construction and installation of the Generating Facility and compliance with all California Solar Initiative ("CSI") requirements are Seller's sole responsibility, provided that Buyer cooperates in good faith with Seller to satisfy the requirements of CSI and those of the Local Electric Utility.
- 3.2 Seller shall provide services as described herein and pursuant to Exhibit B – Engineering and Construction Requirements.
- 3.3 [Intentionally left blank].
- 3.4 Seller shall provide weekly status reports from the Effective Date through the Actual Commercial Operation Date, as well as any additional briefing requested by Buyer.
- 3.5 Seller will create, maintain and provide to Buyer, minutes of meetings between Buyer's representatives and Seller's Project Management Team.
- 3.6 CEQA Compliance
 - (a) Compliance with the California Environmental Quality Act ("CEQA"), California Pub. Res. Code § 21000 et seq., is a condition precedent to the Buyer's obligations under this Agreement. The Seller shall not have any right to install a Facility until the Buyer has fully complied with CEQA, issued a statement to Seller attesting to the fact that Buyer has fully complied with CEQA as it relates to the Facility included in this Agreement, and issued a notice to proceed to Seller. In most cases, the Buyer expects to satisfy the CEQA requirements with a Notice of Exemption for each Generating Facility.
 - (b) If the Buyer, in its discretion, determines that a mitigated negative declaration ("MND") or environmental impact report ("EIR") is required to comply with CEQA, then Buyer shall, provide Seller with a written statement detailing the reasons that Buyer believes that a MND or an EIR is required to comply with CEQA, the estimated cost to comply with CEQA for the Facility, and a statement that it will or will not pay for the estimated cost to comply with CEQA for the Facility. If Buyer declines to pay for all of the estimated costs to comply with CEQA, then this Agreement shall terminate as to the Facility, and neither Party shall have any liability to the

other Party (other than any such liabilities that have accrued prior to such termination).

- (c) Within ten business days after the Effective Date, Buyer shall provide Seller either (1) a notice to proceed based on a Notice of Exemption under Section 3.6(a), or (2) the notice described pursuant to Section 3.6(b), including Buyer's election regarding payment of costs.

3.7 Engineering - Design Phase

During this phase, Seller shall proceed with all activities necessary to allow commencement of the construction phase, including completing the Preliminary Requirements (as set forth below) within the timeframes established in Schedule 8 [Project Site Milestones]. Upon completion of this phase, Seller shall proceed with the installation and construction phase. Seller's failure to meet Preliminary Requirements will be subject to Section 3.9 below.

(a) Preliminary Requirements:

- (i) Prior to the execution of this Agreement, the Seller must comply with the insurance requirements for the design phase included as Exhibit E (Insurance Requirements). Seller shall maintain such coverage throughout this phase.
- (ii) Seller must comply with all system design requirements set forth in Exhibit B [Engineering & Construction Requirements].
- (iii) Within the timeframe set forth in Schedule 8 [Project Site Milestones]:
 - (1) Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. The Expected Commercial Operation Date shall be no later than the CSI reservation expiration date which is provided in Schedule 8 of this Agreement, or any extensions thereof.
 - (2) Each Party, upon request, shall furnish current certificates evidencing that the insurance coverage required in Exhibit E is being maintained.

(iv) Within the timeframe set forth in Schedule 8 [Project Site Milestones]:

- (1) Seller must have obtained a financing commitment for construction of each Facility and submitted a signed term sheet or redacted financing agreement as satisfactory proof of such financing commitment to the Buyer or in the alternative, Seller may certify in writing that Seller will be self-financing the construction of the Facility and that Seller has sufficient funds to do so. Such

certification shall be submitted by Seller in the Form of Certification in Exhibit G of this Agreement [Form of Certification].

- (v) Within the timeframe set forth in Schedule 8 [Project Site Milestones] for a Facility, Seller must have applied for a building permit for the Facility.
- (vi) Seller must have obtained approval from the Buyer, which shall not be unreasonably withheld, conditioned or delayed of the final 100% detailed engineering drawings and specifications for the Facility. Seller must submit 65% and final 100% detailed engineering drawings and specifications for the Facility to Buyer for approval no later the date set forth in Schedule 8 [Project Site Milestones].

3.8 Construction Phase

- (a) Prior to the execution of this Agreement, the Seller must comply with the insurance requirements for the construction phase included as Exhibit E (Insurance Requirements). Seller shall maintain such coverage throughout this phase.
- (b) Seller will cause each Facility to be designed, engineered, installed and constructed substantially in accordance with Exhibit B (Engineering and Construction Requirements) of this Agreement and Applicable Law, including but not limited to, the payment of Prevailing Wages, as applicable. All construction of a Facility, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of the photovoltaic systems, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Prior to the commencement of construction on a Facility, Seller shall deliver to Buyer for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, a complete set of plans and specifications relating to the installation of the Facility, which shall comply with all applicable uniform construction codes. Buyer shall be deemed to have approved such plans and specifications if Buyer fails to transmit notice of disapproval within the timeframe established in Schedule 8 [Project Site Milestones]. Buyer shall have the right, but not the obligation, to inspect all construction solely for the purpose of confirming that Seller is adhering to the specifications provided for in Exhibit B (Engineering and Construction Requirements) to this Agreement, provided that Buyer's inspections are done at a reasonable frequency and during reasonable dates and times.
- (c) Seller must comply with all requirements set forth in applicable building and electrical codes and Exhibit B (Engineering and Construction Requirements).

3.9 Parties' Rights to Terminate Prior to Commercial Operation

(a) Buyer's Rights to Terminate: If Seller fails to complete the Preliminary Requirements in conformance with Section 3.7 with respect to a Facility, Buyer may terminate this Agreement as to the applicable Facility without penalty, liability or expense of any kind to Buyer by providing to Seller a written notice of termination after the deadline for completion of the Preliminary Requirements; provided, however that any such written notice of termination for non-compliance with Article 3.7, sections (a)(i) – (a)(v) shall be provided by Buyer to Seller prior to the Commencement of Work Date and any written notice of termination for non-compliance with Article 3.7 section (a)(vi) may be provided by Buyer after the Commencement of Work Date. The Buyer may extend deadlines at its option. If Buyer elects to terminate this Agreement pursuant to this Section 3.9(a), Seller shall take all actions necessary to return the Project Site to the condition Seller first encountered them, at no cost to the Buyer. Buyer's right to terminate hereunder shall not be subject to the alternative dispute resolution procedures in Section 9.1. If Buyer determines that it wishes to exercise its termination right pursuant to this Section 3.9(a), Buyer shall give written notice to Seller within fifteen (15) days of such determination, specifying the basis for the termination. Upon receiving such notice, if Seller is able to cure, Seller shall have 45 days to provide a cure for the circumstance identified by Buyer as the basis for termination. The Seller shall not exercise its rights under section 3.9(a) until it has provided a written notice to the Seller of its intent to do so and allowed the Seller 45 days to attempt to cure. The Seller shall have the option, but not the obligation, to cure.

(b) Seller's Rights to Terminate: In the event that any of the following events or circumstances occur prior to the Actual Commercial Operation Date for a Facility, Seller may (at its sole discretion) terminate this Agreement, subject to Sections 3.9(d) and (e), as to the Facility, in which case neither Party shall have any liability to the other Party as to the Facility:

- (i) Seller has not received a fully executed (i) Grant of Access Right (Schedule 1 to this Agreement), and (ii) a release or acknowledgement from any mortgagee of the Project Site, if required by Seller or Seller's Financing Party, to establish the priority of its security interest in the Facility.
- (ii) Seller has not received evidence that interconnection services will be available with respect to energy generated by the Facility.
- (iii) Seller has reasonably determined that there are easements, covenants, conditions, or restrictions or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the Facility.

Remediation: If Seller wishes to exercise its termination rights listed in section 3.9(b) with regard to a specific Facility, Seller shall take all actions necessary to return the Buyer's Project Site where the applicable Generating Facility was to be installed to the condition the Seller first encountered it in within ninety (90) days.

- (a) Buyer Option to Cure: Notwithstanding anything to the contrary, if Seller determines that it wishes to exercise termination pursuant to section 3.9(b), Seller shall give written notice to Buyer within 15 days of such determination, specifying the basis for the termination. Upon receiving such notice, if Buyer is able to cure, Buyer shall have 45 days to provide a cure for the circumstance identified by Seller as the basis for termination. The Seller shall not exercise its rights under section 3.9(b) until it has provided a written notice to the Buyer of its intent to do so and allowed the Buyer 45 days to attempt to cure. The Buyer shall have the option, but not the obligation, to cure.
- (b) Mutual Rights to Termination: Either Party shall have the right to terminate this Agreement, without liability to the other Party if:
 - (iv) Seller and Buyer mutually determine that the Project Site, as is, is insufficient to accommodate the Facility.
 - (v) Seller and Buyer mutually agree that there exist site conditions at the Project Site (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the Facility or would adversely affect the electricity production from the Facility as designed.
 - (vi) Seller and Buyer have reasonably determined that there has been a material adverse change in the rights of the Buyer to occupy the Project Site or the Seller to construct the Facility on the Project Site.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale

- (a) Commencing on the Actual Commercial Operation Date and continuing throughout the Term, subject to this Article 4, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for, the Output as follows:

Energy Pricing: The pricing for Energy delivered at the Delivery Point shall be the Contract Price for the current Contract Year. The invoice for Energy delivered by the Seller for the applicable monthly billing period shall be determined as follows:

$P =$ Payment to Seller for Energy supplied to the Buyer over the billing period. $P = EE \times EP$

EE = the total kWh of Delivered Energy to Buyer by Seller during the billing period.

EP= the Contract Price as per Schedule 6 to this Agreement – [Contract Price].

(b) Intentionally left blank.

(c) Meters

(i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric Utility Tariffs and the Buyer-PG&E Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least every two (2) years. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better and monitoring results from Seller's Performance Monitoring and Reporting Service (PMRS) that is viewable by Buyer at all times. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website.

(ii) Single Viewing Kiosk for the Generating Facility: At the location of Buyer's choice, Seller will install a single Kiosk for viewing by the general public consisting of a 20"LCD screen with a computer and keyboard sufficient to view the Data Acquisition System ("DAS") monitoring of the Generating Facilities. The computer and keyboard shall be housed in a cabinet whose design, aesthetics, and cost are mutually agreed upon by Buyer and Seller. Buyer will allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet. Seller's total installed cost of the Kiosk consisting shall not exceed \$5,000 US dollars. Following installation, Buyer shall provide and maintain communications equipment and services to the Kiosk.

(iii) Communications Equipment. After the Actual Operating Date Seller shall install, own and maintain, at its sole cost and expense,

communications equipment and services necessary to allow remote reading of the Meters.

- (iv) Meter Updates. Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facility for the purpose of verifying Meters.
- (d) Delivery Obligations. Beginning on the Actual Commercial Operation Date for each Facility, such Facility shall produce not less than 90% of its Expected Annual Contract Quantity (after accounting for weather-related) during the Initial Term or applicable Renewal Term, if any, measured on a four (4) year cumulative basis (the "Measurement Period"), unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity is due to any downtime or Facility correction or repair resulting from the following: (a) Facility failure, damage to the system, theft, or downtime not caused by Seller or its approved service providers, (b) general utility outages or any failure of any electric grid, (c) a Force Majeure Event, (d) acts or omissions of Buyer of any of its obligations hereunder, provided that Buyer has received prior written notice from Seller of such acts or omissions, (e) if someone other than Seller or its approved service providers installed, repaired, or removed the system, or (f) any Buyer Act Outages (each of (a) through (f) a "Lost Output Event").

Subject to the terms and conditions of this Agreement, beginning on the fourth anniversary of the Actual Commercial Operation Date, and at the end of each successive four (4) year anniversary thereof, if the Actual System Output plus the Lost Output does not equal or exceed 90% of the Expected Annual Contract Quantity for such Measurement Period, then Seller will credit Buyer on its next invoice an amount equal to the product of (i) the average of the annual Contract Prices found in the applicable site Schedule 6 during such Measurement Period multiplied by (ii) the difference between the Actual System Output plus the Lost Output and the Expected Annual Contract Quantity for such Measurement Period.

- (e) Excess Energy. Buyer shall have the option, but not the obligation, to purchase the output of any facility that exceeds 110% of the expected annual contract quantity. Seller will first offer any energy beyond the 110% cap to buyer and, only if buyer does not exercise its option to purchase all or a portion of such excess energy, seller shall be permitted to resell the excess energy, provided such sale is in accordance will all applicable laws.

4.1 Monitoring System and Web Interface

- (a) Seller shall install, maintain, control, and operate a monitoring system for each Facility meeting the following requirements (the “Monitoring System”):
 - (i) The Monitoring System shall include, without limitation, ability to monitor revenue grade AC production data; weather data, (including ambient temperature and wind speed); and shall include a pyranometer.
 - (ii) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, and greenhouse gas emissions reduced.
 - (iii) The Monitoring System shall meet or exceed PG&E monitoring and reporting standards.
 - (iv) Additional requirements and specifications for monitoring are described in Exhibit C – (Operations Forecasts, Scheduling Protocols, & Monitoring).

4.2 Delivery Point

- (a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller is responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer is responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.3 Environmental Attributes

- (a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, title and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees that the Contract Price, as applicable is the full compensation for all Environmental Attributes.
- (b) Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes to any Person other than Buyer.

- (c) During the Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to the Buyer belong to anyone other than the Buyer, and the Buyer may report under any program that such attributes purchased hereunder belong to it.
- (d) WREGIS. If requested by Buyer, and at Buyer's expense, prior to the Actual Commercial Operation Dates of a Facility, Seller shall register the Facility in WREGIS, and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Facility are issued and tracked through WREGIS for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer as applicable.
- (e) If Buyer does not elect the use of WREGIS under Section 4.4(d), Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Buyer an attestation of Environmental Attributes produced by the Facility and purchased by Buyer in the preceding Contract Year. On or before the Anniversary Date of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to the Buyer an attestation of Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit D [Form of Attestation]. Exhibit D [Form of Attestation] hereto may be updated or changed by Buyer as necessary to ensure that the Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- (f) Documentation. At Buyer's option, the Parties, each at the Buyer's expense, shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

4.4 Tax Credits and Financial Incentives

- (a) Buyer agrees to provide Seller information and documentation in support of Seller's rights and interests in Internal Revenue Service tax related benefits. In connection with Buyer's rights and interests in performance based incentive payments to be made under the CSI after the Actual Commercial Operation Date, Seller agrees to cooperate with Buyer,

including signing authorizations needed by Buyer, to obtain any such performance based incentives.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment

- (a) During the Term on a monthly basis Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer, in accordance with Article 4. Such payment is full compensation to Seller for the Delivered Energy received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form acceptable to the Buyer, and must include a unique invoice number.
- (b) All payments shall be made on or before thirty (30) days after receipt of an invoice. Each Party shall make payments by electronic funds transfer, if available, or by other mutually agreeable method(s), to the account designated by the other Party.
- (c) All payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.
- (d) Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall pay the undisputed portion of the invoice and state, in writing, the basis for the dispute. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount in dispute from the date becoming past due under such invoice until the date paid.

5.2 Allocation of Taxes and Possessory Interest Tax

- 5.3 Buyer shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the Generating Facility or the interconnection of the Generating Facility to the Utility's electric distribution system, including property taxes on the Generating Facility; provided, however, Buyer will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Buyer due to the action or omission of Seller. For purposes of this section, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall

be Seller's responsibility. Nothing shall obligate or cause a Party to pay or be liable to pay Taxes for which it is exempt under the law.

ARTICLE 6: REMOVAL OF GENERATING FACILITY

6.1 Removal and Disposal Fund Requirements

- (a) Removal and Disposal Fund – General. In order to ensure that funds are available for the removal of the Generating Facilities and remediation of the Project Sites upon the expiration or termination of this Agreement, Seller agrees to establish an interest bearing escrow account at a federally insured banking institution to hold funds dedicated for such purpose (the "Removal Fund"). The terms for the escrow account shall be reasonably acceptable to the Buyer and the Seller.
- (b) Interest. All interest earned shall become part of the Removal Fund.
- (c) Buyer shall have the right to request and review Removal Fund balances at any point prior to expiration of Term, upon written notice to Seller.
- (d) Deposits. Seller shall make deposits into the Removal Fund in annual amounts of \$6 per KW, on the Actual Commercial Operation Date. Seller shall deposit equal annual amounts on the first day of each subsequent Anniversary Date during the Term. Seller agrees to deposit the annual amount until the Removal Fund (including interest income) has a balance equal to or greater than \$120 per KW of nameplate capacity of the Generating Facilities. Funds from the Removal Fund shall be disbursed, as needed, on a pro-rata per KW basis for individual Project Sites; however, Seller's costs of removal shall not be limited to amounts deposited in the Removal Fund.
- (e) Estimate of Removal Costs. No later than five hundred and forty-five (545) days prior to the expiration of the Term for each Facility, Seller shall provide Buyer a written estimate of the cost to remove the applicable Facility and restore the applicable Project Site to its condition prior to the installation of the Facility. The Parties shall meet and confer within thirty (30) days after such written estimate is received by Buyer to resolve any concerns regarding such estimated cost.

6.2 Abandonment.

If Seller fails to complete its removal and restoration obligations under this Agreement within one hundred eighty (180) Days of after termination of this Agreement, then, in addition to Buyer's other remedies under this Agreement, at law or in equity for such failure, any part of a Facility and all personal property of Seller not removed from the Project Site within one hundred eighty (180) Days after such termination of this Agreement shall be

deemed abandoned by Seller, and shall become the property of Buyer, and Buyer may, at its option, remove and warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion. Buyer shall have no liability to Seller for any property deemed abandoned per this Section 6.2.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

- 7.1 Seller shall provide Buyer with an as-built plan set after project completion.
- 7.2 Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the technical requirements set forth in Exhibits A [Technical and Warranty Requirements] and B [Engineering and Construction Requirements], access rights to the Project Sites, all Requirements of Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit A [Technical and Warranty Requirements] for the equipment detailed therein.
- 7.3 Seller agrees to pay Prevailing Wages in connection with the construction and operation of the Generation Facilities. Seller also agrees to plan subcontracting and staffing levels according to its Workforce Plan in Exhibit F [Workforce Plan].
- 7.4 Milestones
- (a) Generally.

Seller shall diligently pursue all Milestones established pursuant to Exhibits A and B, Schedule 8, and the Expected Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facilities, and that Milestones for the development, financing and construction of the Generating Facilities must be achieved in a timely fashion. Seller will use best commercial efforts to achieve the Milestones mutually agreed to at the time this PPA executed by the Seller and Buyer.

- (b) Weekly Reports.

Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide weekly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to the Buyer (along with any supporting documentation) demonstrating the satisfaction of such Milestone. Seller shall provide to the Buyer additional information concerning Seller's progress towards, or confirmation of,

achievement of the Milestones, as the Buyer may reasonably request from time to time.

(c) Notice of Failure to Achieve a Milestone.

Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify the Buyer in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may, or will have, on any other Milestone, and the measures to be taken to mitigate such impact.

(d) Facility Substantial Completion Inspection.

Seller shall notify Buyer when Substantial Completion of a Facility is achieved. At discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection of the Facility after Substantial Completion. The inspection shall be scheduled for a date, mutually agreeable to Seller and Buyer, which is within ten (10) Business Days of Seller's notification of Substantial Completion of the Facility. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Seller is responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to document actions taken in response to the punch list items. If requested by Buyer, Seller shall schedule and arrange a follow-up inspection for Buyer after all punch list items are resolved. All punch list items shall be resolved prior to the Actual Commercial Operation Date of the Facility except those items specifically excepted by mutual agreement between Buyer and Seller.

(e) Force Majeure Event.

In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed six (6) months. The extension provided for in this Section 7.4 shall be the only effect of a Force Majeure Event on Seller's obligations with respect to the Milestones. Should a Force Majeure Event beyond such six (6) month period, then either Party shall be entitled to terminate this Agreement upon

prior written notice to the other Party. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the Buyer shall not be required to pay the Early Termination Fee. For any termination under this section, Seller shall be required to remove any portion of the Facility then installed, and shall remediate and restore the Project Site to the condition preceding the installation of the applicable Generating Facility as set forth in Section 10.5.

(f) Waiver of Right.

The Buyer may, at its discretion, grant waivers for Seller's failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

7.5 Compliance: Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law, the Local Electric Utility Tariffs or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by this Agreement.

7.6 Maintenance, Audit and Inspection of Records

(a) Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and any lease or license relating to the Generating Facilities, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Buyer for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.

(b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.

7.7 Insurance:

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit E [Insurance Requirements] for the term of this Agreement.

7.8 Commissioning Tests:

Seller shall comply with all applicable Local Electric Utility requirements for pre- operational testing. In addition, no later than fourteen (14) days prior to conducting its Commissioning Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller's Commissioning Tests, Seller shall provide to Buyer written notification of the Actual Commercial Operation Date, including any relevant data demonstrating that Actual Commercial Operation has occurred. Buyer has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days' notice of the date of such tests.

7.9 Obligation to Interconnect:

Seller shall be responsible for the interconnection of the Facility to the Project Site electrical system and shall be solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement. Buyer shall at all times own and be responsible for the operation and maintenance of the Project Site electrical system at and from the Delivery Point.

Seller, with Buyer's assistance, shall, at it's own cost and expense, enter into net metering arrangements by executing such agreements, including Interconnection Agreements, as may be required by the Local Electric Utility to permit the interconnection of the Facility with the Project Site electrical system and to allow any output of the Facility not consumed by the Project Site to flow to the Local Electric Utility. Seller shall promptly provide copies of such agreements and arrangements to Buyer when executed. Seller shall be responsible for all costs under any Interconnection Agreement and any other agreements with the Local Electric Utility including but not limited to the costs of any upgrades to the Transmission System associated with the Interconnection of the Project Site electrical system. Per California net metering laws, there are no interconnection fees.

7.10 Facility Conformance to Buyer Specifications. Seller shall assure that each Facility remains in conformance with the most recent version of the as-built drawings approved by the Buyer and all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Seller has the right to modify the design of the Facility subject to the Buyer's approval, not to unreasonably conditioned, delayed, or withheld. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Facility and the most recent version of the as-built drawings approved by the Buyer, or any specification or requirement of this

Agreement. Within twenty (20) Days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer, which consent shall not be unreasonably withheld or delayed.

7.11 Coordination with Local Electric Utility and Western Electricity Coordinating Council ("WECC")

- (a) Local Electric Utility and WECC Standards. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the Local Electric Utility; (ii) WECC scheduling practices; and (iii) Prudent Utility Practices.
- (b) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit C [Operations Forecasts, Scheduling Protocols, & Monitoring].

7.12 Seller and Buyer shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Facility otherwise would be able to produce Energy. Seller's Planned Outages shall be limited to no more than five (5) calendar days per Contract Year. Seller is responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling. Planned and forced Outages shall be coordinated between Seller and Buyer in accordance with Exhibit C [Operations Forecasts, Scheduling Protocols, & Monitoring].

- (a) Buyer Act Outages. For each Facility, Buyer shall be permitted to be off line for a total of forty-eight (48) Daylight Hours per Contract Year during the Term, during which hours Buyer shall not be obligated to accept or pay for Output from a Facility. If Buyer's outages exceed a total of forty-eight (48) hours, Seller shall estimate the Deemed Genreated Energy for such outages and invoice Buyer for such amount. In the event that a Buyer Act results in a Disruption Period that is greater than thirty (30) calendar days in any Contract Year, or more than eighty (80) days in the aggregate when added to all prior Disruption Periods, then Buyer shall (i) pay Seller for all work required by Seller to disassemble or move the Facility, which work shall be undertaken within thirty (30) days of Buyer notice to Seller, and (ii) continue to make all payments for the Energy that was expected to be delivered during such Disruption Period exceeding thirty (30) days annually, or eighty (80) days in aggregate, and (iii) reimburse Seller for lost revenue associated with any Existing Financial Incentives recaptured by a Governmental Authority during such Disruption Period exceeding thirty (30) days annually, or eighty (80) days in the aggregate. For the purpose of calculating estimated Energy and lost revenue for such

Disruption Periods, Energy shall be deemed to have been produced at the average rate over the preceding twelve (12) months (or, if the Disruption Period occurs within the first twelve (12) months of operation, the average over such period of operation).

- 7.13 Transmission and Distribution Maintenance Information: If either Party receives information from the Local Electric Utility regarding maintenance that will directly affect the Generating Facilities, it will provide the information promptly to the other Party.
- 7.14 Modifications to the Generating Facilities After Its Applicable Actual Commercial Operation Date

After the Actual Commercial Operation Date of a Facility, Seller shall have no right to change, replace or alter the Facility nor attach fixtures or erect additions or structures in or upon the Facility (collectively "Alterations") without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. To the extent any change, replacement or alteration consists solely of modification or replacement of like-kind equipment it shall not be deemed to be an Alteration. Buyer shall not unreasonably delay, condition or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the Alterations, Buyer may impose reasonable requirements, including the reimbursement of any costs incurred by Buyer in responding to Seller's request or inspecting such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary Permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller's routine repair, replacement, or maintenance of the equipment components of the Facility shall not require Buyer's consent, but shall require sufficient advance notice to Buyer.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

- (a) Excuse. Subject to Article 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event. "Force Majeure Event" means an event or circumstance that:

- (i) was not anticipated on the Effective Date.
 - (ii) is not attributable to the fault or negligence or action or inaction on the part of that Party;
 - (iii) is caused by factors beyond that Party's reasonable control; and
 - (iv) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.
- (b) Subject to this Article 8, a "Force Majeure Event" may include, but is not limited to:
- (i) acts of Nature such as storms, floods, lightning and earthquakes;
 - (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - (iii) Local Electric Utility transmission system or distribution system outage or failure not caused by Seller or Seller activities;
 - (iv) war, riot, acts of a public enemy or other civil disturbance;
 - (v) strike, walkout, lockout or other significant labor dispute;
 - (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves; and
 - (vii) a Budgetary Non-Appropriation Event (as defined in Section (d) below)
- (c) Exclusion. "Force Majeure Event" does not include the following:
- (i) economic hardship of either Party except pursuant to 8.1(d);
 - (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Article 8.1;
 - (iii) failure or delay in the granting of Permits;
 - (iv) failures or delays by the Local Electric Utility in entering into, or performing under, all agreements with Seller contemplated by this Agreement;

- (v) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event
- (d) Notwithstanding anything to the contrary, due to the constitutional limitations on Buyer it may choose not to appropriate funds for the procurement of any utility services for Buyer for a particular fiscal year (a "Budgetary Non-Appropriation Event"). During a Budgetary Non-Appropriation Event, if the Buyer does not otherwise have other funds available to make payments otherwise due under this Agreement, the Buyer is not obligated to pay for (and the Seller shall not be required to deliver) any services provided under this Agreement until the Budgetary Non-Appropriation Event has terminated; *provided* that Buyer shall reimburse Seller for payments of any energy delivered during a Budgetary Non-Appropriation Event if funds for utility services are appropriated retroactively. Buyer agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a Budgetary Non-Appropriation Event continues for more than 180 days, Seller (but not Buyer) may terminate this Agreement.

8.2 Conditions

- (a) In addition to the conditions set forth in Article 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:
 - (i) provides prompt written notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
 - (ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - (iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;
 - (iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and
 - (v) provides prompt written notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force Majeure event, the other Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice after the Force Majeure Event. In the event that a Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and this Agreement as it relates to that Facility is thereby terminated, Seller shall be responsible for removing the applicable Facility and restoring the Project Site where the applicable Facility was installed to its pre-installation condition within ninety (90) days after provision of written notice. Seller agrees to work in good faith to keep Buyer informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in a Facility being unable to function for a period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Buyer with a plan to restore the Facility. For avoidance of doubt, Seller termination for a Force Majeure Event under Section 8.1(b)(vii) (Budgetary Non-Appropriation Event) shall be in accordance with the timeframes set forth in Section 8.1(d).

ARTICLE 9: DISPUTE RESOLUTION

- 9.1 The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party, other than the Seller's failure to comply with the Preliminary Requirements in Section 3.7 for which a specific Buyer termination procedure exists pursuant to Section 3.9 which shall not require compliance with Section 9.1. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator mutually agreeable to the parties whom they choose together, and share costs for such equally.
- 9.2 Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy or otherwise negate the requirements of the Government Claims Act, if applicable.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Events of Default Generally.

The following is a list of non-exclusive events of default (each, an “Event of Default,” and collectively “Events of Default”) They shall constitute a Seller’s default or Buyer’s default as specified below and are in addition to those Events of Default specified in Sections 10.2 and 10.3:

- (a) Seller delivers to Buyer, without Buyer’s consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement; or
- (b) If, for twelve (12) consecutive months, a facility does not meet fifty percent (50%) of the expected annual contract quantity for such twelve-month period as specified in schedule 7 of this Agreement after adjustments for weather and lost output events; or
- (c) Seller sells or transfers output to any person other than Buyer, except as may be permitted herein; or
- (d) Either Party fails to maintain any insurance required pursuant to this Agreement, and such failure is not cured within five (5) business days after notice by the other party; or
- (e) A court shall have made or entered any decree or order: (i) adjudging a Party to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of such Party or an arrangement under the bankruptcy laws or any other applicable debtor’s relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of such Party in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of such Party and such decree or order shall have continued for a period of sixty (60) days; or (v) such Party shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- (f) The sequestration or attachment of or execution or other levy by a Governmental Authority on a Party’s interest in this Agreement or the Project Site or any improvements located thereon shall have occurred and such Party shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (g) The occurrence of any act or omission on the part of a Party which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for a Party to lawfully conduct the operations which a Party is required or permitted to conduct on the

Project Site and the defaulting Party fails to cure such breach within thirty (30) days after the non-defaulting Party's written notice or (B) fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed; or

- (h) A mechanics lien is filed against the Facility because of any act or omission of the Seller, that has not been discharged, bonded or contested by the Seller in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice.

10.2 Seller Defaults and Buyer Remedies

- (a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Seller;
- (ii) Seller fails to pay Buyer any undisputed amount owed under this Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount;
- (iii) Seller breaches any material term of this Agreement, (including, where applicable to Seller, the circumstances listed in Section 10.1), and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed; and
- (iv) Any material representation or warranty made by Seller hereunder is false or misleading in any material respect and such misrepresentation is not cured within ten (10) business days from the earlier of (a) written notice from the Party affected by the misrepresentation and (b) the actual discovery or determination by any responsible personnel of a Party of its misrepresentation; provided, that if the Party that has made the misrepresentation commences an action to cure such misrepresentation within such ten (10) business day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days after the expiration of the initial ten (10) business day period.

- (b) Buyer's Remedies. If a Seller Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies expressly provided herein, Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to each Financing Party – the identity of which Seller will have provided to Buyer,

and such Seller Default has not been cured within thirty (30) days of delivery of such notice or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Buyer within such thirty (30) day period if a longer cure period is needed. Any Financing Party is an intended third-party beneficiary of this Article 10. Upon Buyer's exercise of termination rights pursuant to this subsection, Buyer may, at its option, provide written notice to Seller to remove the Facility from the Project Site of the Buyer. If Buyer makes such election, Seller shall be responsible for removing the Facility at its own cost and restoring the site where the Generating Facility was installed to its pre-installation condition, within 180 days of provision of written notice.

- (c) No Early Termination Fee. Buyer's exercise of its rights under this section 10.2 will not obligate it to pay an Early Termination Fee.

10.3 Buyer Defaults and Seller Remedies

- (a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Buyer;
- (ii) Buyer fails to pay Seller any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Seller of such past due amount, which Seller shall send to Buyer 45 days after amount is due;
- (iii) Buyer breaches any material term of this Agreement, (including where applicable to Buyer, the circumstances listed in Article 10.1), if (A) such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;
- (iv) Buyer's modification or change in use of the Project Site that will or would reasonably be expected to impact the Output of the Facility without Seller's prior written consent; and
- (v) Buyer's failure to provide Access Rights to a Facility as required pursuant to Schedule 1.

- (b) Seller's Remedies. If a Buyer Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, and subject to Article 11, Seller may terminate this Agreement and demand payment of the Early Termination Fee by Buyer as specified in Schedule 2 of this Agreement. Upon such termination, Seller shall remove the applicable Facility and shall remediate

and restore the Project Site to the condition preceding the installation of the applicable Facility as set forth in Section 10.5.

10.4 Limitation of Liabilities

- (a) Except as otherwise specifically and expressly provided in this Agreement, and except as may be included in the Early Termination Fee, neither Party shall be liable to the other Party under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its buyers or members to which service is made.
- (b) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).
- (c) To the extent an Event of Default occurs as to an individual Facility, but not all of the Generating Facilities, this Agreement will terminate as to such Facility and will remain in full force and effect as to any Facility not impacted by the default.

10.5 Effect of Termination - Survival of Obligations

- (a) Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon expiration of any Initial or Renewal Terms, or upon termination of this Agreement as to a Facility for any reason other than the exercise of the Purchase Option pursuant to Section 2.2, Seller shall disconnect and remove the Facility from the Project Site and shall remediate and restore the Project Site to the condition preceding the installation of the Facility at no cost to the Buyer. Within one hundred eighty (180) calendar days after payment of the Early Termination Fee, Seller shall remove the Facility and shall remediate and restore the Project Site to the condition preceding the installation of the Facility. If the Facility is located on Buyer's roof, Seller shall ensure that its removal shall not affect the integrity of the roof, including, without limitation, its leak proof capacity (other than ordinary wear and tear). Upon removal of the Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer. Should Seller fail to comply with any obligation to remove the Facility and restore the Project Site as required herein, Buyer shall be entitled to draw on the Removal Fund in order to fulfill Seller's removal and restoration obligations herein, and if any such funds are exhausted, Buyer may exercise any remedies it may have at law or equity against Seller for failure to comply with the terms herein.
- (b) The following sections shall survive termination or expiration of this Agreement:

- (i) Obligations to pay by either Party that have accrued prior to termination or expiration
- (ii) Indemnification obligations
- (iii) Limitation of liability provisions
- (iv) Obligations to remove the Generating Facility and remediate the Project Site
- (v) Obligations (if any) to repair damage caused by either Party (13.27)
- (vi) Obligations to retain records and provide access to same (13.28)
- (vii) Restriction regarding use of Buyer's name for commercial purposes (13.34)
- (viii) This provision, section 10.5.

10.6 Indemnification

To the fullest extent permitted by law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its permitted successors and assigns, and their elective or appointive board, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all claims, liability or losses, including but not limited to those losses arising from (i) personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this Agreement, (iv) fines or penalties payable by the Indemnified Party, or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or, in the case of Seller, the design, construction, use, operation, maintenance, or removal of a Facility, except as may arise solely from the negligence, willful misconduct or violation of law by the Indemnified Party, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

The Indemnifying Party shall defend any claims, liabilities, or lawsuits at its cost and expense. The Indemnifying Party shall defend the Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party's selection

reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnified Party shall take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and no Indemnifying Party shall settle any such claims without the Indemnified Party's prior written consent, unless the settlement includes a full and unconditional release of claims against the Indemnified Party.

If Indemnifying Party refuses or fails to undertake or diligently prosecute such defense on behalf of Indemnified Party, Indemnified Party will have the right to provide its own defense, and Indemnifying Party will reimburse Indemnified Party for such expenditures, including reasonable attorney's fees and costs. Indemnifying Party's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Indemnified Party or any other person, except as may arise solely from the negligence or solely from the willful misconduct of the Indemnified Party, its officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act, inverse condemnation, or any other statutory or legal theory. All obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

To the extent that a portion of Seller's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section shall be subject to any applicable limitations mandated by Civil Code Section 2782.8.

Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided by Seller to Buyer under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards against Buyer as a result of any such claim.

ARTICLE 11: REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Seller's Representations, Warranties and Covenants

- (a) Seller represents, warrants, and covenants to the Buyer that as of the date of the execution of this Agreement:

- (b) Seller is duly organized and validly existing as a <INSERT LOCATION e.g. DELAWARE >limited liability company, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (c) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (f) Seller will deliver to Buyer at the Delivery Point the Delivered Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.
- (g) Prior to conveyance to Buyer, Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and
- (h) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

11.2 Seller's Additional Representations, Warranties and Covenants

- (a) Seller warrants, represents and covenants that all of its operating and maintenance personnel shall be adequately qualified and trained throughout the term of this Agreement.
- (b) Seller shall conform to all requirements in Exhibits A and B of this Agreement and shall operate and maintain the Generating Facilities in accordance with Prudent Industry Practices.

- (c) Seller covenants to maintain and repair the Project Sites if such maintenance and repairs are necessary as a direct result of Sellers' authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

11.3 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

- (a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part; and
- (b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Generating Facility to be installed and operated in accordance with all Requirements of Law.
- (d) Buyer represents that during the five (5) year period prior to the Effective Date, Buyer sufficient funds for the procurement of utility services have been appropriated by the County.

ARTICLE 12: ASSIGNMENT AND FINANCING

12.1 Collateral Assignment and Assignment to Financing Parties

Buyer acknowledges that Seller will be financing the acquisition, operation, and/or installation of a Facility or the Generating Facilities through a lessor, lender, or with financing accommodations from one or more financing institutions (each a "Financing Party"), and that Seller may assign, or in the

case of a sale-leaseback transaction, sell and lease back, the Generating Facilities and/or may secure Seller's obligations to a Financing Party by a pledge or collateral assignment of this Agreement and a first security interest in the Generating Facilities (a "Collateral Assignment"). In order to facilitate a Collateral Assignment by Seller, and with respect to any Financing Party of which Seller has notified Buyer in writing, Buyer agrees to take any reasonable action and provide any documentation reasonably requested by Seller in connection with such a transaction, and agrees as follows:

- (i) Buyer consents to the collateral assignment by Seller to a Financing Party that has provided financing for a Facility or the Generating Facilities, of the Seller's right, title and interest in and to this Agreement.
- (ii) Buyer will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Buyer under this Agreement, inclusive of a reasonable description of Seller default.

Any Collateral Assignment by Seller shall not release either Party of its obligations hereunder. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests and obligations under this Agreement, it shall do so in writing.

12.2 Assignment. Except as otherwise provided in Section Article 12.1 Seller shall not sell, transfer or assign the Seller's rights and obligations under this Agreement, or any interest in this Agreement (collectively, a "Full Assignment"), without the prior written consent of Buyer, provided, however, that, without the prior consent of Buyer, Seller may fully assign this Agreement to an Affiliate of Seller, if Affiliate is wholly owned by Seller. For any assignment requiring Buyer's consent, Buyer has thirty (30) days to approve or deny Seller's written request for Full Assignment (unless the parties mutually agree in writing to a longer period). Upon the completion of a Full Assignment by Seller that follows the requirements of this Agreement, the term "Seller" shall mean the Assignment Assignee. Buyer's consent to any Full Assignment shall not be unreasonably withheld, conditioned or delayed if Buyer has been provided with proof to the Buyer's reasonable satisfaction that the proposed assignee (and subcontractor(s) with whom it has an active contract):

- (e) has experience in operating and maintaining fuel cell or solar PV systems, as applicable, greater than or equal to that of Seller; and
- (f) has the financial capability and credit rating equal to or greater than that of Seller; and
- (g) has the ability to maintain the Facility and provide the services provided pursuant to this Agreement in the manner required by this Agreement; and

(h) provides proof that it complies with the Removal Fund requirements of this Agreement.

Seller will not sell, lease, or otherwise convey its interest in the Facility to any Person unless it also makes a Full Assignment to such Person and such assignment is permitted by this Agreement. Assignments or transfers not permitted or in compliance with this section will be null and void. Any assignment by Seller without required prior written consent of Buyer shall not release Seller of its obligations hereunder.

12.3 Rights of Assignees Upon Event of Default.

In the case where a Seller has defaulted under its obligations under this Agreement, any Financing Party shall have the right but not the obligation to (a) cure such default on Seller's behalf, including the right to pay all sums due and to perform any other act, duty, or obligation required of Seller hereunder, or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement, or (b) assume the Seller's obligations under this Agreement within 45 days of the Seller's default. For avoidance of doubt, in the event that a Financing Party exercises its right contemplated in this section, such Financing Party shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under this Agreement, and thereafter shall become the Successor-in-Interest to Seller under this Agreement.

- (i) In the event that a Financing Party exercises its right to assume all of Seller's rights, interests, and obligations under this Agreement, it shall so assume in writing, and Seller shall have no further obligation to Buyer unless accrued up to that point and will provide notice to Buyer in writing.
- (ii) Nothing herein requires the Financing Party to cure any default of Seller under this Agreement (unless the Financing Party has succeeded to Seller's interests under this Agreement). Except as provided, Buyer has no obligation to deal with a Financing Party under this Agreement unless it has succeeded to Seller's right, title, and interest under this Agreement and become the Seller hereunder.
- (iii) A Successor-in-Interest shall cure any ongoing Seller Defaults promptly after becoming the Successor-in-Interest and no later than 90 days after becoming Successor-in-Interest. If the Successor-in-Interest does not cure all

(1) Seller Defaults, it will also be considered to be in default and Buyer shall have all rights afforded to Buyer against such Successor-in-Interest under this Agreement as in the case of a Seller Default.

- (iv) Buyer will not terminate this Agreement unless it has given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within the periods provided for in this Agreement. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, Buyer may agree to extend such period for cure for a reasonable period of time under the circumstances.
- (v) Buyer shall be relieved of its obligations under this Agreement during the period of time a Seller Default has occurred and is continuing and may exercise its termination rights (upon notification to Financing Party and expiration of the applicable cure periods) pursuant to this Agreement (including without limitation, invoking the use of the Removal Fund to have any facilities/equipment removed). If Buyer chooses not to exercise any available termination rights and when the Successor-in-Interest cures any and all Seller Defaults, the respective Buyer and Seller rights and obligations shall resume for the remainder of the Term. No partial or complete waiver of Buyer's rights shall be implied from Buyer's actions pursuant to this paragraph.

12.4 Payments and Notices

If a Collateral Assignee elects to become the Successor-in-Interest, it will be solely responsible for notifying the Seller and any other Collateral Assignees of this intention. The Buyer shall not be responsible for passing any notices, information and/or communications between the Seller and Collateral Assignees. If a Collateral Assignee does become a Successor-in-Interest, Buyer shall make all payments due under this Agreement to an account specified by such Collateral Assignee. For avoidance of doubt, upon the Collateral Assignee becoming the Successor-in-Interest the previous Seller shall not retain any of its rights or obligations under this Agreement and payments made by Buyer to the Successor-in-Interest shall satisfy Buyer's payment obligations under this Agreement.

Seller is solely responsible to provide contact information, including mailing addresses, email addresses and phone numbers for all Collateral Assignment assignees and Full Assignment assignees to Buyer. Buyer shall notify all Collateral Assignment assignees for which it has contact information within 15 days of a Seller Default. Seller shall be solely responsible for any instance where a Collateral Assignment assignee does not receive notice due to the Seller not providing contact information to Buyer.

Collateral Assignee Changes. Buyer acknowledges and agrees that Seller, subject to the terms and conditions of this Agreement may change one or more Collateral Assignment assignees. In the case that a Seller changes a Collateral Assignment assignee, Seller shall provide Buyer with any relevant, new contact information and payment directions as instructed by Seller. The terms and conditions of this Agreement, apply to any change in Financing Party by Seller.

Notwithstanding any language to the contrary, when any assignee chooses to exercise any rights against Buyer, it shall indemnify Buyer per the terms of this Agreement (and shall agree to do so in writing upon request by Buyer) for any claims arising from the exercise of such rights. By way of example and not limitation, such indemnification obligations shall extend to claims by other Financing Parties and Collateral Assignees asserted against Buyer. Any assignee's ability to exercise any rights against Buyer shall be contingent on the assignee's assumption of such indemnification obligations.

ARTICLE 13: OTHER TERMS & CONDITIONS

13.1 NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given three (3) days after being sent by registered or certified mail, return receipt requested; one (1) day after being sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

Buyer: As listed in Schedule 3 of this Agreement

Seller: As listed in Schedule 3 of this Agreement

Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

13.2 COMPLIANCE WITH ALL LAWS

The Parties shall at all times comply with all applicable laws, ordinances, rules and regulations. The Parties shall keep themselves fully informed of Buyer's charter, codes, ordinances and regulations and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Seller shall

procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under.

13.3 NO DEDICATION

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facility or any portion thereof to the public or to any portion thereof.

13.4 NON-WAIVER OF RIGHTS

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

13.5 HEADINGS

All titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

13.6 NO THIRD PARTY BENEFICIARY

Except as to Seller's Financing Parties referred to in Article 12 of this Agreement, including but not limited to Seller's Financing Parties, who are intended third party beneficiaries of this Agreement and the Grant of Access Rights, neither this Agreement nor the Grant of Access Rights shall not be construed to create rights in, or to grant remedies to, any third party.

13.7 FORWARD CONTRACT

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 GOVERNING LAW

This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California without regard to conflict of law

principles.

13.9 VENUE

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the <INSERT JURISDICTION NAME> or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, <INSERT JURISDICTION>, California.

13.10 NATURE OF RELATIONSHIP

- (i) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.
- (j) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.
- (k) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.
- (l) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work only, and not as to the means by which such a result is obtained. Buyer does not retain the right to control the means or the method by which Seller performs work under this Agreement.

13.11 SUBCONTRACTING

All subcontractors shall be subject to background checks and Seller shall notify Buyer of its intent to use a subcontractor prior to such subcontractor's

entry on the Project Site. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

13.12 GOOD FAITH & FAIR DEALING

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever this Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

13.13 SEVERABILITY

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

13.14 COUNTERPARTS

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.

13.15 COOPERATION

The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

13.16 NECESSARY ACTS AND FURTHER ASSURANCES

The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and

purposes of this Agreement. Buyer shall provide Seller estoppels certificates confirming the status of this Agreement and acknowledging that Buyer has no rights in the Generating Facility. Buyer shall obtain, and pay any costs to obtain, all consents required for Buyer to enter into and perform its obligations under this Agreement from Buyer's lenders, landlords and tenants, if any, and those of any other persons with interests in Buyer's real property upon which Seller's personal property is located. These consents shall include estoppels certificates which recognize the rights of Seller, Seller's Financing Parties, and Seller and Seller's Financing Parties' assignees and successors under this Agreement.

13.17 CONSTRUCTION

The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

13.18 ENTIRE AGREEMENT, INTEGRATION/MERGER CLAUSE

This Agreement, together with all Exhibits and schedules attached hereto, constitute the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

13.19 NON-DISCRIMINATION

Seller shall comply with all applicable Federal, State, and local laws and regulations including Buyer's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability,

medical condition, political beliefs, organizational affiliations, or marital status.

13.20 NON-EXCLUSIVE CONTRACT

This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

13.21 MODIFICATION

This Agreement may be supplemented, amended, or modified only by the mutual written agreement of the Parties.

13.22 HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Seller must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

13.23 DISENTANGLEMENT

Seller shall cooperate with Buyer and Buyer's other Sellers to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data related to Buyer, including, but not limited to, the Buyer Data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

13.24 ACCOUNTABILITY

Seller will be the primary point of contact and assume the responsibility of all matters relating to this Agreement, including those involving the manufacturer and/or deliverer and/or any subcontractor, as well as payment issues. If issues arise, the Seller must take immediate action to correct or resolve the issues.

13.25 CONFLICT OF INTEREST

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

13.26 DAMAGE AND REPAIR

Any and all damages to a Party's property caused by the other Party's negligence or operations shall be repaired, replaced or reimbursed by such Party at no charge to the other Party. Repairs and replacements shall be completed within seventy-two (72) hours of the incident, unless the Parties agree to an extension or another time frame, or if such repairs or replacements cannot be completed within such timeframe, then upon notification by the repairing Party then the Parties shall mutually agree on an alternative timeframe to complete such repair or replacement. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from a Party's vehicles or during performance shall be responsibility of such Party. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer's <INSERT ORGANIZATION NAME AND CONTACT>. Damage observed by either Party, whether or not resulting from such Party's operations or negligence shall be promptly reported to the other Party.

13.27 COOPERATION WITH REVIEW

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits. The Seller shall pay to Buyer the full amount of any

audit determined to be due as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

13.28 AUDIT RIGHTS UNDER STATE LAW

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

13.29 DEBARMENT

Seller represents and warrants that it, its employees, subcontractors and agents are not suspended, debarred, or excluded from, or ineligible from, receiving Federal or state funds. Seller must within 30 calendar days advise the Buyer if, during the term of this Agreement, the Seller becomes suspended, debarred or excluded from or ineligible for, receiving Federal or state funds.

13.30 CALIFORNIA PUBLIC RECORDS ACT

The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller's proprietary information is contained in documents or information submitted to Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in <INSERT APPROPRIATE JURISDICTION> before the Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer's deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

13.31 DEBT LIABILITY DISCLAIMER

The Buyer, including, but not limited to, any source of funding for Buyer, any general fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. Buyer is not be liable for and shall be held harmless and indemnified by Seller for any claims or damages arising out of any other

contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller. Buyer and its agencies and divisions, has no obligation to defend or undertake the defense on behalf of the Seller or its heirs, successors or assigns.

13.32 USE OF BUYER'S NAME FOR COMMERCIAL PURPOSES

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer.

13.33 PAYMENT OF PREVAILING WAGES

The Seller and all subcontractors under the Seller shall pay all workers on all work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of **<INSERT JURISDICTION>**, pursuant to sections 1770 et seq. of the California Labor Code.

13.34 ACCOUNT MANAGER

Seller must assign an account manager to Buyer to facilitate the contractual relationship, be fully responsible and accountable for fulfilling Buyer's requirements. Seller represents and warrants that such person will ensure that Buyer receives adequate support, problem resolution assistance and required information on a timely basis.

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

SELLER: **<INSERT NAME>**

By: By: By:

By: Name: Title:

BUYER: THE <INSERT JURISDICTION NAME>

<INSERT NAME>
<INSERT TITLE>

Approval as to Form:

Approval of <INSERT TITLE>:

<INSERT NAME>
<<INSERT JURISDICTION NAME>> Counsel

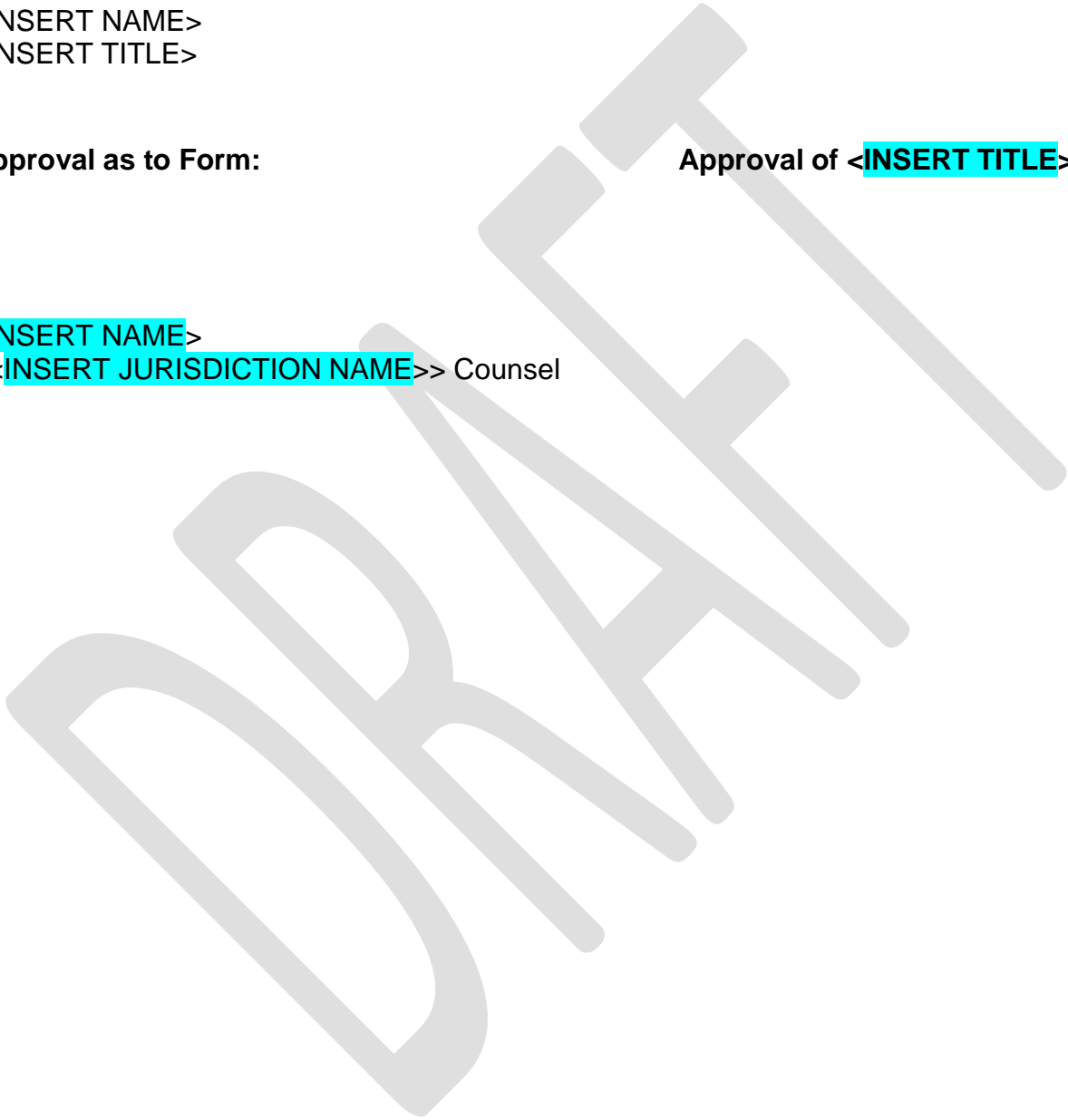


Exhibit A. Technical and Warrant Documentation

Exhibit A

Technical and Warranty Documentation

<insert all system and component Technical and Warranty documents here>

Exhibit B

Engineering and Construction Requirements

Table of Contents

1.	Site Access	3
2.	Project Management	3
2.1	Project Manager	3
2.2	Project Schedule	3
2.3	Submittals.....	2
2.4	Solar Incentives	2
2.5	Interconnection Applications.....	3
3.	System Design.....	3
3.1	Design Review Process/ Phases.....	3
3.1.1	Schematic Design	4
3.1.2	Design Development.....	4
3.1.3	Construction Documents.....	4
3.2	Sellers' License Classification	5
3.3	Design Submittals.....	5
3.4	Permits and approvals.....	5
3.5	Technical Requirements.....	6
3.5.1	General Considerations	6
3.5.2	Electrical Design Standards	6
3.5.3	Modules	7
3.5.4	Inverters	7
3.5.5	Electrical Balance of System Components	8
3.5.6	Mounting Systems.....	9
3.5.7	Corrosion Control	10
3.5.8	Roofing Requirements	10
3.5.9	Shade Structure Requirements.....	11
3.5.10	Ancillary Equipment Enclosures.....	12
3.5.11	Placards and Signage.....	12
3.5.12	Infrastructure for Ground Mount Systems.....	12
3.5.13	Lightning and Surge Protection.....	13

Exhibit B. Engineering and Construction Requirements

3.5.14	Short Circuit Coordination.....	13
3.5.15	Wiring and Cabling Runs	13
3.5.16	Grounding and Bonding.....	15
3.5.17	System Security Requirements.....	15
3.5.18	Shade Structure Lighting	15
3.5.19	Monitoring System, DAS, and Reporting	16
3.5.20	FAA Requirements.....	17
3.5.21	Interconnection	18
3.5.22	Production Modeling	18
3.5.23	Shading.....	18
3.6	Warranties	19
4.	Procurement/Construction	20
4.1	Scope of Supply	20
4.2	Materials and Equipment.....	20
4.3	Line Location	20
4.4	Quality Assurance and Quality Control.....	20
4.5	Removal and Remediation	21
5.	Testing	21
5.1	Acceptance Testing.....	22
5.2	System Startup.....	23
5.3	Proving Period (30 days).....	23
5.4	CLOSE-OUT DOCUMENTATION REQUIREMENTS	25
6.	Operations and Maintenance	25
6.1	Preventive Maintenance	25
6.2	Troubleshooting, Inspection and Additional Repairs.....	27
6.3	Customer Service Support.....	27
6.4	Major Component Maintenance and Repair	27
6.5	Other System Services.....	28
7.	Production Guarantee.....	28
8.	Training.....	28

Exhibit B. Engineering and Construction Requirements

1. Site Access

Seller shall conform to all Buyer rules and requirements for accessing the Project Sites. Road usage, road closures, number of vehicles, access points, etc., may be regulated by the Buyer. Project Site visits shall be approved and proper check-in requirements must be followed. Seller shall provide signage and/or electronic notification of possible operational impacts upon request by Buyer. Unless otherwise determined by Buyer, Seller shall be responsible for providing bathroom and storage facilities for all workers on-site, and shall be responsible for procuring, installing, securing, and removing temporary security fencing and scaffolding.

2. Project Management

2.1 Project Manager

Seller shall assign a Project Manager from their firm upon execution of this Agreement and receipt of Notice to Proceed. The Project Manager shall manage all design, procurement, construction, and commissioning phases of the Project. The construction of PV systems shall be accomplished by Seller with an on-site construction management team. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the Buyer.

2.2 Project Schedule

A Project Schedule is to be prepared and submitted to the Buyer within 14 days of Agreement execution. The Buyer will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the Buyer may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities, dependencies, and sequencing of tasks. In particular, Seller shall include Buyer review of submittals on the Critical Path. The Project Schedule shall describe all elements of project design, equipment procurement, construction and commissioning, and shall be submitted in electronic format (MS Project, Primavera P6). Adobe Acrobat is not acceptable. The schedule shall also reflect the requirement that construction activities must be coordinated to minimize impacts on normal operations at each Project Site, including ongoing construction activities.

Sufficient information shall be shown on the Project Schedule to enable proper control

Exhibit B. Engineering and Construction Requirements

and monitoring of the Work. The Project Schedule shall show the intended time for starting and completing each activity; the duration of each activity; submittal and approval times; design; delivery of materials, equipment and software; all testing; and other significant items related to the progress of the Work. The Project Schedule shall include a CPM network diagram of sufficient detail to show how Mandatory Milestones are intended to be met. If a schedule submitted by Seller includes changes affecting the achievement of Mandatory Milestones, Seller should clearly identify and justify those changes.

Seller is encouraged to phase the Work in a way that supports efficient and effective delivery of design and build services. The Mandatory Milestones set forth in Schedule 8 to this Agreement shall be reflected in the schedule and where applicable, represent the dates upon which each milestone is to be achieved for all Project Sites in this Agreement.

2.3 Submittals

Seller shall provide the submittals set forth in Schedule 8 to this Agreement as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

2.4 Solar Incentives

Seller, with Buyer's reasonable cooperation, shall submit applications for all available energy production incentives (e.g., CSI, SGIP, etc.) or, should the Buyer already have submitted such applications, assume responsibility for all future requirements (agreements, submittals, etc.) related to these programs. This includes actions necessary to ensure compliance with the PG&E's net metering program and all interconnection agreements and related documents for Buyer participation and utilization of the benefits of each applicable program. Seller shall attend all Project Site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the Buyer in satisfying the requirements of the incentive program. Seller shall be responsible for providing updated documentation to incentive program administrators throughout the project, as required by rules of the relevant incentive programs. Incentives shall be paid to the Buyer if the system is to be purchased and to the Seller should the system be owned by a third-party.

2.5 Interconnection Applications

Seller shall be responsible for preparing and submitting interconnection application to appropriate utility and department. Seller shall pay the PG&E Interconnection Agreement application fee, if applicable, for a behind the meter, distributed generation net-metered project.

3. System Design

3.1 Design Review Process/ Phases

The Buyer will review and approve design documentation as detailed in Section 3.3 of this document. Additional documents may be requested by the Buyer as needed. The precise organization and format of the design submittals shall be agreed upon by Seller and the Buyer prior to the first design submission. The Buyer will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Seller shall provide additional detail, as required, at each successive stage of the Design Review. Seller shall not order equipment and materials until Schematic Design submittals have been approved. Seller shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The Buyer will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Seller shall not enter a subsequent design phase without the approval of the Buyer.

Seller shall be held solely responsible for obtaining approvals from the Buyer, including revising designs as necessary until they are given approval by the Buyer and all other required entities and organizations. A description of requirements for each design phase is provided below. System design shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations for construction projects of jurisdictions with authority over the Buyer. Seller is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. Costs for engineering reviews and approvals shall be borne by the Seller. System designs must take into account Buyer aesthetic issues and not conflict with any current Buyer operations.

3.1.1 Schematic Design

Seller shall prepare Schematic Design documents consisting of drawings and other

Exhibit B. Engineering and Construction Requirements

documents illustrating the scale and relationship of Project components, including but not limited to, schematic design studies, site utilization plans, PV array layouts and design information, a shading analysis, electrical single-line diagrams, wiring and conduit schedule, equipment lists and bills of material, and equipment cut sheets or specifications.

3.1.2 Design Development

Design Development documents shall consist of elevations, cross sections, and other drawings and documents necessary to depict the design of the Project. This submittal shall include architectural, structural, geotechnical, mechanical and electrical design documents and equipment specifications to illustrate the size, character, and quality of the Project and demonstrate that it meets the performance specifications defined in this RFP. The Design Development documents shall represent 100% of the intended scope for the Project.

Documents

Seller shall prepare Construction Documents (CDs) depicting the detailed construction requirements of the Project. CDs shall conform to all applicable governmental, regulatory, and code requirements, and all pertinent federal, state, and local permitting agencies. The CDs shall show the work to be done, as well as the materials, workmanship, finishes, and equipment required for the Project. CDs shall comply with and illustrate methods to achieve the performance specifications of this RFP. CDs shall be stamped by the engineer of record and any other required engineering disciplines.

3.2 Sellers' License Classification

In accordance with the provisions of California Public Contract Code §3300, the Buyer requires that Respondents possess, at the time of submission of a Proposal, at the time of award of this Agreement and at all time during construction activities, a General Contractor License (B), Electrical Contractor License (C-10), or Solar Contractor License (C-46). It shall be acceptable for a Respondent that does not possess a C-10 or C-46 License to list a Subcontractor with a C-10 or C-46 License.

Exhibit B. Engineering and Construction Requirements

3.3 Design Submittals

Seller shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the Buyer. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

- Project Site Layout Drawings, with distances from roof edges and existing equipment, as applicable
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Electrical Single-Line and Three-Line Diagrams
- Module Stringing Diagrams
- Electric Wire and Conduit Schedule
- Electrical Warning Labels & Placards Plans
- Lighting Plan (for carports)
- Network Connection Diagrams
- Architectural Drawings
- Structural/Mechanical Drawings including roof penetration details
- Geotechnical Drawings
- Manufacturer's Cut Sheets with Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Seller shall include adequate time for Buyer review and approval of submittals, as well as re-submittals and re-reviews. Minimum Buyer review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

3.4 Permits and approvals

Construction Documents must be reviewed and approved by all authorities having jurisdiction (AHJs) over the work, which may include, but are not limited to: the Buyer, the City or County in which the work is being done, the utility, the Office of Statewide Health Planning and Development (OSHPD), and the California Solar Initiative Program Administrator. Seller shall be responsible for obtaining all approvals and shall account for permitting requirements in their system designs, project pricing, and schedule. Seller shall produce required documentation in sufficient detail to obtain all regulatory

Exhibit B. Engineering and Construction Requirements

approvals requested for design, construction and operation of the system, including but not limited to all federal, state, and local permits. Seller shall attend all Project Site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the Buyer in satisfying the requirements of the incentive program. The Buyer will not grant Seller relief based on Seller's incomplete or incorrect understanding of permitting and approval requirements.

13.35 Technical Requirements

3.5.1 General Considerations

All documentation and components furnished by Seller shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the Buyer and all applicable industry codes and standards. Reference is made in these specifications to various standards under which the Work is to be performed or tested. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Pacific Gas and Electric (PG&E) Interconnection Requirements, California Building Code (CBC) and all other federal, state, and local jurisdictions having authority.

3.5.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Electronic Industries Association (EIA) Standard 569
- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- National Electric Code (NEC)
- Insulated Power Cable Engineers Association (IPCEA)
- Certified Ballast Manufacturers Association (CBMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- Pacific Gas and Electric Utility Requirements
- American National Standards Institute (ANSI)

Exhibit B. Engineering and Construction Requirements

- Occupational Health and Safety Administration (OSHA)
- American Disabilities Act (ADA)
- American Society for Testing and Materials (ASTM)
- National Electrical Contractors Association (NECA)
- National Electrical Testing Association (NETA)
- International Building Code (IBC)
- California Building Code (CBC)
- All other Authorities Having Jurisdiction

3.5.3 Modules

In addition to the above, the PV modules proposed by Seller shall comply with at least, but not limited to, the following:

IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”.

System modules shall be UL1703 listed.

Modules shall be new, undamaged, fully warranted without defect.

Modules shall comply with the State of California SB1 Guidelines for Eligibility, listed at: http://www.gosolarcalifornia.org/equipment/pv_modules.php

Modules shall have minimum maintenance requirements and high reliability, have a minimum 25-year design life, and be designed for normal, unattended operation.

Acceptable mounting methods for unframed modules shall be provided by the manufacturer. Bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.

If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

3.5.4 Inverters

In addition to the above, inverters proposed by Seller must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all PG&E interconnection requirements.

Exhibit B. Engineering and Construction Requirements

- Inverters shall comply with the State of California SB1 Guidelines for Eligibility, listed at: <http://www.gosolarcalifornia.org/equipment/inverters.php>
- IEEE 929-2000 – “Recommended Practice for Utility Interface of Photovoltaic Systems”.
- Inverters must automatically reset and resume normal operation after a power limiting operation.
- The inverter shall be capable of continuous operation into a system with voltage variation of plus or minus 10% of nominal. The inverter shall operate in an ambient temperature range of -20°C to +50°C.
- Inverters shall include all necessary self-protective features and self-diagnostic features to protect the inverter from damage (in the event of component failure or from parameters beyond normal operating range due to internal or external causes). The self protective features shall not allow the inverters to be operated in a manner which may be unsafe or damaging.
- Inverters shall be true sine wave high frequency PWM with galvanic isolation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Inverters shall be capable of adjusting to "sun splash" from all possible combinations of cloud fringe effects without interruption of electrical production.
- Isolation transformers shall be provided for central inverters if the NEC or any other applicable safety standards require the use and application of such transformers. Use of transformerless string inverters is acceptable.
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall have a THD < 5%.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
- Power factor shall be 0.99 or higher.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with Buyer activities.
- Inverters shall have a minimum efficiency, based on the device's power rating, of 96%.
- Inverters shall be 600V minimum. 1000V inverters are acceptable.

3.5.5 Electrical Balance of System Components

- Each proposed PV system shall include, at a minimum, one fused DC disconnect and one fused AC disconnect for safety and maintenance concerns.
- String combiner boxes must include properly-sized fusing, and all metal equipment and components must be bonded and grounded as required by NEC.

Exhibit B. Engineering and Construction Requirements

- String combiner boxes shall be load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- All system wiring and conduit must comply with NEC stipulations, and all indoor and outdoor wiring, outdoor-rated or otherwise, must be enclosed in EMT or RIGID conduit or covered raceway, except adjacent panel connections. [All outdoor EMT shall be weatherproof with weatherproof fittings and boxes, this may include rugged die cast aluminum construction and powder coated finish for added corrosion protection.]
- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

3.5.6 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion, UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. The Seller's design shall sufficiently respond to the design requirements imposed by Federal, State, and local jurisdictions in effect at the time of Agreement execution and any pending code decisions affecting the design shall be identified during Schematic Design. Seller shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- PV modules will be mounted using a combination of Prudent Industry Practices, best practices and manufacturer's instructions to maintain the module warranty.
- Final coating and paint colors shall be reviewed and approved by the Buyer during Design Review from standard colors offered by the manufacturer.

Exhibit B. Engineering and Construction Requirements

- Painting or other coatings must not interfere with the grounding and bonding of the array.

3.5.7 Corrosion Control

In addition to the above, Corrosion Control proposed by Seller must comply with at least, but not limited to the following requirements:

- Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components
- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the Project Site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.

3.5.8 Roofing Requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. A minimum of four feet of clearance shall be provided between PV equipment and the edge of the roof. Clearance guidelines of the local fire marshal shall be followed. The installation of solar or thermal systems will be reviewed for code compliance and adherence to the *State Fire Marshal Solar Photovoltaic Installation Guideline*. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment.

Proposed roof top mounted systems may be ballasted, standing seam attachment, or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Seller prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Seller shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted.

Exhibit B. Engineering and Construction Requirements

- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
- All materials and/or sealants must be chemically compatible.
- Thermal movement that causes scuffing to the roof must be mitigated as part of the mounting solution.
- All penetrations shall be waterproofed.
- Detail(s) for the sealing of any roof penetrations shall be approved in writing to the Buyer, as well as the manufacturer of the existing roofing system, as part of system design review and approval – prior to Seller proceeding with work. The Buyer will make available the roofing manufacturer for each building for consultation with Seller as part of the design process.
- All roofing penetrations and waterproofing shall be performed or overseen by a licensed roofing contractor who is certified by the roofing materials manufacturer for the specific materials or systems comprising each roof upon which a solar system will be installed. The roofing contractor shall also be safety prequalified by the Buyer.
- As part of the design submittals, Seller shall include signed certificates from the roofing manufacturer stating:
 - The roofing contractor is certified installer of Complete Roofing System.
 - The manufacturer's Technical Representative is qualified and authorized to approve project.
 - Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
 - Existing warranty incorporates the new roofing work and flashing work.
- Any damage to roofing material during installation of solar systems must be remedied by Seller.
- The installation of PV modules, inverters and other equipment on building roofs will be designed to minimize visibility of the equipment from the ground.

3.5.9 Shade Structure Requirements

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Project Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structures located in parking lots shall have a concrete bollards installed on support posts. The bollards shall extend up to a minimum elevation of 36"

Exhibit B. Engineering and Construction Requirements

above finished grade. This requirement may be waived at the Buyer's sole discretion.

- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the Buyer's approval.

3.5.10 Ancillary Equipment Enclosures

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing: all ancillary equipment be grouped to a single location per Project Site and shall be surrounded by a fence to prevent access by unauthorized personnel. The fence shall be a six (6) foot high chain link fence with vinyl privacy slats. This requirement may be waived at the Buyer's sole discretion.
- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal Buyer operations and minimizes the visual impacts to the Project Site.

3.5.11 Placards and Signage

Placards and signs shall correspond with requirements in the National Electric Code and the interconnecting utility in terms of appearance, wording, and placement.

Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

3.5.12 Infrastructure for Ground Mount Systems

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing: the site shall be surrounded by a fence to prevent unauthorized personnel from gaining access the site. The fence shall be a eight (8) foot high chain link fence with vinyl privacy slats.
- Gates shall be installed to enable site access for trucks.
- A pathway a minimum of ten (10) feet wide passable by a maintenance truck shall be provided within the array fence to allow for access to all equipment enclosed within the fence area.
- Access to water for maintenance (module cleaning) purposes, as determined adequate by Seller and approved by the Buyer.
- Access to low voltage (120V) AC power to power maintenance equipment and miscellaneous equipment.

Exhibit B. Engineering and Construction Requirements

- Seller shall install and ensure activation of sufficient security cameras on site to monitor array area, connected to the site's security system, in collaboration with the Buyer.
- Seller will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management.
- Seller will be responsible for creating an access road to any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.

3.5.13 Lightning and Surge Protection

Seller shall utilize surge suppressors to protect the appropriate equipment from electrical surges.

3.5.14 Short Circuit Coordination

As part of their design submittals, Seller shall identify overcurrent protective devices installed on the project (AC/DC fuses and AC/DC circuit breakers). Design submittals shall include calculations and demonstrate that the devices installed as part of the PV project are coordinated with the rest of each site's distribution, preventing an unintentional outage due to an isolated PV system fault.

3.5.15 Wiring and Cabling Runs

- Seller shall install all AC conductors in conduit.
- Direct burial wire will not be acceptable. Conduit buried underground shall be suitable for the application and compliant with all applicable codes. PVC shall be constructed of a virgin homopolymer PVC compound and be manufactured according to NEMA and UL specifications. All PVC conduit feeders shall contain a copper grounding conductor sized per NEC requirements and continuity shall be maintained throughout conduit runs and pullboxes. Minimum conduit size shall be ¾". A tracing/caution tape must be installed in the trench over all buried conduit.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC 2011 Article 300.5. The Seller is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the

Exhibit B. Engineering and Construction Requirements

specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.

- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the Buyer as part of Design Review.
- Electro-metallic tubing (EMT) shall be used in indoor, above grade locations and where conduit needs to be protected from damage. EMT shall not be installed underground, outdoors, or embedded in concrete. EMT shall be cold-rolled zinc coated steel and be manufactured to UL and ANSI standards. Fittings shall be watertight and malleable gripping ring compression type. Pressure cast material for nuts of compression ring type fittings and set-screw type connections are not acceptable. EMT can be used outdoor, exposed to weather with approved UL-listed fittings.
- Unless specified otherwise by Buyer, Galvanized Rigid Conduit (GRC) shall be used where to transition from underground to above ground exposed to weather up to 10' above finished grade where subject to physical damage in exposed areas. GRC shall be continuous hot-dipped galvanized manufactured per UL and ANSI requirements. Rigid aluminum conduit is not acceptable. Conduit bodies for use with steel conduit, rigid or flexible, shall be manufactured per UL requirements and shall be cast metal with gasketed closures. Fittings for GRC conduit shall be malleable iron or forged steel with cadmium or zinc coating. Union couplings for joining rigid conduit at intermediate runs shall be of the same material as the conduit. Couplings shall be threaded concrete-tight to permit completing conduit runs when neither conduit can be turned and to permit breaking the conduit run at the union. Set screw connectors are not acceptable.
- All conduits, boxes, enclosures, etc. shall be secured per NEC 690 requirements.
- All conductors shall be insulated copper rated for 600V, minimum. 1000V-rated conductors shall be used for systems rated as such. DC conductors shall be PV Wire or USE-2 600V UL Listed Sunlight resistant wire.
- All items shall be U.L. listed and shall bear the U.L. label.
- All spare conduits shall be cleaned, mandrelled, and provided with a pullwire. Spare conduits shall be required for security cameras for ground mount systems.
- All feeders and branch circuits shall be sized to minimize voltage drop and losses and shall be in compliance with NEC requirements.
- Seller shall furnish, install, and connect combiners and recombiners as necessary to complete the System. Enclosures for combiners and recombiners shall be NEMA 3R rated outdoor or NEMA 1 indoor or higher.
- All systems, conduit, boxes, components, etc. shall be grounded and bonded per NEC requirements and in accordance with Section 3.5.16.

Exhibit B. Engineering and Construction Requirements

- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Seller will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure.
- Design Builder shall install and secure the exposed string cable homeruns along the beams or structure where the combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 1.5% and acceptable wire loss in AC circuits is < 1.5% as well.
- 1000V systems are acceptable.

3.5.16 Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.
- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

3.5.17 System Security Requirements

Seller shall utilize tamper-resistant PV module to rack fasteners for all PV module mounting.

3.5.18 Shade Structure Lighting

- Installation of shade structure PV systems in all locations shall include the installation of new high efficiency lighting. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective.
- Lighting shall be LED lighting or other similar energy efficient lighting system.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.

Exhibit B. Engineering and Construction Requirements

- Minimum horizontal illuminance of one (1) foot-candle shall be maintained at ground level with a uniformity ratio (maximum to minimum) of 15:1.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights to restore light levels to similar condition as before, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new SSS canopy lighting.
- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.

Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the Buyer.

3.5.19 Monitoring System, DAS, and Reporting

Seller shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the Buyer to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Seller shall provide equipment to connect the DAS via Ethernet cable, existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The Buyer will pay for the cost of cellular data service if needed, but not for the modem or other equipment needed to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- AC and DC voltage
- In-plane irradiance
- Ambient and back-of-module temperature (at least two (2) sensors for each, at different positions in the array)
- Inverter status flags and general system status information
- System availability

Exhibit B. Engineering and Construction Requirements

- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed for each site

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the Buyer for the term of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production. Historical data from the full lifetime of the PV system shall be available through the online interface.

The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document.

Additionally, Seller shall make available, at no additional cost, the following:

- Monthly Production report shall be available online to the Buyer personnel.
- System performance data shall be made available electronically to the Buyer in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the Buyer to assist the Buyer in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.
- A Monitoring Manual shall be provided to the Buyer in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

3.5.20 FAA Requirements

Seller shall be responsible to submit the appropriate FAA Form 7460-1, along with any other required forms and documentation, for all proposed PV systems within the approach or takeoff paths or on the property of airports as defined by the Code of Federal Regulations Title 14 Part 77.9.

3.5.21 Interconnection

Exhibit B. Engineering and Construction Requirements

Seller is responsible for obtaining all necessary PG&E interconnection approvals for each PV system being installed. Seller must comply with all interconnection requirements, such as CPUC Rule 21 for the PG&E service territory. Seller is responsible for the proper planning and scheduling of interconnection approvals. Systems installed as part of this project will take advantage of Net Energy Metering (NEM), unless specified otherwise by Buyer or its agents. Seller shall be responsible for ensuring the system design and interconnection qualifies for NEM, as applicable.

3.5.22 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the location closest to the site. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The Buyer will independently verify production models are accurate to the designed systems and utilize simulation results for economic evaluations. Seller shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

3.5.23 Shading

Seller shall adhere to the following requirements in order to avoid excessive shading on modules. For any object near an array that is higher than the lowest point of that array by height H , Seller shall locate the array farther from the object than:

- $2H$ to the North of the object
- $2H$ to the East or West of the object
- $2H$ to any non-cardinal direction of the object

Any Seller whose system design does not adhere to these rules shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.

Any trees that are in the footprint of systems to be installed by the Seller shall be removed by the Seller at their expense, subject to the approval of the Buyer. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The Buyer will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems

Exhibit B. Engineering and Construction Requirements

(at present time or in the foreseeable future), provided the Seller identifies these trees during the design process. The Seller shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Seller's responsibility.

3.6 Warranties

Seller shall provide a comprehensive ten (10) year warranty on all solar energy equipment for electricity generation (PV Modules & inverters) to provide for no-cost repair and replacement of the system for any expenses not otherwise covered by the manufacturer.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (20) years of operation.
- Inverters: Inverters shall carry a minimum 10-year warranty (direct purchase price must include a 20-year warranty).
- Meters: At minimum, meters shall have a one (1) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- Mounting system: twenty (20) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: the remainder of system components shall carry manufacturer warranties conforming to industry standards.

All work performed by Seller must not render void, violate, or otherwise jeopardize any preexisting Buyer facility or building warranties or the warranties of system components.

4. Procurement/Construction

4.1 Scope of Supply

Seller shall provide all necessary labor, materials, equipment, and services required to install complete integrated turnkey PV systems. Seller shall supply all solar modules, mounting equipment, inverters, AC and DC disconnect switches, metering, related wiring, monitoring equipment, and all ancillary equipment necessary to install the PV system and interconnect it to the Buyer electrical distribution system. The PV system installations shall comply with all contract requirements, technical specifications, approved design documents, and applicable regulatory codes and requirements. Seller shall submit As-Built Construction Drawings in hard copy with two (2) sets and an electronic copy in DWG format on compact disc to the Buyer after completion of the

Exhibit B. Engineering and Construction Requirements

Proving Period for each system at each site.

4.2 Materials and Equipment

Materials and equipment incorporated in the Work shall be new and suitable for the use intended. No material or equipment shall be used for any purpose other than that for which it is designed, specified or indicated.

Seller shall use means necessary to protect the materials and equipment before, during and after installation. Seller shall promptly replace lost or damaged materials and equipment with equal, or Buyer-approved, replacements, or repair them, at no additional cost to the Buyer.

4.3 Line Location

Seller will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure. In addition to USA Dig and utility line-locating, a private line-locator must be used for any project requiring underground work.

4.4 Quality Assurance and Quality Control

Seller shall implement a Quality Assurance / Quality Control (QA/QC) plan for construction activities on Buyer sites. At least 30 days prior to the planned commencement of construction, Seller shall submit a copy of the QA/QC Plan for review and approval by the Buyer.

To ensure the highest quality of the installation, Seller shall:

- Implement policies and procedures to ensure proper oversight of construction work, verification of adherence to construction documents and contractual requirements, and rapid identification and mitigation of issues and risks.
- Utilize best practice methods for communicating progress, performing work according to the approved Project schedule, and completing the Project on-time.
- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Provide equipment marking, as well as labeling and signage for the Project that shall be removed after Project completion.
- Fully comply with all applicable notification, safety and Work rules (including Buyer safety standards) when working on or near Buyer facilities.
- Provide Special Inspection for trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements.

Exhibit B. Engineering and Construction Requirements

- Route all electrical collection system wiring and conduits in a neat and orderly fashion and in accordance with all applicable code requirements. All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- Torque all mechanical and electrical connections and terminations according to manufacturer specifications, with marking/sealing of all electrical terminations at appropriate torque point.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

4.5 Removal and Remediation

SELLER SHALL REMOVE ALL CONSTRUCTION SPOILS, ABANDONED FOOTINGS, UTILITIES, CONSTRUCTION EQUIPMENT AND OTHER BYPRODUCTS OF CONSTRUCTION. ALL DISTURBED AREAS INCLUDING LANDSCAPING, ASPHALT, AND CONCRETE SHALL BE REMEDIATED TO BE IN EQUAL OR BETTER CONDITION THAN FOUND. PARKING LOTS SHALL BE RE-STRIPED IF AFFECTED BY CONSTRUCTION OPERATIONS.

THE SITE SHALL BE LEFT CLEAN AND FREE OF DEBRIS OR DIRT THAT HAS ACCUMULATED AS A RESULT OF CONSTRUCTION OPERATIONS.

5. Testing

Following completion of construction, Seller shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be prepared prior to substantial completion of construction. A detailed description of each phase is provided below.

5.1 Acceptance Testing

Seller shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

Exhibit B. Engineering and Construction Requirements

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed test methods, including sample calculations and reference to standards as required or applicable, and list of tested equipment.
- Pre-test checklist to ensure readiness and any safety measures are in-place.
- Detailed list of all items to be inspected and tests to be conducted.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level voltage (open circuit) and amperage (under load) testing for all PV strings. Amperage testing shall be performed concurrently with irradiance testing.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified. Performance testing shall be performed concurrently with irradiance testing.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Seller conducts all Acceptance Testing based on the Testing Plan, Seller shall submit a detailed Acceptance Test Report to the Buyer for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

5.2 System Startup

Following Buyer approval of the Acceptance Test Report, Seller shall conduct tests over twenty-four (24) hours and at a time resolution of fifteen (15) minutes, recording the following data:

- Average AC output (kW)

Exhibit B. Engineering and Construction Requirements

- Average DC output (kW)
- Hourly PV system production (kWh)
- AC and DC voltage
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information

These data points shall be presented in a manner that best depicts the actual performance of the system for Buyer review and approval and shall be submitted as part of the Startup Test Report.

5.3 Proving Period (30 days)

Upon completion of Acceptance Testing and System Startup, Seller shall monitor the system during a thirty (30) day Proving Period and submit a report for Buyer review. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- AC and DC voltage
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Seller shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the Buyer for access throughout the Proving Period. Seller shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

Exhibit B. Engineering and Construction Requirements

All data and reports required in Section 3.5.20 shall be fully functional and available to the Buyer at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Seller, deficiencies shall be identified with proposed corrective actions submitted to the Buyer. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the system.

At the end of the Proving Period, Seller will provide notice to Buyer confirming that the system is operating as designed and in compliance with this Exhibit.

5.4 CLOSE-OUT DOCUMENTATION REQUIREMENTS

Close-Out documents prepared by Seller must include at minimum, but not limited to, the following items:

- Final As-Built Drawing Set with accurate string diagram and estimated Year 1 monthly production
- Megger test Results
- Module flash-test results with serial numbers
- Component warranties
- Signed inspections cards from AHJ and required Special Inspections
- Interconnection agreements and Permission To Operate
- Owner's Manual

6. Operations and Maintenance

Seller shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior). Maintenance by Seller shall ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of any panel wash-downs shall be determined by Seller based on system monitoring data. Environmental sensors will be evaluated on an ongoing basis to ensure accuracy.

Seller shall perform the following maintenance services, at a minimum, as described in the following sections:

6.1 Preventive Maintenance

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/amperage) at inverter and string levels

Exhibit B. Engineering and Construction Requirements

- System visual inspection and necessary corrections:
 - Inspect for stolen, broken or damaged PV modules, record damage and location.
 - Inspect PV wiring for loose connections and wire condition. Inspect for wires in contact with the structure or hanging loose from racking.
 - Check mechanical attachment of the PV modules to the racking.
 - Check attachment of racking components to each other and the structure.
 - Verify proper system grounding is in place from panels to the inverter.
 - Check conduits and raceways for proper anchorage to structures.
 - Inspect all metallic parts for corrosion.
 - Check combiner boxes for proper fuse sizes and continuity.
 - Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration, etc).
 - Inspect disconnects for proper operation.
 - Survey entire jobsite for debris or obstructions.
 - Inspect fasteners for proper torque and corrosion.
 - Inspect inverter pad for cracking or settling.
 - Inspect electrical hardware for proper warning and rating labeling.
 - Review as built documentation as needed.
 - Inspect alignment of arrays and racking to identify settling foundations or loose attachments
 - Inspect operation of tracking hinges, pivots, motors and actuators if present.
 - Check for proper operation and reporting of monitoring hardware.
 - Inspect sealed electrical components for condensation buildup.
 - Inspect wiring and hardware for signs of damage from vandalism or animal damage.
- Routine system maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work.
- Module cleaning, as deemed necessary by Seller.
- Routine DAS maintenance to include sensor calibration and data integrity check.

6.2 Troubleshooting, Inspection and Additional Repairs

Dispatch of field service resources (via automated or manual means) for repairs as necessary to maintain system performance.

Seller will respond in a timely manner upon recognition of an alarm condition to ensure, using commercially reasonable efforts, that the Performance Guarantee requirements outlined in this Agreement are achieved.

Exhibit B. Engineering and Construction Requirements

6.3 Customer Service Support

Support telephone line made available to Buyer staff to answer questions or report issues. Contact Seller at: [provide contact information here]

6.4 Major Component Maintenance and Repair

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer's warranty specifications. Those include but are not limited to the following annually:
 - Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
 - Inspect, clean/replace air filter elements
 - Check for corrosion on all terminals, cables and enclosure.
 - Check all fuses.
 - Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
 - Check condition of all the AC and DC surge suppressors.
 - Torque terminals and all fasteners in electrical power connections.
 - Check the operation of all safety devices (E-stop, door switches).
 - Record all operating voltages and current readings via the front display panel.
 - Record all inspections completed.
 - Inform inverter manufacturer of all deficiencies identified.
 - Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.
- Customer advocacy with vendors.

6.5 Other System Services

- O&M Manuals – Seller shall provide one (1) copy of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the Buyer as they become available.
- Management of long term service and warranty agreements, ongoing.

Exhibit B. Engineering and Construction Requirements

- Seller shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the Buyer on a minimum monthly basis.

8. Training

The Respondent shall provide emergency shutdown training and standard PV safety training for Buyer's personnel.

Upon exercise by Buyer of Purchase Option, Seller shall make additional system training available to Buyer at an additional, agreed upon price. Training shall included, at a minimum, the following:

- PV system safety, including shut-down procedures
- PV module maintenance and troubleshooting
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- DAS and monitoring solution, including standard and custom reporting

Exhibit C

Operations & Scheduling

3 Notices

All Schedules, Schedule changes, Scheduled Outages, Forced Outages, and planned outages are to be submitted to Buyer by email to the following persons: [AGENCY CONTACT NAME, EMAIL, PHONE.]

3 Meters

3.1 Metering

Proposers shall install utility-grade revenue, electronic, bi-directional meter per this Agreement and Exhibit B. The meter must meet all CSI rebate requirements and Local Utility requirements.

Exhibit D

Form of Attestation

FORM OF ATTESTATION Environmental Attribute Attestation and
Bill of Sale

[Name of Seller] (“Seller”) hereby sells, transfers and delivers to the [Name of Public Agency] (“Buyer”) the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such terms are defined in the Regional Power Purchase Agreement (“Agreement”) dated [Date], between Buyer and Seller) arising from the generation for delivery to the grid of the energy by the Generating Facility described below:

Facility name and
location: Project

Name:

EIA

ID #:

CEC

ID#:

ISO Meter ID#:

Fuel Type:

Capacity

(MW):

Commercial Operation Date:

Dates	MWhs generated	Dates	MWhs generated
-------	----------------	-------	----------------

In the amount of one Environmental Attribute for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
3. The Facility generated and delivered to the grid the energy in the amount

Exhibit

indicated as undifferentiated energy; and

(Check one)

_____ Seller owns the facility.

_____ To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Name: _____ Phone: _____

WITNESS MY HAND,

Seller: By:

Title: Date:

Exhibit E
Insurance Requirements

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of the Buyer, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of this Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverage's and provisions:

1. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the Buyer. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04

13. Pursuant to the provisions of this Agreement insurance effected or procured by the Seller shall not reduce or limit Seller's contractual obligation to indemnify and defend the Indemnified Parties.

2. **EVIDENCE OF COVERAGE:** Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to Buyer, evidencing that all required insurance coverage is in effect. The Buyer reserves the rights to require the Seller to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices.

The Seller shall not receive a Notice to Proceed with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the Buyer. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies. In addition, Insurance policies and coverage(s) written on a claims-made basis:

- Shall be maintained during the entire term of this Agreement or phase of this Agreement to which it applies and until 5 years following the letter of termination of this Agreement/Phase of this Agreement and acceptance of all work provided under this Agreement.
- The retroactive date must be before the execution date of the contract or the beginning of contract work.
- If coverage is canceled or non-renewed, and not replaced with another claims-

Exhibit E. Insurance Requirements

made policy form with a retroactive date prior to the contract effective, or start of work date, the Seller must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. **ADDITIONAL INSURED:** All insurance required herein with the exception of Automobile Liability, Workers' Compensation, Employers Liability, and Professional liability shall be endorsed to name as additional insured: Buyer or, its <Insert Buyer's Governing Authority Name>, the individual members thereof, and all Buyer's officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

The additional insured condition described above shall apply to all public entities entering into this agreement, with the specific entity and its respective related parties substituted for the Buyer. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the Work shall be covered as an additional insured under the same coverage as provided the Buyer as respects their ownership of the property and the work to be done thereon.

5. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the Buyer. Acceptance of Seller's insurance by Buyer shall not relieve or decrease the liability of Seller hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Seller.

6. **SUBCONTRACTORS:** Seller shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit F. Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

7. **JOINT VENTURES:** If Seller is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:

- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies.
- Coverage shall be at least as broad as in the ISO Forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured.

8. **NOTICE OF CANCELLATION:**

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Buyer insurance requirements without 30 days' prior

Exhibit E. Insurance Requirements

written notice of such cancellation or change being delivered to the Buyer or their designated agent.

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self insurance shall be approved in writing by the Buyer upon satisfactory evidence of financial capacity. Seller's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement.

The Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined below.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$2,000,000
- c. Personal Injury -\$2,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the Buyer:

The additional insured requirement described above applies to each Agreement, with the specific entity and its respective related parties substituted for the County of Alameda. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

Exhibit E. Insurance Requirements

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than one hundred fifty thousand dollars (\$150,000) per claim /event.
- c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

7. CLAIMS MADE COVERAGE

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply In the event that a single bidder is awarded multiple bid packets with simultaneous construction periods, the Buyer reserves the right to increase insurance limits after bid award but prior to commencement of construction to reflect the higher exposure.

1. Commercial General Liability Insurance for bodily injury (including death) and

Exhibit E. Insurance Requirements

property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$4,000,000
- c. Products/Completed Operations aggregate ** -
\$4,000,000
- d. Personal Injury -\$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations
- b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by the Buyer.
- c. Contractual Liability expressly including tort liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.
- d. Personal Injury liability
- e. Independent Contractor's Protective
liability
- f. Severability of interest
- g. Explosion, Collapse, and Underground Hazards (X, C and U)
- h. Broad Form Property Damage liability

3. General liability coverage shall not be endorsed to exclude the following:

a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to tort liability assumed by the insured under written contract with the Buyer.

b. X C & U (Explosion, Collapse and Underground) Endorsement:

Exhibit E. Insurance Requirements

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all states coverage.

b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall insure project material and equipment intended to become a part of the installation against risks of direct physical loss while in transit, in temporary storage, and while at the installation site. The coverage shall be in the amount of the value of the completed project.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the Buyer, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

a. Each occurrence -\$2,000,000

b. General aggregate -\$4,000,000

c. Personal Injury -\$2,000,000

2. General liability coverage shall include:

- Premises and Operations
- Personal Injury liability
- Severability of interest

Exhibit E. Insurance Requirements

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage including broad form all-states coverage.
- Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

Exhibit F – Workforce Plan

Insert here

Exhibit G – Form of Certificate

Insert here

SCHEDULES

I. Schedule 1: Grant of Access Rights

Location of Site:
Agency:

RIGHT OF ENTRY FOR CONSTRUCTION AND MAINTENANCE

This Right of Entry for Construction and Maintenance Agreement (this "License") is made and entered into this _____ day of _____ (the "Effective Date"), by and between the [Participating Agency] _____ as licensor ("Buyer"), and [Vendor] as licensee ("Seller"). _____ and _____ are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Reference is made to the Power Purchase Agreement dated as of DATE (the "Agreement") and entered into by and between the undersigned the <INSERT JURISDICTION NAME> ("Buyer") and <INSERT SELLER'S NAME> ("Seller"), pursuant to which Seller will install, finance, operate, and maintain a solar photovoltaic system at [Insert Site Address] (the "Site"); and

WHEREAS, capitalized terms used herein but not defined herein shall have the meaning set forth in the Agreement.

By our signature below, we hereby grant to Seller and to Seller's agents, employees, contractors and subcontractors, commercial access rights during the Term of this License (the "Access Rights"), We further acknowledge and agree that:

WITNESSETH

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual Agreements by the Parties set forth herein and other good and valuable consideration, this License is subject to the following terms and conditions:

1. Grant of License

1.1 [Participating Agency] hereby grants to [Vendor], its employees, consultants, representatives and contractors a non-exclusive, temporary license to enter the Site for the purpose of installation, operation, and maintenance of the applicable Facility or Generating Facilities, including commercially reasonable access to, on, over, under and across the Site during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the applicable Facility or Generating Facilities or the Site.

1.2 This License is subordinate to all prior or future rights and obligations of the [Participating Agency] in the Site, except that the [Participating Agency] shall grant no rights inconsistent with the reasonable exercise by the [Vendor] of its rights under this License.

2. Use

2.1 Seller may use the Site for the erection, installation, ownership, operation, maintenance, repair, replacement, improvement and removal of the Facility or Generating Facilities as well as for all other activities to be conducted by Seller in connection with the performance of its obligations and exercise of its rights under the Agreement. Seller will comply with all laws, ordinances, orders, rules and regulations (state, federal or local), specifically including without limitation all environmental and occupational, health and safety requirements relating to Seller's use and/or occupancy of the Site and the Facility or Generating Facilities. Seller shall confine maintenance and operations activities to the Site or to other portions of the Site as may be expressly permitted by Buyer in writing.

3. Utilities

3.1 Buyer and Seller understand and acknowledge that pursuant to the terms of the Agreement, Buyer shall provide certain specified utilities to the Site in connection with Seller's construction, start-up, maintenance, repair, replacement and operation of the Facility or Generating Facilities. In connection therewith, Seller's use of the Site shall include the non-exclusive right to the use of water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, and drainage ditches, if available. Exercise of Seller's license to utilize these utilities as set forth herein and in the Agreement shall be subject to Buyer's prior written approval which may be withheld should Buyer, in its sole discretion, determine that the proposed use will interfere or otherwise adversely impact Buyer systems, operations or activities. Buyer shall maintain and repair all utilities up to the delivery points identified in the Agreement, and Seller will have the obligation to maintain and repair all utilities, including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided, from said delivery points to and then within the Site.

4. Maintenance Activities/Seller's Security Obligations

4.1 Except in the event of an emergency, Seller agrees to give Buyer fifteen (15) days prior written notice of its maintenance activities to coordinate and schedule such activities so as to avoid interference, impact or conflict with Buyer's use of the Site or areas adjacent to or proximate to the Site. Notwithstanding the security measures Buyer maintains around the Site and adjacent to the Site, Seller shall be solely responsible for undertaking reasonable security measures to ensure and maintain the security of the Facility or Generating Facilities and the Site, which includes, but is not limited to, the security of the wiring and the inverters. As such, Seller shall bear the sole cost and responsibility of replacing any equipment or other property stolen from or otherwise damaged at the Site, whether owned by Buyer or Seller, due to Seller's failure to provide reasonable security measures except if such damage is the result of Buyer's negligence or willful misconduct.

Seller shall contact Buyer's designated contact person as described in Attachment 2 to coordinate operation and maintenance activities on the Site. Buyer shall provide Seller with at least seven (7) calendar days written notice of any Buyer activities proximate to the Facility or Generating Facilities.

5. Seller to Comply with Buyer's Security Measures, Rules and Regulations

5.1 Without in anyway limiting Seller's responsibility to provide adequate security as set forth in the foregoing, Seller hereby agrees to abide by any and all Buyer security measures and procedures currently in place at or adjacent to the Site. Seller agrees to repair to the current standards all roads, driveways and walkways damaged by Seller equipment or deliveries that are now and may be located in and around the Site necessary for proper ingress and egress to and from, and occupancy of, the Site. Seller will observe all speed limits and other rules and regulations established by Buyer with respect to such roads and driveways.

6. Compliance with Safety Requirements

6.1 Seller shall comply with all safety requirements specified in any safety program established by Buyer as well as any required by state, federal or local laws and ordinances.

6.2 Buyer will provide Seller with a copy of all Buyer established safety programs and will provide Seller with written changes to these programs, if any, within a reasonable time of their adoption by Buyer. Seller or its designee (including any Financing Party) shall have the right without cost to access the Site to perform its obligations under the Agreement. Buyer will not charge Seller any rent for such right to access the Site.

7. No Interference with Buyer's Use

7.1 This License and the use hereunder by Seller shall not interfere or permit interference with Buyer's use of its Site for _____ purposes. Seller shall repair any damage to the Site and any facilities, equipment, persons or property located

in or adjacent to the Site. Nothing in this License shall supersede the terms and conditions of the Agreement. To the extent that the terms and conditions of the Agreement and this License conflict, the Agreement shall govern.

8. Security Interest

8.1 The Financing Parties have a first priority perfected security interest in the Facility or Generating Facilities. Seller and the Financing Parties are intended third party beneficiaries of Buyer's Agreements in this License.

9. Generating Facility Personal Property of Seller/Not a Fixture

9.1 The applicable Facility or Generating Facilities are the personal property of Seller, and shall not be considered the property (personal or otherwise) of Buyer upon installation of the applicable Facility or Generating Facilities at the applicable Site. Each applicable Facility is more particularly described in the Schedule 4 of the Agreement.

9.2 The applicable Facility or Generating Facilities shall not be considered a fixture of the applicable Site. Accordingly, Buyer hereby grants Seller and any Financing Party the right to file any UCC-1 financing statement or fixture filing that confirms its interest in the applicable Facility or Generating Facilities.

10. No Interference with Access Rights

10.1 The term shall commence on the Effective Date and shall terminate upon expiration of the one-hundred eighty (180) day period provided for in Section 10.5 of the Agreement, which allows for the removal of the Facility or Generating Facilities ("Term"). During the Term, Seller's access rights are preserved and Buyer shall not interfere with or permit any third party to interfere with such rights or access. The Access Rights granted hereunder shall be irrevocable during the Term of this License, except upon expiration or earlier termination of the Agreement regarding a Facility, in which case it shall only be revocable as it relates to the applicable Facility or Generating Facilities.

11. Access Rights Upon Termination

11.1 Upon any rejection or other termination of this License pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall execute a new grant of access rights in favor of the Financing Parties (or their designees) on substantially the same terms as this Grant of Access Rights.

12. Compliance with Laws

12.1 [Vendor] shall conduct all activities in compliance with all Federal, State and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies ("Laws and Regulations"), as such Laws and Regulations exist during the Term of this License.

13. Indemnification

13.1 To the fullest extent permitted by law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless, with counsel of its own choosing (subject to terms of the next paragraph), the other Party, and its permitted successors and assigns, and their elective or appointive board, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all claims, liability or losses, including but not limited to those losses arising from (i) personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this License, (iv) fines or penalties payable by the Indemnified Party, or (v) any other actions resulting in damages, losses or liabilities to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this License or, in the case of Seller, the design, construction, use, operation, maintenance, or removal of the Generating Facility, except as may arise solely from the negligence, willful misconduct or violation of law by the Indemnified Party, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnifying Party shall not be required to defend, indemnify and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

13.2 If requested by any of the Buyer's Indemnified Parties, Seller shall defend any claims, liabilities, or lawsuits at its cost and expense. In an action or claim against Buyer in which Seller is required to defend Buyer, Seller shall have reasonable discretion in choosing legal counsel retained by Seller to provide Buyer's defense, provided however, that Buyer shall have the right to approve such legal counsel, which approval shall not be unreasonably withheld, conditioned or delayed. If Seller refuses or fails to undertake or diligently prosecute such defense on behalf of Buyer, Buyer will have the right to provide its own defense, and Seller will reimburse Buyer for such expenditures, including reasonable attorney's fees and costs. Seller's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Buyer or any other person, except as may arise solely from the negligence or solely from the willful misconduct of Buyer, its officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act, inverse condemnation, or any other statutory or legal theory. All of Seller's obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

14. Insurance

14.1 [Vendor] shall maintain the policies of insurance in amounts and with coverage as set forth in Exhibit E [Insurance Requirements] of the Agreement.

15. Taxes and Assessments

15.1 It is expressly understood that this License is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Site to Seller. Should taxes or assessments be levied upon any interest in this License, Seller agrees to pay all lawful taxes, assessments or charges created by this License.

16. Continuing Liability

16.1 No termination of this License shall release the Seller from any liability or obligations hereunder resulting from any acts, omissions or events happening prior to the termination of this License and restoration of the Site to its prior condition.

17. Attorneys' Fees

17.1 In the event of a dispute between the Parties with respect to the terms or condition of this License, it is agreed that each Party, including the prevailing Party, must bear its own costs and reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

18. Assignment

18.1 Seller shall not sell, transfer or assign the Seller's rights and obligations under this License, or any interest in this License, without the prior written consent of Buyer, except as may be permitted with regards to assignment concurrently with the Agreement, in which case any proposed sale, transfer or assignment of Seller's rights and obligations under this License must be carried out in accordance with Section 12 of the Agreement.

19. Notices

19.1 All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service), sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.

19.2 All such notices or other communications shall be deemed received upon the earlier of 1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notices or 2) if mailed as provided above, on the date of receipt or rejection.

To the County of Alameda:

To _____ [vendor]:

20. Entire Agreement

20.1 This License contains all the agreements of the Parties regarding right of entry for construction and supersedes any prior License or negotiations. There have been no representations by the Seller or understandings made between the Seller and the Buyer regarding right of entry for construction other than those set forth in this License. This License may not be modified except by a written instrument duly executed by the Parties.

21. Counterparts

21.1 This License may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this License by their duly authorized representatives on the date first above written.

II. Schedule 2: Early Termination Fee

The Early Termination Fee with respect to each Facility under this Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Early Termination Fee (\$/Wdc including costs of removal)
1	
2	
3	
4	
5	
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7	
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10	
11	
12	
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19	
20	

III. Schedule 3: Notice Information _

Buyer:

<Insert Buyer Name>

<Insert Buyer Address>

Seller:

<Insert Seller Name>

<Insert Seller Address>

Financing Party:

With a copy to:

[]

[To be provided by Seller when known]

IV. Schedule 4: Description of Generating Facilities

V. Schedule 5: Project Site Description

VI. Schedule 6: Contract Price

The kWh Rate with respect to the Generating Facility under this Agreement shall be in accordance with the following schedule(s).

<INSERT PROJECT SITE NAME> Generating Facility:

Year of System	kWh Rate[*] (\$/kWh)	Year of System	\$/kWh Rate[*] (\$/kWh)
1	\$0.0	11	\$0.0
2	\$0.0	12	\$0.0
3	\$0.0	13	\$0.0
4	\$0.0	14	\$0.0
5	\$0.0	15	\$0.0
6	\$0.0	16	\$0.0
7	\$0.0	17	\$0.0
8	\$0.0	18	\$0.0
9	\$0.0	19	\$0.0
10	\$0.0	20	\$0.0

[*Calculated based on the year 1 kWh Rate multiplied by <X>% inflation factor each year.]

VII. Schedule 7: Expected Annual Contract Quantity

Expected Annual Contract Quantity commencing on the Actual Commercial Operation Date with respect to each Facility under this Agreement shall be as follows:

[include Expected annual Contract Quantity set forth separately for each separate Facility]

VIII. Schedule 8: Project Site Milestones

Mandatory Milestones

Mandatory Milestone	Date
50% Schematic Design submittal	TBD
90% Design Development submittal	TBD
100% Construction Documents submittal for permitting	TBD
Approved Construction Documents – All Agency Sites	TBD
Notice to Proceed	TBD
Mobilization	TBD
Substantial Completion	TBD
Final Completion	TBD

1.1 Submittals

Seller shall provide the following submittals as part of its obligations under this Agreement. The cost of developing and providing such submittals shall be included in the Contract Price.

Agreement Submittals

Submittal	Timeline Requirement	Date
I. System Design		TBD
a. System Design Documentation	At each design milestone	TBD
b. Warranties	At Construction Documents milestone	TBD

Schedule 8

c. Testing Plan	At Construction Documents milestone	TBD
d. Training Plan	At Construction Documents milestone	TBD
e. Power production modeling	At Construction Documents milestone	TBD
II. Procurements and Construction		TBD
a. Quality Assurance / Quality Control (QA/QC) Plan	30 days before commencement of construction	TBD
b. Safety Plan	30 days before commencement of construction	TBD
c. As-built Documentation	After completion of Proving Period	TBD
III. Testing		TBD
a. Acceptance Test Results	After Acceptance Test	TBD
b. Startup Test Results	After Startup Test	TBD
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	TBD
d. Proving Period Report	30 days after System Startup	TBD
IV. Training		TBD
a. Training Materials	30 days before Training Session	TBD
b. Monitoring Manual	30 days before Training Session	TBD
c. Operations & Maintenance Manual	30 days before Training Session	TBD

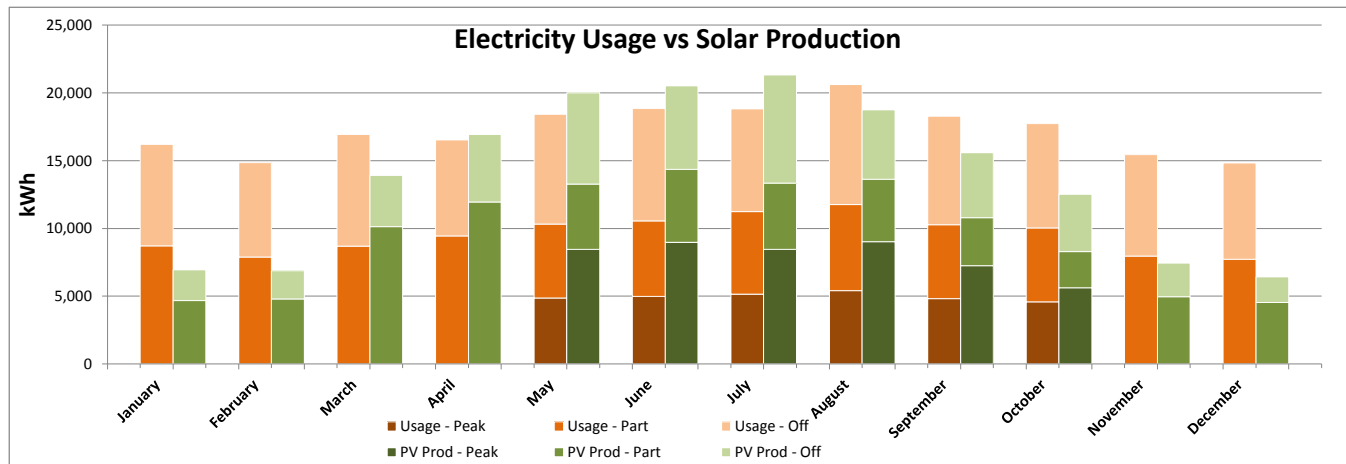
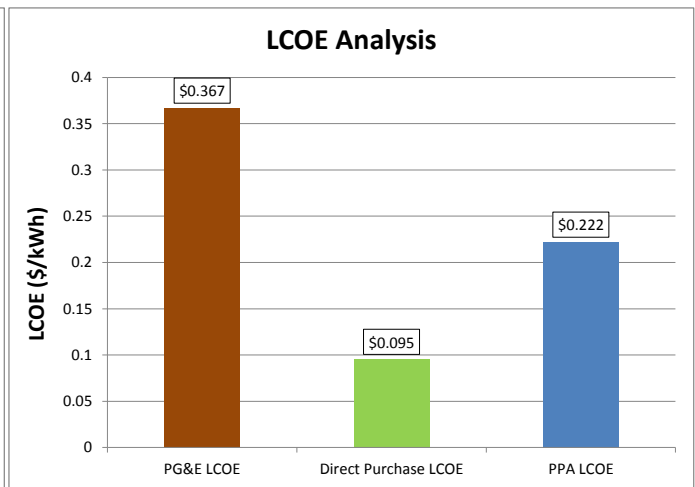
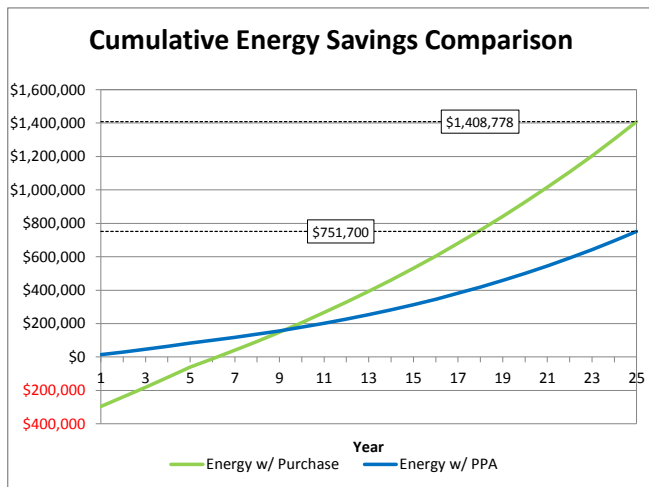
IX. Schedule 9: Project Management Reimbursement

Seller to provide Project Management funds of <INSERT \$ AMOUNT>, equaling three and one half percent (3.5%) of Seller's costs [to construct] the Generating Facility to Buyer within thirty (30) days of receipt of Notice to Proceed from Buyer.

X. Schedule 10: Cash Flow Tables Showing Value of Solar

<INSERT TABLE PROVIDED BY SELLER

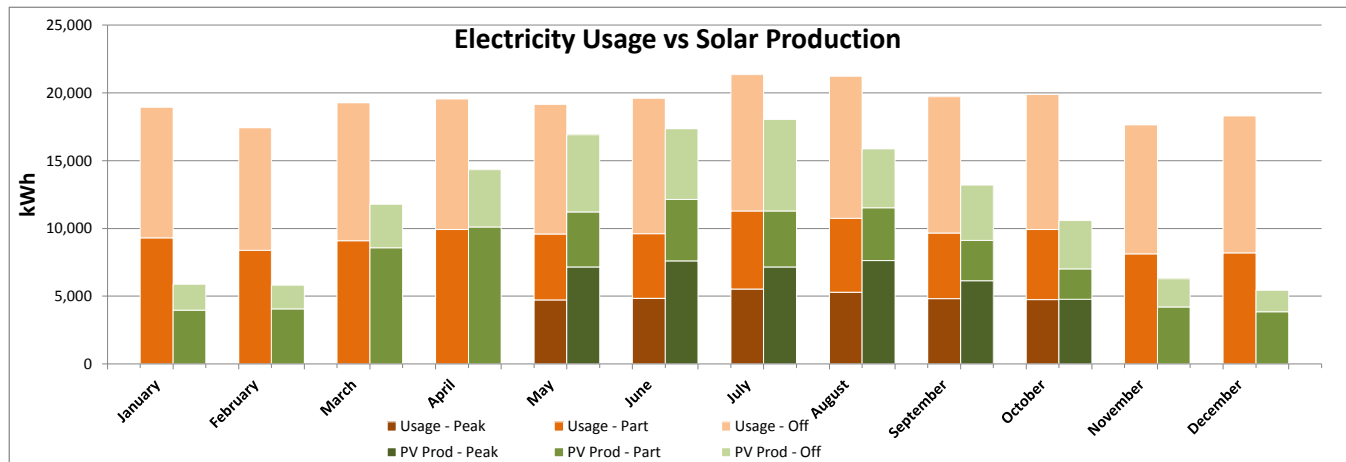
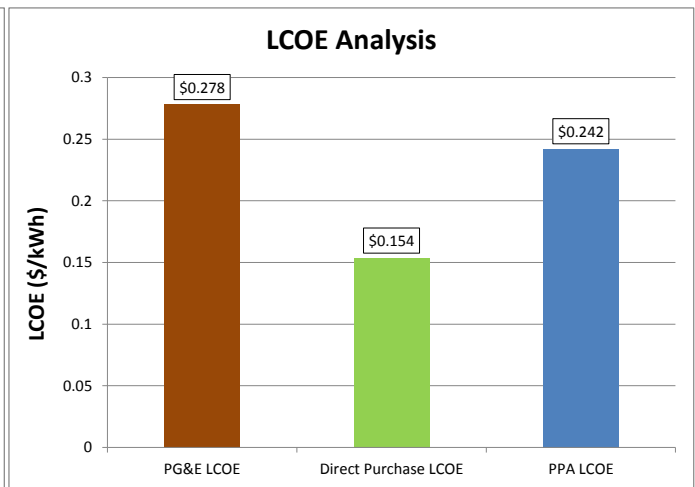
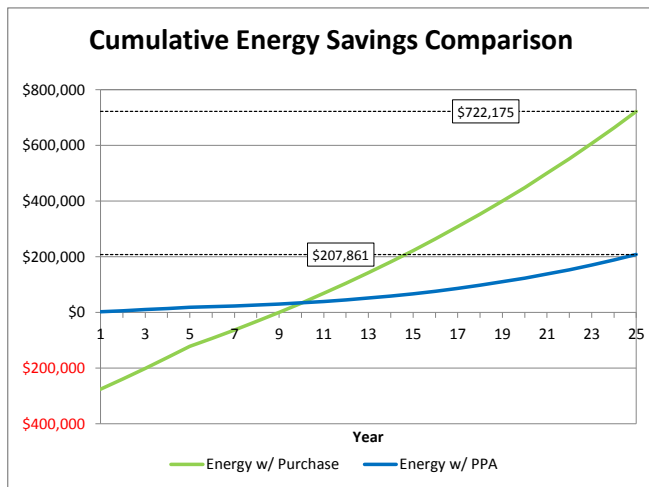
Arrillaga Family Gymnasium Financial Analysis Summary		(Cupertino Electric Inc.)			
Site Information and Assumptions		Energy Savings Summary By Term			
Recommended System Size (kW)	109.8	Year	Cost of PG&E	Cost of Purchase	Cost of PPA
Yield (kWh/kW)	1,523	15-Year	\$ 662,456	\$ 339,956	\$ 429,840
Year 1 Solar Output (kWh)	167,220	20-Year	\$ 894,079	\$ 368,751	\$ 565,869
Annual Onsite Energy Usage (kWh)	207,473	25-Year	\$ 1,131,324	\$ 402,965	\$ 697,331
Energy Offset by Solar	81%	25 year Savings/Cost		\$ 728,359	\$ 433,993
Annual PV degradation	0.50%		% Savings	Energy w/ Purchase	Energy w/ PPA
Utility Rate Schedule	A-10 S		10-Year	39%	34%
Proposed Rate Schedule	A-10 S		15-Year	60%	35%
Average Utility Cost (\$/kWh)	0.2058		20-Year	69%	37%
Utility Annual Inflater	5%		25-Year	74%	40%
Analysis Cycle	25 yrs	Payback Year =		7	1
General Financial Inputs		Levelized Cost of Energy (LCOE)			
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)		\$ 0.3668	
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)		\$ 0.0952	
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)		\$ 0.2219	
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost			
Direct Purchase Information		Utility Energy Purchase (25 years)		\$1,131,324	
System and PM Cost (\$/W)	\$3.36	Direct Purchase (25 years, incl O&M)		\$402,965	
Engineering, Procurement, and Construction	\$350,845	PPA (25 years)		\$697,331	
Year 1 O&M	2,716	Environmental Impact			
O&M Annual Escalator	2%	Annual CO2 Reduction (tons)		120	
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)		275,513	
Initial PPA rate (\$/kWh)	0.1950	Annual Carbon Sequestration Equiv. (acres)		26	
PPA escalator	2.5%				



Onetta Harris Community Center Financial Analysis Summary

(Cupertino Electric Inc.)

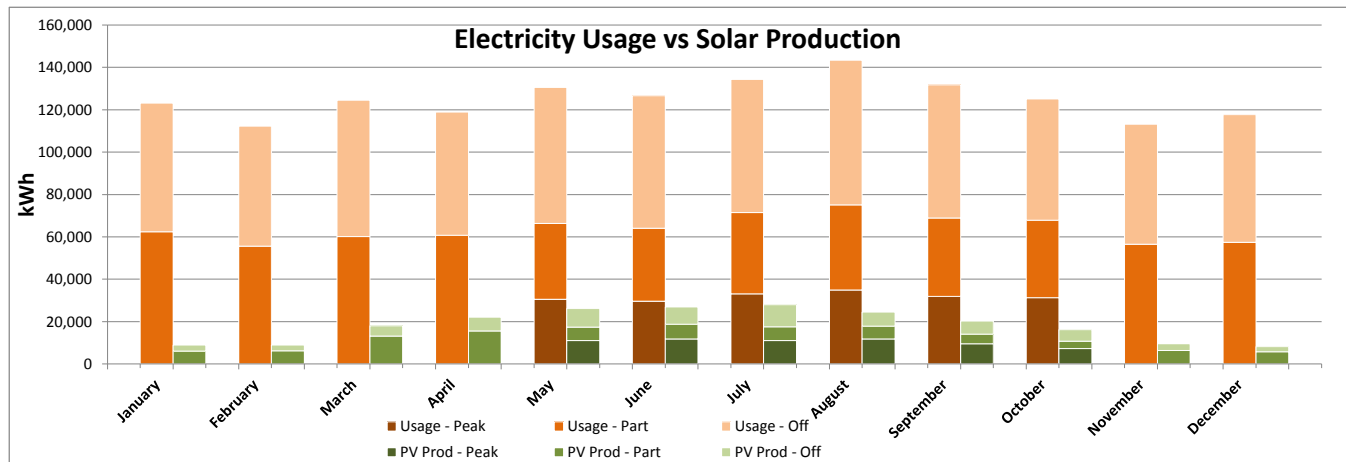
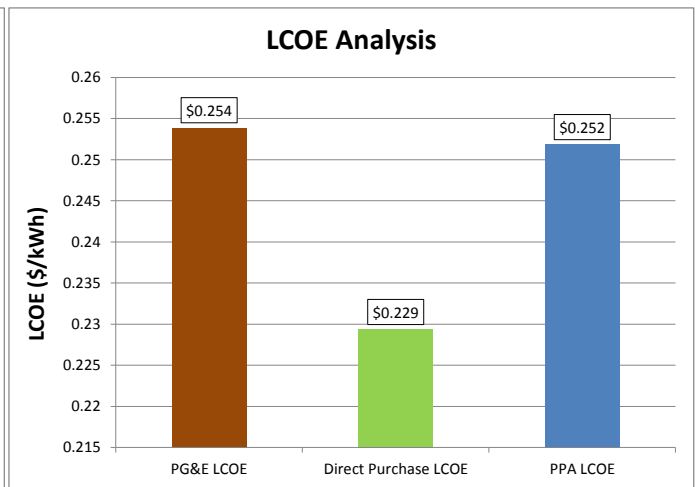
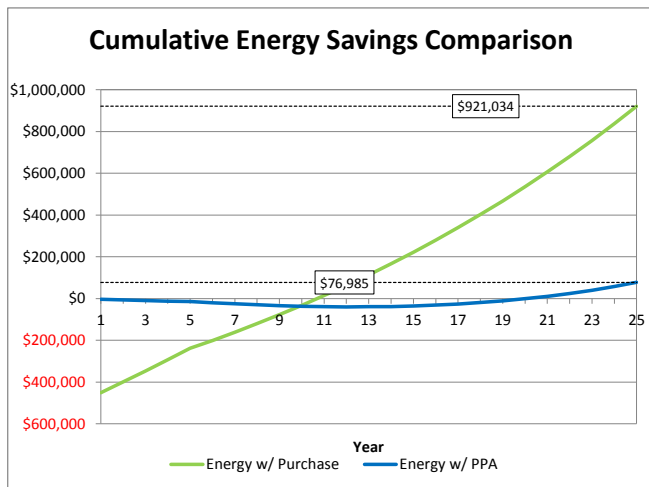
Site Information and Assumptions		Energy Savings Summary By Term				
Recommended System Size (kW)	97.6	Year	Cost of PG&E	Cost of Purchase	Cost of PPA	
Yield (kWh/kW)	1,450	15-Year	\$ 561,519	\$ 462,218	\$ 512,167	
Year 1 Solar Output (kWh)	141,483	20-Year	\$ 757,850	\$ 542,263	\$ 679,985	
Annual Onsite Energy Usage (kWh)	232,045	25-Year	\$ 958,946	\$ 628,196	\$ 845,517	
Energy Offset by Solar	61%	25 year Savings/Cost		\$ 330,751	\$ 113,429	
Annual PV degradation	0.50%			% Savings	Energy w/ Purchase	
Utility Rate Schedule	E-19 SV			10-Year	8%	8%
Proposed Rate Schedule	E-19 SV			15-Year	30%	9%
Average Utility Cost (\$/kWh)	0.1560			20-Year	40%	11%
Utility Annual Inflator	5%			25-Year	45%	13%
Analysis Cycle	25 yrs			Payback Year =	9	
General Financial Inputs		Levelized Cost of Energy (LCOE)				
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)			\$ 0.2780	
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)			\$ 0.1535	
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)			\$ 0.2422	
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost				
Direct Purchase Information		Utility Energy Purchase (25 years)			\$958,946	
System and PM Cost (\$/W)	\$3.36	Direct Purchase (25 years, incl O&M)			\$628,196	
Engineering, Procurement, and Construction	\$312,131	PPA (25 years)			\$845,517	
Year 1 O&M	2,414	Environmental Impact				
O&M Annual Escalator	2%	Annual CO2 Reduction (tons)			102	
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)			233,108	
Initial PPA rate (\$/kWh)	0.1900	Annual Carbon Sequestration Equiv. (acres)			22	
PPA escalator	2.5%					



Arrillaga Family Gymnastics Center Financial Analysis Summary

(Cupertino Electric Inc.)

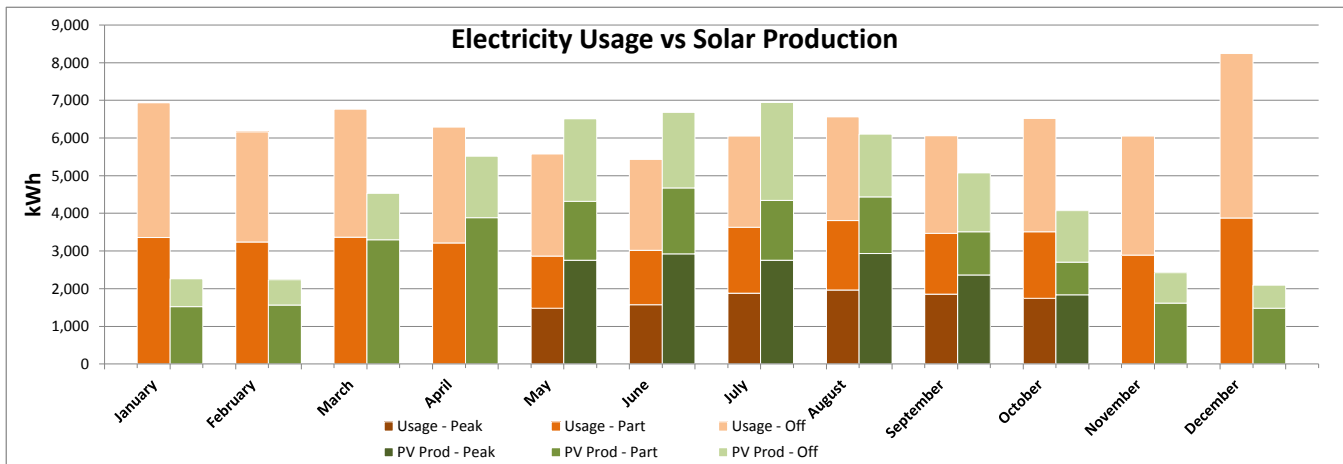
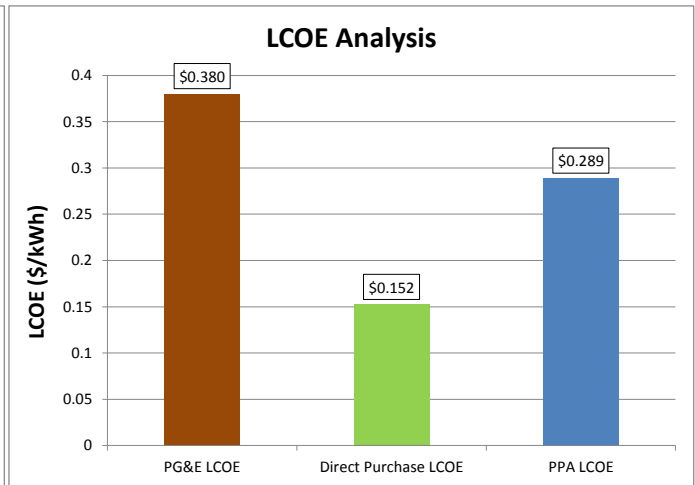
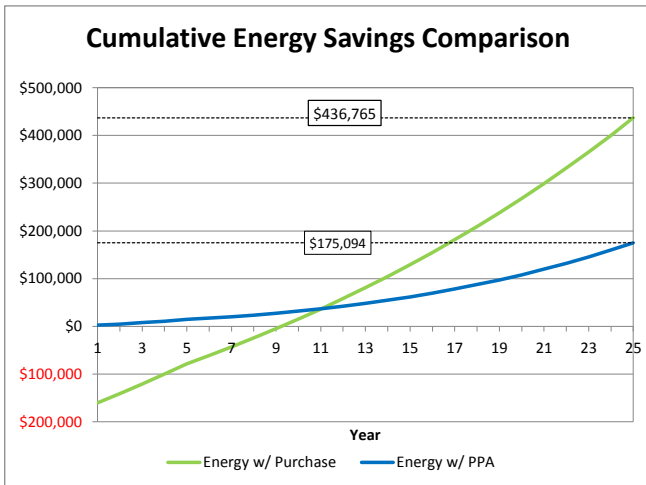
Site Information and Assumptions		Energy Savings Summary By Term			
		Year	Cost of PG&E	Cost of Purchase	Cost of PPA
Recommended System Size (kW)	146.4	15-Year	\$ 3,317,555	\$ 3,261,272	\$ 3,347,836
Yield (kWh/kW)	1,487	20-Year	\$ 4,477,515	\$ 4,260,615	\$ 4,490,415
Year 1 Solar Output (kWh)	217,743	25-Year	\$ 5,665,629	\$ 5,286,135	\$ 5,645,830
Annual Onsite Energy Usage (kWh)	1,501,322	25 year Savings/Cost		\$ 379,493	\$ 19,798
Energy Offset by Solar	15%				
Annual PV degradation	0.50%				
Utility Rate Schedule	A-10 S				
Proposed Rate Schedule	A-10 S				
Average Utility Cost (\$/kWh)	0.1424				
Utility Annual Inflater	5%				
Analysis Cycle	25 yrs				
General Financial Inputs		Levelized Cost of Energy (LCOE)			
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)		\$ 0.2539	
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)		\$ 0.2293	
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)		\$ 0.2518	
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost			
Direct Purchase Information		Utility Energy Purchase (25 years)		\$5,665,629	
System and PM Cost (\$/W)	\$3.59	Direct Purchase (25 years, incl O&M)		\$5,286,135	
Engineering, Procurement, and Construction	\$500,505	PPA (25 years)		\$5,645,830	
Year 1 O&M	3,622	Environmental Impact			
O&M Annual Escalator	2%	Annual CO2 Reduction (tons)		156	
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)		358,755	
Initial PPA rate (\$/kWh)	0.2000	Annual Carbon Sequestration Equiv. (acres)		33	
PPA escalator	2.5%				



Corporation Yard (Option 1) Financial Analysis Summary

(Cupertino Electric Inc.)

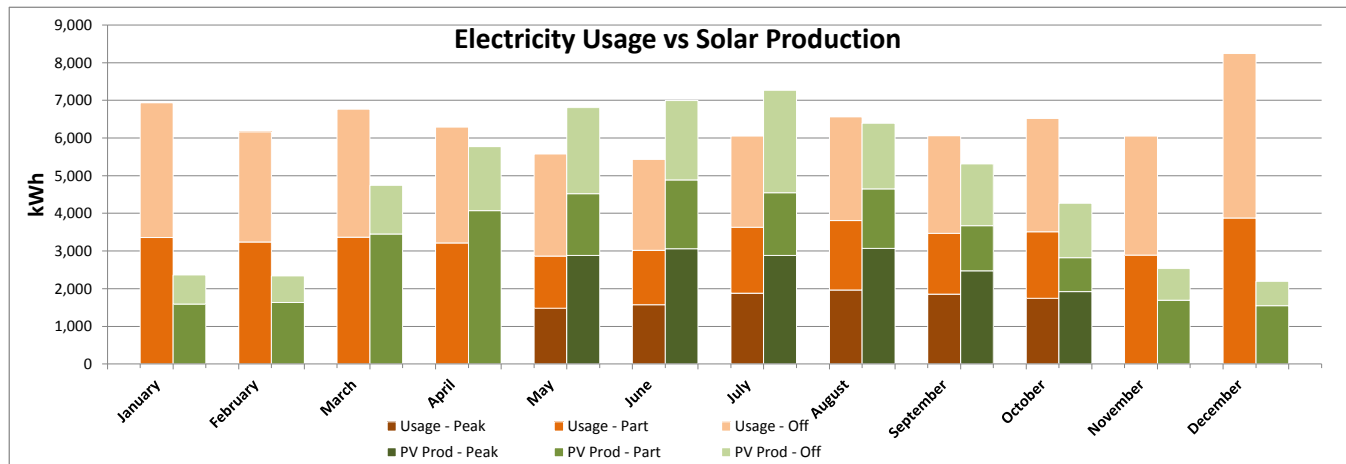
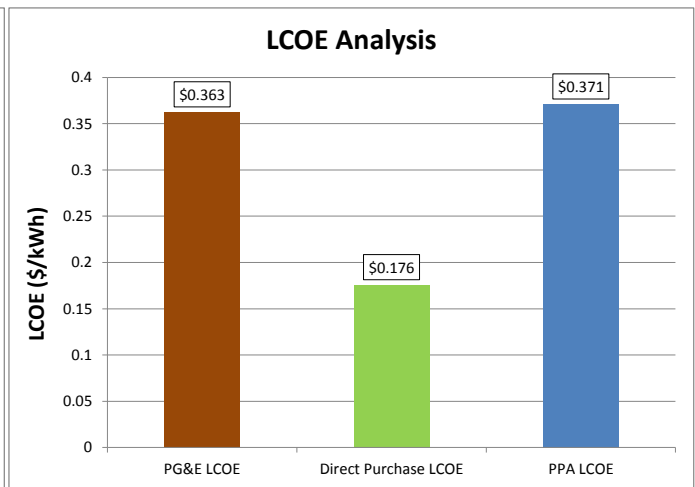
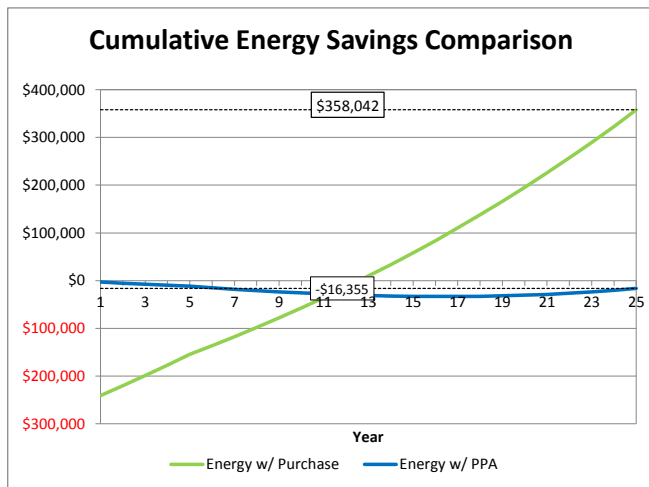
Site Information and Assumptions		Energy Savings Summary By Term			
		Year	Cost of PG&E	Cost of Purchase	Cost of PPA
Recommended System Size (kW)	36.6	15-Year	\$ 253,791	\$ 197,715	\$ 208,750
Yield (kWh/kW)	1,488	20-Year	\$ 342,528	\$ 215,339	\$ 273,859
Year 1 Solar Output (kWh)	54,443	25-Year	\$ 433,418	\$ 235,133	\$ 336,611
Annual Onsite Energy Usage (kWh)	76,655	25 year Savings/Cost		\$ 198,285	\$ 96,807
Energy Offset by Solar	71%			% Savings	Energy w/ Purchase
Annual PV degradation	0.50%			10-Year	8%
Utility Rate Schedule	A-10 S			15-Year	38%
Proposed Rate Schedule	A-10 S			20-Year	52%
Average Utility Cost (\$/kWh)	0.2134			25-Year	60%
Utility Annual Inflater	5%			Payback Year =	
Analysis Cycle	25 yrs			10	1
General Financial Inputs		Levelized Cost of Energy (LCOE)			
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)			\$ 0.3804
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)			\$ 0.1525
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)			\$ 0.2890
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost			
Direct Purchase Information		Utility Energy Purchase (25 years)			\$433,418
System and PM Cost (\$/W)	\$5.14	Direct Purchase (25 years, incl O&M)			\$235,133
Engineering, Procurement, and Construction	\$179,262	PPA (25 years)			\$336,611
Year 1 O&M	549	Environmental Impact			
O&M Annual Escalator	3%	Annual CO2 Reduction (tons)			39
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)			89,701
Initial PPA rate (\$/kWh)	0.2550	Annual Carbon Sequestration Equiv. (acres)			8
PPA escalator	2.5%				



Corporation Yard (Option 2) Financial Analysis Summary

(Cupertino Electric Inc.)

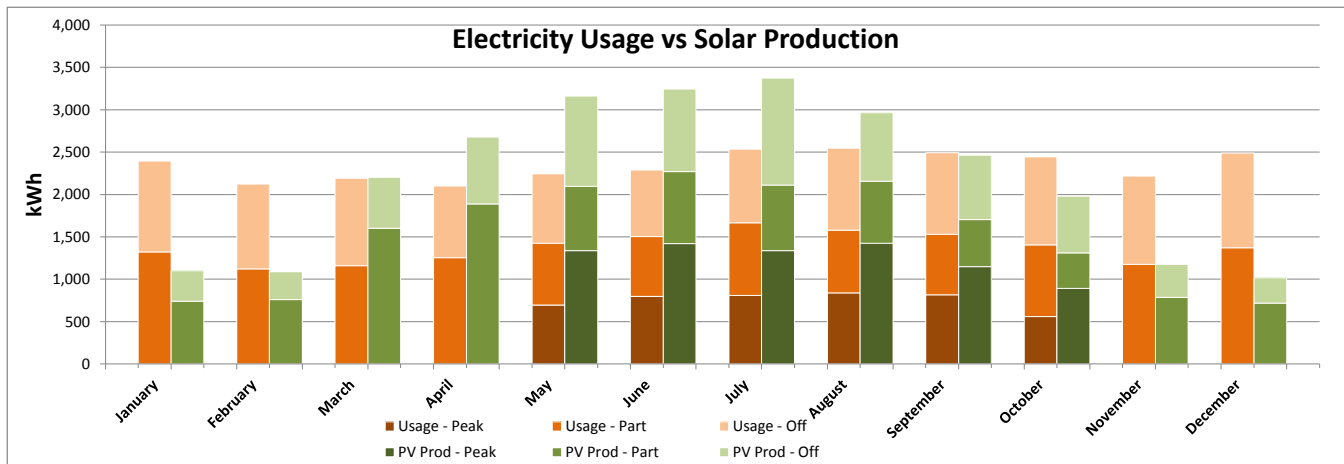
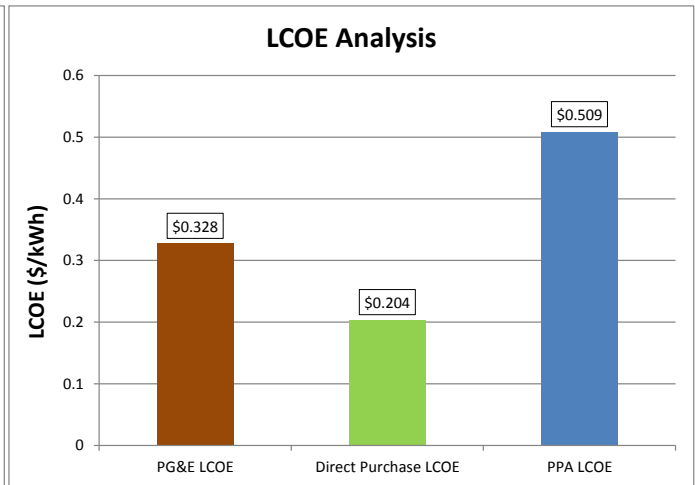
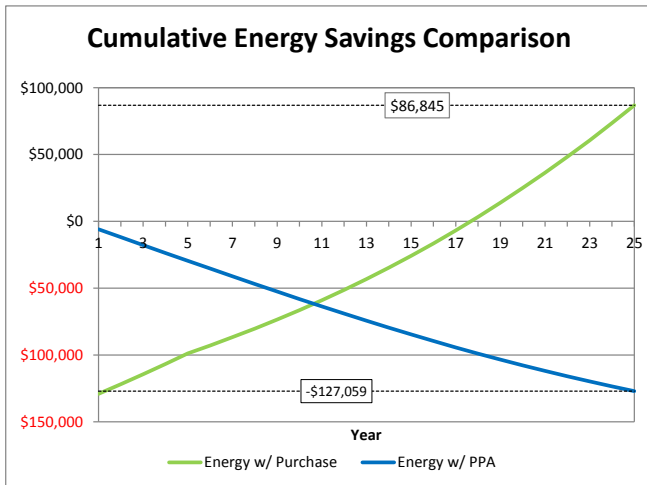
Site Information and Assumptions		Energy Savings Summary By Term			
Recommended System Size (kW)	36.6	Year	Cost of PG&E	Cost of Purchase	Cost of PPA
Yield (kWh/kW)	1,557	15-Year	\$ 250,436	\$ 267,210	\$ 276,639
Year 1 Solar Output (kWh)	56,986	20-Year	\$ 333,914	\$ 280,392	\$ 359,058
Annual Onsite Energy Usage (kWh)	76,655	25-Year	\$ 417,393	\$ 295,262	\$ 436,612
Energy Offset by Solar	74%	25 year Savings/Cost		\$ 122,131	\$ (19,219)
Annual PV degradation	0.50%		% Savings	Energy w/ Purchase	Energy w/ PPA
Utility Rate Schedule	A-6 TOU		10-Year	-29%	-13%
Proposed Rate Schedule	A-6 TOU		15-Year	17%	-10%
Average Utility Cost (\$/kWh)	0.2464		20-Year	39%	-6%
Utility Annual Inflator	4%		25-Year	51%	-2%
Analysis Cycle	25 yrs	Payback Year =		13	26
General Financial Inputs		Levelized Cost of Energy (LCOE)			
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)			\$ 0.3628
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)			\$ 0.1760
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)			\$ 0.3714
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost			
Direct Purchase Information		Utility Energy Purchase (25 years)			\$417,393
System and PM Cost (\$/W)	\$7.49	Direct Purchase (25 years, incl O&M)			\$295,262
Engineering, Procurement, and Construction	\$261,193	PPA (25 years)			\$436,612
Year 1 O&M	549	Environmental Impact			
O&M Annual Escalator	3%	Annual CO2 Reduction (tons)			41
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)			93,891
Initial PPA rate (\$/kWh)	0.3500	Annual Carbon Sequestration Equiv. (acres)			9
PPA escalator	2.5%				



Belle Haven Childcare Center Financial Analysis Summary

(Cupertino Electric Inc.)

Site Information and Assumptions		Energy Savings Summary By Term				
Recommended System Size (kW)	18.3	Year	Cost of PG&E	Cost of Purchase	Cost of PPA	
Yield (kWh/kW)	1,445	15-Year	\$ 80,078	\$ 131,855	\$ 145,816	
Year 1 Solar Output (kWh)	26,444	20-Year	\$ 108,076	\$ 133,836	\$ 185,706	
Annual Onsite Energy Usage (kWh)	28,069	25-Year	\$ 136,754	\$ 136,434	\$ 222,596	
Energy Offset by Solar	94%	25 year Savings/Cost		\$ 320	\$ (85,842)	
Annual PV degradation	0.50%			% Savings	Energy w/ Purchase	
Utility Rate Schedule	A-1			10-Year	-105%	-92%
Proposed Rate Schedule	A-1			15-Year	-24%	-79%
Average Utility Cost (\$/kWh)	0.1839			20-Year	15%	-67%
Utility Annual Inflater	5%			25-Year	38%	-55%
Analysis Cycle	25 yrs			Payback Year =	18	
General Financial Inputs		Levelized Cost of Energy (LCOE)				
Discount Rate	4%	Utility LCOE (25 years) (\$/kWh)		\$ 0.3278		
Buyer sells S-REC (Y/N)	N	Direct Purchase LCOE (25 years) (\$/kWh)		\$ 0.2040		
Solar Rebate (\$/kWh) (Direct Purchase / PPA)	\$0.088 / \$0.025	PPA LCOE (25 years) (\$/kWh)		\$ 0.5088		
Solar Rebate Term (Years)	5	Net Present Value (NPV) of Energy Cost				
Direct Purchase Information		Utility Energy Purchase (25 years)		\$136,754		
System and PM Cost (\$/W)	\$7.81	Direct Purchase (25 years, incl O&M)		\$136,434		
Engineering, Procurement, and Construction	\$136,107	PPA (25 years)		\$222,596		
Year 1 O&M	458	Environmental Impact				
O&M Annual Escalator	3%	Annual CO2 Reduction (tons)		19		
Power Purchase Agreement (PPA) Information		Annual VMT Reduction Equivalent (miles)		43,569		
Initial PPA rate (\$/kWh)	0.4200	Annual Carbon Sequestration Equiv. (acres)		4		
PPA escalator	2.5%					





Optony Inc.
2855 Kifer Road, Suite 201
Santa Clara, CA 95051

August 18, 2014

Vanessa Marcadejas
City of Menlo Park

Re: Solar Project Technical Services

Dear Vanessa,

As the City moves into the next phase of your solar solar projects, we have prepared the following description of the services that we can provide to continue to support your efforts. We will build upon the work completed to date and will continue to deliver outstanding value.

Following is the scope of work for major tasks that we can perform for you during the next phases of the project lifecycle including final vendor contract reviews and project commissioning. Budget estimates have been provided for discussion and planning purposes.

After your review, I would be happy to discuss the specific deliverables and cost estimates and make any necessary adjustments so that you are comfortable to proceed. Please do not hesitate to contact me if you have any questions at (646) 250-4241.

Sincerely,

Benjamin Foster

Senior Vice-President
Optony Inc.
Ben.foster@optony.com
646-250-4241



SCOPE OF WORK

TASK 1: VENDOR CONTRACT REVIEW SERVICES

In collaboration with City staff and vendors, Optony will support the final analysis and approval of contracts for your solar projects. We believe that providing continuity and independent expertise at this critical phase of the project will increase the long-term benefits from this project while avoiding major issues. Close attention to details in contract terms and conditions, system sizing and designs, proactive issues identification and rapid analysis of their impact are all keys to ensuring that the purchase or PPA contracts meet your needs.

Tasks Performed

- Contract negotiation support including evaluation of terms, conditions, pricing and performance, recommendations and negotiation points
- Provide continuity from site evaluation and procurement to negotiation and system designs
- Independent analysis and evaluation for final contract
- Evaluation of available state and federal incentive programs and any potential changes to determine the impact on project financial viability
- Modeling of applicable and recommended electricity rate schedules for renewable energy systems, including virtual net metering and feed-in-tariff options
- Recommendations for SREC strategy related to clean energy goals
- Assist in preparation and presentation of project benefits for Council (Board) approval



TASK 2: PROJECT COMMISSIONING SERVICES

From the approval to proceed until the system is fully operational, Optony will apply its extensive experience and knowledge of the solar industry to provide a broad range of project commissioning services designed to protect your investment, as needed. These include hands-on project coordination, technology inspection, installation oversight, and specification compliance to final project performance certification. Independent from any financial, technology, or vendor interests, our solar experts act on your behalf to ensure a smooth transition from construction to long-term operations, based on your specific needs and risk assessment.

Tasks Performed

- Expert, independent review of engineering documents, components and system designs
- Participation in site walks to aid in review and approval of contractor provided designs
- Conducting final system design reviews to ensure the proposed designs meet desired goals, technical requirements, and adherence to industry best practices
- On-site inspection of system and all components, methods and designs using Optony's 35-point evaluation form at 50%, 90% and 100% completion levels.
- Documentation of current progress with impact to construction timeline and project risks
- Review engineering change orders and provide independent analysis to minimize impact
- Evaluate system safety and security to minimize risks from damage, theft and third party claims
- Create project punch-list to verify completion of construction to site-specific requirements.
- Monitoring system and process review to ensure proper performance management
- Review solar energy output (kWh) one month after in-service date to evaluate actual system output and project economics for compliance with contract guarantees
- Follow up with utility to verify that electric meter rate schedule has changed to meet the proposed financial benefits
- Report of findings and final project performance forecasts



CONTRACTING & PROPOSED BUDGET

Optony was competitively selected for full project lifecycle management services by the County of Alameda (Vendor #: 0000094365) and all public agencies can directly procure our services under this contracting vehicle in the category of “Technical and Financial Consultants for the Regional Renewable Energy Project” based on RFP# 901098 and 901053. These services specifically include: Procurement Management, Vendor and Contact Reviews, Site Design Analysis, and Design/Build Phase Project Management.

The budget estimates below are based on our discounted rate schedules and take into account the scope, tasks and group efficiency and cost savings savings for each remaining phase of this project. As we have demonstrated with our projects across the US and over 25 agencies in the Bay Area alone, our services will deliver significant project risk reduction and increase lifetime costs savings for our clients.

Subsequent changes to the tasks for each task are welcomed if they help your goals and any impact to the proposed costs will be quickly communicated and are subject to your prior approval.

Rest assured that we do not have any financial interests in the contractors or technology that will be evaluated or recommended because maintaining our independence and your best interests are our top priority. We also offer our discounted rate schedule for our advisory services based on the scale and importance of your efforts.

Proposed Services	Budget Estimates
TASK 1: Final Contract Review for Council	\$2,500
TASK 2: Project Commissioning	\$12,000 Per Site
Other Fees and Costs	
Travel - Within Bay Area	No charge
Expenses - printing, binding, materials	No charge

Optony is committed to making this project a success and in the event that the scope needs to be changed to fit within budget constraints, we are open to further refinement and negotiation.

Thank you for your consideration of our proposal.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-167

Agenda Item #: F-1

REGULAR BUSINESS: **Appropriate \$57,000 from the Water Fund to Implement a Menlo Park Municipal Water District Outreach Program to Meet the State Water Resources Control Board's Emergency Mandatory Regulations for Water Conservation**

RECOMMENDATION

Appropriate \$57,000 from the Water Fund to implement a Menlo Park Municipal Water District Outreach Program to meet the State Water Resources Control Board's (SWRCB) emergency mandatory regulations for water conservation.

BACKGROUND

The SWRCB regulations became law on July 28, 2014, and will remain in effect for up to 270 days, up to April 25, 2015. The new law consists of 3 components:

1. Restricting outdoor irrigation activities.
2. Implementing the City's Water Shortage Contingency Plan (WSCP) Stage 3. See Attachment A for the WSCP in its entirety.
3. Submitting monthly reports to the SWRCB.

The new SWRCB regulations requires that staff implement an extensive outreach program, monitor customer water use, and submit monthly reports to the State, all of which is above and beyond staff's current workload. In order to effectively implement this new program, on August 26, 2014, staff recommended approving a new Environmental Programs Specialist position and outreach program in the amount of \$155,000 to be covered by the Water Fund – approximately \$57,000 for the outreach program activities and \$98,000 for the new staff position. City Council requested that staff return on September 9, 2014 with more information to specifically address the possibility of partnering with another water agency for outreach costs, and recommend a staffing plan to implement the new outreach program.

ANALYSIS

Outreach Program

Staff is recommending that Council appropriate \$57,000 from the Water Fund to implement the outreach program elements detailed below that are above and beyond staff's current outreach efforts.

Outreach Program Activities Estimated Costs

Activity	Details	Annual Cost
Intro Letter on City Letterhead	Mailed to every Menlo Park Municipal Water District customer to introduce new regulations, \$2,030	\$2,030
Brochures	Mailed to every Menlo Park Municipal Water District customer to explain regulations and educate 2 mailings (\$15,750 each), fall and spring, hire marketing firm to design	\$31,500
Newspaper Ads	2 full-page ad 5x8, \$1,800 4 half-page ads 5x4 size, \$1,000 3 ads 5x3 size, \$750 each	\$9,850
Direct Mailers Letters or Postcards	Mailed to Menlo Park Municipal Water District customers 4 mailers (\$2,030 each)	\$8,120
Robocalls, City recorded messages	4 times (\$420 per 40 second message)	\$1,680
Doorhangers	Provide as needed to Menlo Park Municipal Water District customers violating water restrictions \$2 each (2,000 pieces)	\$4,000
		Approximately \$57,000

Staffing Plan & Partnering with Other Agencies

Staff is still in the process of gathering data on a staffing plan and the feasibility of partnering with other agencies for outreach activities. Staff will return to City Council in the near future with this additional information.

IMPACT ON CITY RESOURCES

Costs to implement an extensive outreach program are estimated at \$57,000 per year. The actual costs would be lower during this fiscal year since the fiscal year has already begun. These costs would be fully funded by the Water Fund. Since the extent and impact of the drought is not yet known, staff will provide an update regarding the continuing need for this outreach program during the annual budget process. In addition, if the drought continues and the City is required to implement a higher WSCP stage, the estimated outreach program costs may increase.

POLICY ISSUES

The City has permanent water use restrictions in place and has already increased water conservation efforts in response to the dry conditions. The recommended action is consistent with those policy efforts and the strategies outlined in the 2010 UWMP that

expires on April 25, 2015 unless the SWRCB revises, renews, or terminates the regulations.

ENVIRONMENTAL REVIEW

Council's adoption of the proposed ordinance and resolution is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

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. Water Shortage Contingency Plan (from the 2010 Urban Water Management Plan)

Report prepared by:

Pam Lowe, P.E.

Associate Civil Engineer

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Water Shortage Contingency Plan

Every five years, the City must develop and update its Urban Water Management Plan (UWMP) and submit it for approval to the California Department of Water Resources. The UWMP addresses changing conditions related to water sources, water availability, water demands, and water reliability for the next 20 to 25 years. The Water Shortage Contingency Plan (WSCP), developed as part of the UWMP, describes the water supplier's response and planning for changes or shortages in water supply. It compares supply and demand under normal, single-dry, and multiple-dry years and describes stages and actions to be undertaken in response to water supply shortages of up to 50%.

Below is the City's WSCP (Table 5.11 from the 2010 UWMP). The City is currently implementing all of the voluntary Stage 2 actions. The current 2010 UWMP can be viewed in its entirety at <http://www.menlopark.org/150/Urban-Water-Management-Plan>.

Water Shortage Contingency Rationing Stages* to Address Water Supply Shortages (Table 5.11 from the 2010 UWMP)

Stage No.	Water Supply Conditions	% Shortage					
1 Ongoing	Water Waste Prohibitions including <ul style="list-style-type: none"> • Repair of defective irrigation systems • No flooding of gutter, driveways and streets • Restaurant water served on request • Water use for cooling must be recycled • Prohibition against sidewalk and building washing 	NA					
2 Voluntary	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Increase in public information budgets</td> <td rowspan="4" style="text-align: center; vertical-align: middle;">Up to 20%</td> </tr> <tr> <td style="padding: 2px;">Increased enforcement of the water waste prohibition</td> </tr> <tr> <td style="padding: 2px;">Restaurant water served on request</td> </tr> <tr> <td style="padding: 2px;">10% reduction across all customer classes</td> </tr> </table>	Increase in public information budgets	Up to 20%	Increased enforcement of the water waste prohibition	Restaurant water served on request	10% reduction across all customer classes	
Increase in public information budgets	Up to 20%						
Increased enforcement of the water waste prohibition							
Restaurant water served on request							
10% reduction across all customer classes							
3 Mandatory	All Stage 2 Prohibitions and <ul style="list-style-type: none"> • No new or expanded irrigation systems • Prohibition against noncommercial vehicle washing • Prohibition against filling swimming pools and using ornamental fountains • Limited new water service connections • Prohibitions against use of potable water for construction dust control • Controls on groundwater use 30% reductions for residential, commercial, industrial & public	25% to 35%					

Stage No.	Water Supply Conditions	% Shortage
	customers	
	45% reducing in dedicated irrigation accounts	
4 Mandatory	All Stage 2 and 3 Prohibitions	40% to 50%
	50% reductions for residential, commercial, industrial & public customers	
	75% reductions in dedicated irrigation accounts	

* One of the stages of action must be designed to address a 50 percent reduction in water supply.



OFFICE OF THE CITY MANAGER

Council Meeting Date: September 9, 2014
Staff Report #: 14-171

Agenda Item #: F-2

REGULAR BUSINESS:

Adopt a Resolution to Authorize a Loan to MidPen Housing for up to \$3.2 million for Affordable Housing at 1200 Block of Willow Road as Affordable Senior Housing and Authorize the Renegotiation of Terms of the Existing \$4.02 Million Loan

RECOMMENDATION

Staff recommends City Council:

1. Adopt a Resolution affirming the City's financial commitment to MidPen Housing for a loan from the Below Market Rate (BMR) Fund of up to \$3.2 million for the 1221-1275 Block of Willow Road; and
2. Authorize the Renegotiation of Terms of the Existing \$4.02 Million Loan from 1987 and amended in 2002 consistent with the attached Term Sheet.

BACKGROUND

By consensus, the City Council directed staff to proceed with MidPen Housing's request for a \$3.2 million loan from the Below Market Rate Fund at the May 13, 2014 meeting to develop an affordable Senior Housing project at 1221-1275 Willow Road. The proposed development would include a net increase of 42 affordable units at this location, resulting in a total of 90 units. A copy of the May 13, 2014 staff report is provided as Attachment A for more details regarding the background of this project.

MidPen Housing anticipates that a large part of the overall funding for the units will come from the California Tax Credit Allocation Committee in the first round in 2015. MidPen Housing has also requested funds from the Housing Authority County of San Mateo. The maximum funding from the Housing Authority per project is \$2.5 million but it is not anticipated that any project would receive full funding. Previously, MidPen has been granted \$400,000 from the County's Affordable Housing Funds (which are comprised of one-time monies attributable to the dissolution of Redevelopment Agencies). San Mateo County has made it a policy to reinvest the one-time funding into the housing projects in the City from which the funds originated.

This item is before the City Council to finalize the commitment of the requested BMR funds, advise Council regarding the requested fee waiver, and respond to the request for restructuring the existing \$4.02 million former Redevelopment Agency Loan.

ANALYSIS

MidPen Housing is proposing to develop Gateway Senior Housing, a 90-unit new construction affordable senior housing development at 1221 Willow Road in Menlo Park (between Newbridge Street and Ivy Drive). MidPen intends to redevelop the property in light of its physical and functional needs. Gateway's redevelopment is a valuable opportunity to increase the supply of affordable housing in Menlo Park given the scarcity and high cost of available land. The Gateway Senior Housing project would increase the total number of units on that block from 48 units to 90 units, one of which would be an on-site manager's unit. The apartments would be available to seniors 62 years of age and older. Units will be targeted at 30-45% of Area Median Income.

Since the Council considered MidPen's request for funding in May, staff has continued to develop the project particularly with respect to the vehicular circulation, the frontage road abandonment, and improved design and reconstruction of the Willow Road Wall, each of these issues is addressed in correspondence from MidPen provided as Attachment B. A conceptual site plan is provided as Attachment C.

Given the satisfactory progress on these issues, MidPen is requesting a funding authorization of the \$3.2 million from the City to strengthen the competitiveness of its application to the County of San Mateo due October 2, 2014. Certainty of City financing and support will be a critical element in securing funding available through the County. Staff recommends committing the funds to MidPen. The proposed Resolution is provided as Attachment D, with the proposed Term Sheet.

MidPen has been actively working with representatives of the neighborhood throughout the summer including meeting with individual neighborhood representatives. In addition, MidPen was able to meet with the Belle Haven Neighborhood Association at their September meeting to share information regarding the proposed development. MidPen representatives indicate that overall the meeting went well and they look forward to further opportunities to work with BHNA and interested individuals throughout the neighborhood.

With respect to the request for a fee waiver, staff recommends authorizing a waiver consistent with the requirements of the Housing Overlay Zone, which may pertain to most of the fees. Fee costs are still being developed. If there are fees that are not eligible for a waiver, staff may return with an action item for Council consideration to increase the loan in the amount of the non-waived fees.

Finally, as outlined in Attachment E, MidPen is requesting modification of the Community Development Agency promissory note for \$4.02 million that was issued in

1987 and amended in 2002. Attachment E describes the specific terms of the loan modification and proposal to separate the existing loan into two loans. Staff recommends proceeding with the loan modification. The 1200 block loan would be documented through a new Deed of Trust, Promissory Note, and Regulatory Agreement. These documents would be of record and put into effect at the time of construction loan closing for the 1200 block.

In summary, staff believes this to be a viable and valuable housing opportunity for the City and an appropriate use of BMR funds.

IMPACT ON CITY RESOURCES

The City Council's action would commit \$3.2 million in BMR funds, waive consistent with the Housing Overlay Zone requirements, and modify an existing loan held by MidPen. These are all financial policy decisions that are consistent with revitalizing property, prudent use of BMR funds and former RDA funds.

There are sufficient funds available for this project in the BMR fund. Further, the granting of the funds underscores the importance of using a periodic Request for Proposal process to identify worthy projects.

POLICY ISSUES

The proposed purpose of the affordable housing development is consistent with the proposed uses in the BMR Guidelines. The terms of the loan will be consistent with the terms of the restructured loan and the prior agreement with CORE Housing.

ENVIRONMENTAL REVIEW

At this time, the Council is being asked to take action on the loan modification and the loan commitment requests. These actions will enable future actions that have the potential to impact the physical environment. As such, there is a need to make a determination on the environmental review as a whole, even though there will be subsequent and discrete actions associated with this project, such as the R-4-S compliance review, the right-of-way abandonment request and the reconstruction of the wall/fence along Willow Road.

On May 21, 2013, the City Council adopted the Environmental Assessment (EA) prepared for the City's Housing Element. The EA analyzed the project site as a potential location for higher density, low income housing, and the property was rezoned to R-4-S with an Affordable Housing Overlay (AHO). Therefore, the environmental impacts of this project were reviewed in the EA, which is the equivalent of a Draft Environmental Impact Report (EIR).

In light of the foregoing, the "common sense exemption" which indicates that the California Environmental Quality Act (CEQA) applies only to projects that have the

potential for causing a significant effect on the environment applies. It can be seen with certainty that there is no possibility that the approval of the loan for the development of the project will have a significant effect on the environment beyond what was analyzed in the EA. Therefore, the project is exempt from CEQA.

Furthermore, the proposed right-of-way abandonment is categorically exempt under Class 5 (minor alterations in land use limitations) of the current CEQA Guidelines, and the proposed reconstruction of the wall/fence along Willow Road is categorically exempt under either Class 2 (replacement or reconstruction) or Class 3 (new construction of small structures).

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. May 13, 2014 Staff Report re MidPen's NOFA response
- B. Gateway Senior Housing – Affordable Senior Rental Housing
- C. Conceptual Site Plan
- D. Resolution
- E. MidPen Letter requesting Loan Modification of the 1987 loan, amended in 2002 with the Term Sheet

Report prepared by:
Starla Jerome-Robinson
Assistant City Manager



ADMINISTRATIVE SERVICES DEPARTMENT

Council Meeting Date: May 13, 2014
Staff Report #: 14-068

Agenda Item #: SS-1

STUDY SESSION: Review and Generally Affirm the Proposal from MidPen for a \$3.2 million loan from the Below Market Rate Fund for an Affordable Senior Housing Development at 1221-1275 Willow Road

RECOMMENDATION

Staff recommends that the City Council generally affirm the proposal from MidPen for a loan of \$3.2 million from the Below Market Rate (BMR) Housing Fund to support an affordable senior housing development at 1221-1275 Willow Road.

BACKGROUND

Below Market Rate (BMR) Housing Program, Guidelines, and Fund

The BMR Housing Fund is comprised primarily of commercial development in-lieu fees and has a balance of approximately \$11.8 million in total funds and \$5.5 million in uncommitted funds as of March 31, 2014. A summary of the fund balance as of March 30, 2014 is included as Attachment A.

The primary purpose of the BMR Housing Program is to increase the supply and assist in the development of housing that is affordable to very low-, low-, and moderate-income households. The BMR Housing Program is contained within the Zoning Ordinance. The BMR Housing Program Guidelines provide direction on the implementation of the program and use of the BMR Fund. The Guidelines list the following uses of the Fund:

- Provision of below market rate financing for homebuyers;
- Purchase of land or air rights for resale to developers at a reduced cost to facilitate housing development for very low-, low- or moderate-income households;
- Reduction of interest rates for construction loans or permanent financing, or assistance with other costs associated with development or purchase of very low-, low- or moderate-income housing;
- Rehabilitation of uninhabitable structures for very low-, low- or moderate-income housing;
- On-site and off-site improvement costs for production of affordable housing;

- Reduction of purchase price to provide units that are very low-, low- or moderate-cost; and
- Rent subsidies to reduce the cost of rent for households with limited incomes.

In addition to these approved uses listed in the Guidelines, City Council approved additional uses on April 26, 2005, subject to approval by the Council for specific proposals. They include:

- Funding for the purchase and rehabilitation of existing apartment buildings for low-income tenants;
- Funding for the purchase of existing housing units to resell as BMR units to moderate-income households;
- Funding the purchase of BMR units until the units can be sold; and
- Funding loans to BMR unit owners to cover costs arising from repairs in the common areas of condominium projects.

In the near future, staff will be bringing to Council additional BMR Guidelines changes. These changes will establish clear policy and criteria for the allocation of funds from the BMR fund prioritizing non-profit development of workforce rental housing affordable to low and very-low income households on sites the City has determined to be viable for Low Income Housing Tax Credits (LIHTC) funding. Per the Settlement Agreement and Housing Element, the City will accomplish this by setting aside a substantial portion of the uncommitted BMR fund balance and future BMR fees received by the City for such development.

Also per the Settlement Agreement, in July of 2013, the City of Menlo Park announced the availability of approximately \$3.2 million in BMR funds for new affordable rental housing projects in Menlo Park, as a final step in completing the requirements of the lawsuit brought against the City by area housing non-profits through a Notice of Funding Availability (NOFA). The purpose of the funds is to support the acquisition, rehabilitation or new construction of housing providing long term affordability. The funding is intended to fill the financing gap between the projected total development costs and other available funding sources.

One proposal meeting the NOFA qualifications and demonstrating their ability to design, build, and manage affordable housing was received by the November 1, 2013 deadline from MidPen Housing. The MidPen project proposed for Willow Road on the site of Mid Pen's existing development known as the Gateway Apartments has now been presented to the Belle Haven community in a series of meetings (see Attachment C for summary of outreach) and is ready to be considered for conditional commitment of this funding from the City.

ANALYSIS

Since it was founded in 1970, MidPen has achieved recognition as a leading non-profit sponsor and developer of affordable housing. MidPen has constructed or rehabilitated

more than 7,400 residential units for low-income families, seniors, farm workers, and physically, mentally or developmentally disabled people throughout Northern California with developments in Alameda, Contra Costa, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba Counties. 1,500 of Mid Pen's apartment homes are located in San Mateo County. MidPen has a strong track record of leveraging local funds to raise additional funding, compete successfully for low income housing tax credits, and complete projects in a timely way.

MidPen's proposed project would develop Menlo Gateway Senior Housing, a 90-unit new construction, affordable senior housing development at the 1200 block of Willow Road in Menlo Park. The proposed development would include a net increase of 42 affordable units at this location. MidPen's proposal states that the project would be transformative to both current residents and the neighborhood due to its location along the prominent Willow Road corridor.

The current Menlo Gateway Apartments is a 130 unit, 100% affordable, apartment complex on the 1200 and 1300 blocks of Willow Road in the Belle Haven neighborhood of Menlo Park. The proposed project would represent the first phase of a plan to revitalize the entire complex (originally built in the 1960's and "lightly rehabbed" in 1987) and would focus on the 1200 block only, with the potential of increasing the number of units from 48 to 90. This block is where many of the complex's senior residents currently live. The project will be composed of one and two bedroom units. Residential apartments will include a kitchen, dining/living area, bathroom, and bedroom(s). Kitchens, which are proposed to be I-shaped or Pullman style, will include a refrigerator, range, sink with garbage disposal and abundant cabinets. All units are proposed to be adaptable for walkers and wheel chairs. Laundry is provided communally. Social services are proposed to include a small gym or card room, as determined by a resident survey. The apartments would be available to seniors 62 years of age and older. Units would be targeted at 30% of Area Median Income (AMI), or those classified as Extremely Low Income, to 45% AMI, or those considered Low Income (see proposed unit matrix below). The way that current residents' rents are calculated would remain the same.

Unit Type	Quantity	AMI	Max income	Rent net of utilities (2014)
1 br	8	30%	\$26,580	\$584
1br	77	45%	\$39,870	\$896
2br	1	30%	\$29,910	\$697
2br	3	45%	\$44,865	\$1071
2br Mgr unit	1	na	na	na

Income restrictions and rental rate restrictions would apply to all units, consistent with applicable Tax Credit regulatory agreements. MidPen proposes that existing tenants will be relocated during construction at no cost to them. Leasing protocol for any resulting available units would be consistent with the City of Menlo Park's BMR Fund Guidelines, Sections 7 (BMR Waiting List for Rental and For-Purchase Units) and 11 (Requirements for BMR Rental Developments).

MidPen states that the design will embrace the R-4-S zoning district design standards and guidelines, ensuring that new building is of high-quality, enhances the neighborhood, and contributes to a healthy environment. Many of the R-4-S standards and guidelines correspond to MidPen's field tested Building Guidelines. New development on the site would follow the R-4-S compliance review process similar to the one St. Anton pursued on Haven Avenue in October 2013 and that Greenheart is pursuing on Hamilton Avenue in May 2014. See Attachment D for current and proposed site plans.

In addition to providing additional affordable housing, MidPen expects to address several existing challenges with the site's current design and physical condition, including the separation of the two housing blocks and problematic vehicular and pedestrian circulation patterns. Currently, the management office is on the 1300 block while the services space is on the 1200 block, with a considerable distance in between. Part of the revitalization will include creating dedicated space for on-site management and supportive services on both blocks. These community areas will be sufficiently sized and equipped to meet the needs of the residents and to facilitate MidPen's array of service programs. Redevelopment will allow one block to serve seniors and the other block to serve families; by having each block serve a specific population, MidPen will be able to provide more specialized service attention.

As a part of their proposal, MidPen is requesting the City abandon a portion of the frontage road controlled by the City on the 1200 block of the complex to modify access and circulation and to provide continuous sidewalk in the public right of way along Willow Road. This request is in response to concerns from MidPen regarding non-resident pedestrian and vehicular traffic traveling through the site. Although there are existing precedents of vacation and abandonment of the frontage Road along Willow Road, several policy issues impact this request, including whether a partial abandonment or a license agreement is more appropriate given utilities requirements, title concerns, and long-term future use of the right-of-way. The proposed design would also remove direct access from Newbridge to Ivy along the frontage road. The removal of this access would require further circulation analysis to determine if any unanticipated impacts are created. According to MidPen, the vacation and abandonment will allow for a public pedestrian route that is integrated with the rest of Willow Road, and a site layout reconfiguration that will greatly benefit residents, staff and the neighborhood, and create clearly delineated boundaries between public and private realms. City staff have not determined all of the specifics related to the vacation and abandonment request and whether any significant issues would be identified. If Council decides to proceed forward with the proposal, then further information would be researched and provided to Council for consideration of the request.

MidPen's intention on the 1200 block is to demolish the existing wall, and construct a public sidewalk approximately where the current wall is. Next to the new sidewalk would be a new property boundary – likely a decorative fence – that would maintain security for the site, as well as a landscape buffer. Approximately 775 feet of linear frontage would be affected. Staff has concerns that this may require a community engagement

process to determine the look of the decorative fence and its integration with any portion of the wall that might remain. Staff also has concerns about the overall cost of these infrastructure improvements and who would bear those costs.

The project's estimated cost is \$31 million, according to the NOFA submission. The current preliminary per unit costs are estimated at \$347,000/unit. These cost estimates are typical for developments of similar scale in the South and West Bay Region. The project is estimated to generate approximately \$17,000,000 in tax credits, depending on pricing and tax rates at time of sale. Thus far, MidPen has received a commitment of \$400,000 in San Mateo County Affordable Housing Funds (AHF) and will continue to seek County support as it becomes available. MidPen has also applied for \$2 million in HOME/CDBG from the County for the Gateway Senior project. County Staff has not recommended the project for funding in this round as they decided to prioritize projects that have city financing commitments and are ready to apply for tax credits in July, 2014. City funding is one of the most important criteria for County funding. MidPen expects the County to have another funding cycle this year and that, with a City financing commitment, Gateway will be well positioned for an additional County commitment. In addition to County funding, MidPen has also recently applied for \$890,000 in Federal Home Loan Bank Affordable Housing Program funds.

Forty two of the 90 units would count toward the City's Regional Housing Needs Assessment (RHNA) requirements and would represent 18% progress on the Very Low Income allotment of 233 units by 2022. Forty four of the new units would be reserved for current tenants. Based on the City's contribution to the project, a minimum of nine units would be dedicated to the Menlo Park live/work BMR requirement. The complete preliminary proposal from MidPen is included as Attachment B. The actual number of units subject to the Menlo Park live/work requirement will be determined as a part of negotiating the final loan commitment.

If Council is supportive of moving forward, the next step in the process will be a regular agenda item requesting that Council conditionally commit funding for the project. Along with anticipated funding commitments from the County, this will allow MidPen to compete for housing tax credits in March of 2015. Firm commitment of the funds would follow a similar course as that currently being followed for the CORE residential project at the VA Campus.

IMPACT ON CITY RESOURCES

The City's BMR Fund has adequate uncommitted funds to cover the \$3.2 million allocated for this project through the NOFA. As a part of the proposal, MidPen has indicated that the project would be more competitive in the California Tax Credit Allocation process if the existing City loan (approximately \$4 million in Redevelopment funds) were to be "modified and extended" as a part of the funding package. Complicating this request is the dissolution of the RDA, although at this time staff believes that as the housing Successor Agency the City can make all decisions regarding the loan without the necessity for State Department of Finance or Oversight

Board approval. The final structure of the soft loan from the City would be determined once the City's conditions (if any) have been met and would return to Council for final approval.

POLICY ISSUES

Below-market-rate units at the deepest affordability levels are the most challenging to finance, and the most critical among Bay Area housing needs and no new senior housing has been built in Menlo Park in many years. This project is well-positioned given MidPen's ownership of the site. To finance these units in any other location in Menlo Park would require a greater level of subsidy for land acquisition.

The proposal from MidPen is consistent with the City's BMR policy and guidelines. Per the anticipated Low Income Housing Tax Credit Regulatory Agreements, tenants will not be accepted unless their household income levels are below 45% AMI. A pro rata share of no less than nine units will be leased according to the City of Menlo Park's BMR Fund Guidelines, Sections 7 and 11.

Benefits of the project include new development of an older housing complex along an important community gateway; the project helps meet a pressing and long-term housing need; it utilizes an opportunity site included in the Housing Element; and the \$3.2 million commitment of BMR funds to leverage a 90-unit affordable rental project is quite reasonable based on cost per unit. Additionally, MidPen has a strong track record of development and operation of affordable rental housing.

An additional benefit of the project to the community is the progress it would represent toward meeting RHNA goals with all 90 units restricted to 30% and 45% AMI translating to 18% progress on the 233 Very Low Income units needed per the proposed Menlo Park RHNA for 2014-2022 for the 42 new units. Demonstrated progress on the City's RHNA allocation can position the City for a share of State funds for transportation improvements.

Several additional policy issues related to the proposed project remain to be resolved, including:

- MidPen's request for right of way abandonment and the impacts and implications of options under this request
- Potential circulation issues around the site given the current proposed conceptual configuration
- Infrastructure changes impacting the existing wall and sidewalk along Willow Road and the cost of the proposed changes.

Options, along with the pros and cons for these issues, will come to Council in the coming months as the details of the project are determined.

ENVIRONMENTAL REVIEW

Study session items are not subject to the California Environmental Quality Act (CEQA). The appropriate CEQA determination will occur when the City Council acts on the funding commitment request at a future meeting.

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. BMR Fund Status
- B. MidPen Proposal
- C. MidPen Senior Housing Outreach Summary
- D. Existing and Proposed Site Plans
- E. Location Map

Report prepared by:
Starla Jerome-Robinson
Assistant City Manager

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**BELOW MARKET RATE HOUSING RESERVE
BALANCE SHEET
6/30/13 AND 3/31/14**

	6/30/2013	3/31/2014
ASSETS		
BMR Housing Reserve Cash	5,949,007	8,001,193
BMR Accounts Receivable	0	0
BMR Interest Receivable	20,304	0
PAL Loans Receivable	2,092,562	2,018,627
Other Loans Receivable	1,849,047	1,849,047
Real Estate Held for Resale	733,597	0
TOTAL ASSETS	10,644,517	11,868,867
LIABILITIES		
Accounts Payable	14,613	0
TOTAL LIABILITIES	14,613	0
FUND BALANCE		
Designated for PAL Loans	2,389,438	2,463,373
Designated for Neighborhood Stabilization Program	0	-
Designated for Habitat for Humanity Neighborhood Revitalization Program	650,000	650,000
Designated for Foreclosure Prevention Program	0	-
Designated for Housing Project	0	-
Designated for Notice of Funding Availability (NOFA)	3,200,000	3,200,000
Undesignated	4,390,466	5,555,494
TOTAL FUND BALANCE	10,629,904	11,868,867
TOTAL LIABILITIES AND FUND BALANCE	10,644,517	11,868,867

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Gateway Senior Housing

Project Description

I. MidPen Housing

Developer Experience

For more than forty years, MidPen Housing (“MidPen”) has been one of the largest, most trusted developers and owners of high-quality affordable rental housing in Northern California. We have played a leading role in the growth of the affordable housing industry in California, consistently setting new standards for best practices in development, property management, and resident services.

MidPen operates through three distinct non-profit companies that work closely together to manage corporate activities and partnerships, while furthering its mission to provide safe, affordable housing of high quality. MidPen has extensive experience in the development of affordable housing. Since it was founded in 1970, MidPen has achieved recognition as a leading non-profit sponsor and developer of affordable housing. MidPen has constructed or rehabilitated more than 7,400 residential units for low-income families, seniors, farm workers, and physically, mentally or developmentally disabled people throughout Northern California with developments in Alameda, Contra Costa, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba Counties. 1,500 of our apartment homes are located in San Mateo County. MidPen has a strong track record of leveraging local funds to raise additional funding sources, compete successfully for low income housing tax credits, and complete projects in a timely way.

Management Experience

MidPen Housing established an affiliated management company in 1981. Today, MidPen Property Management Corporation manages 6,397 units at over 90 properties, which are located from Fairfield to Monterey and house over 14,000 residents. MidPen Property Management both manages MidPen’s properties and offer fee-based management for other affordable housing communities. MidPen Management has a staff of approximately 200 employees. Our seasoned leadership team provides extensive experience in all aspects critical to exceptional property management including compliance, operations, training, facility maintenance and community relations.

Service Provider Experience

MidPen Resident Services Corporation provides and coordinates onsite support programs to help residents advance. Some of these programs include: computer and vocational training, tutoring and other afterschool programs, financial literacy classes, health and wellness programs and community referrals. With an annual investment of

\$5 million, an in-house staff of 65 and 300 service provider partners, MidPen Resident Services Corporation leads the affordable housing industry with its programs and services by helping over 7,000 MidPen residents each year.

II. Project Overview

MidPen Housing is proposing to develop Gateway Senior Housing, a 90-unit new construction affordable senior housing development at 1221-1275 Willow Road in Menlo Park (between Newbridge Street and Ivy Drive). The project is located on a prominent corridor and would be transformative for current site residents as well as the neighborhood. Gateway Senior Housing has a critical role to play in preserving and expanding the supply of affordable housing.

The current Gateway Apartments is a 130-unit apartment complex on the 1200 and 1300 blocks of Willow Road in the Belle Haven neighborhood of Menlo Park. The property was originally built in the 1960s. MidPen Housing, a regional non-profit developer, has owned and managed the property since 1987. The property is 100% low-income housing, serving both senior and family populations with units ranging from studios to 3-bedrooms. MidPen intends to redevelop the property in light of its physical and functional needs. Gateway's redevelopment is a valuable opportunity to increase the supply of affordable housing in Menlo Park given the scarcity and high cost of available land.

The Gateway Senior Housing project would increase the total number of units on that block from 48 units to 90 units, one of which would be an on-site manager's unit. This block is where many of the current senior residents live. The apartments would be available to seniors 62 years of age and older. Units will be targeted at 30-45% of Area Median Income (please see proposed unit matrix below). The way that current residents' rents are calculated would remain the same.

Unit Type	AMI %	Unit Quantity	Maximum Income (2014)	Rent Net of Utilities (2014)
1 br	30%	8	\$26,580	\$584
1 br	45%	77	\$39,870	\$896
2 br	30%	1	\$29,910	\$697
2 br	45%	3	\$44,865	\$1,071
2 br manager unit	n/a	1	n/a	n/a

III. Need for Senior Housing

This project would serve the critical local and regional needs for affordable senior housing. MidPen develops senior housing with a strong services component in order to support residents as they age in place and help them to live independently as long and successfully as possible. The 2007-2014 Housing Element identified that though the City has long had the goal of expanding housing opportunities for the elderly (in the

1992 Housing Element, the last Housing Element prior to the current version), no new housing for seniors has been developed since 1992 (p.66). According to the Housing Element, 25% of senior households in Menlo Park were extremely low income, while 17% were very low income, and approximately 68% of senior renters are cost burdened (p.71, p.80), demonstrating the need for affordable senior housing so that Menlo Park seniors can age in place. Staff at the Senior Center indicated that housing is the primary concern voiced by seniors; they want to stay in the community and live independently as long as possible but have limited options available to do so.

IV. Gateway Senior Housing Goals

Goals of the project include:

- 1) Increase the supply of high-quality, permanently affordable senior housing in Menlo Park
- 2) Preserve and enhance existing resident community bonds
- 3) Create community gathering space that supports resident health and social activities
- 4) Design building(s) and landscaping to compliment the surrounding neighborhood
- 5) Improve security and access

V. Design and Amenities

The building type will be appropriate to and maximize use of the infill site. The height will be two and three stories. There will be a large common area and leasing office near the primary entry to create a welcoming presence for residents and guests. The building will be elevator served and the apartments will be accessible in order to promote independent living.

The design will embrace the R-4-S design standards and guidelines. MidPen recognizes the intent of the standards and guidelines to ensure that new building is of high-quality, enhances the neighborhood, and contributes to a healthy environment. Many of the R-4-S standards and guidelines correspond to MidPen's field tested Building Guidelines.

In addition to providing additional affordable housing, MidPen expects to address several existing challenges with the site's current design and physical condition, including the separation of the two housing blocks and problematic vehicular and pedestrian circulation patterns. Currently, the management office is on the 1300 block while the services space is on the 1200 block, with a considerable distance in between. Part of the revitalization will include creating dedicated space for on-site management and supportive services on both blocks. These community areas will be sufficiently sized and equipped to meet the needs of the residents and to facilitate MidPen's array of service programs. Redevelopment will allow one block to serve seniors and the other block to serve families; by having each block serve a specific population, MidPen will be able to provide more specialized service attention.

One of the property's most significant challenges is with circulation, especially with non-resident vehicle and pedestrian traffic through the site. We are proposing reconfiguration of Frontage Road at the 1200 block to allow us to address circulation and access, and create distinct public and private circulation routes. There are existing precedents of vacation and abandonment of Frontage Road along Willow Road, to allow for a distinct public sidewalk, including the neighboring property 1283 Willow Road. Vacation and abandonment will allow for provision of a public pedestrian route that is integrated with the rest of Willow Road, and a site layout reconfiguration that will greatly benefit residents, staff and the neighborhood, and create clearly delineated boundaries between public and private realms. The intention on the 1200 block is to demolish the wall, and construct a public sidewalk approximately where the current wall is. Next to the new sidewalk would be a new property boundary – likely a decorative fence – that would maintain security for the site, as well as a landscape buffer.

Gateway Senior Housing will have dedicated spaces for on-site management and resident services, whose programs will be tailored specifically to our senior population. These community areas will be sufficiently sized and equipped to meet the needs of the residents and to facilitate MidPen's array of service programs. The design will incorporate programmed landscape areas (i.e. walking area, picnic/BBQ areas, tai chi, etc.) that we have found to be effective in encouraging our senior residents to spend time outside. Community spaces will include additional small flexible spaces that can be used for a wide array of activities and adapt as residents' needs evolve. These spaces can be used for activities that promote health and wellness for our residents, such as our balance therapy program. We have distributed a survey to residents to get their feedback on the type of open space and community space they would like to see in the new community. We have held resident meetings and meetings with interested community members to get input that will inform our design (see Community Outreach Summary).

V. Financing Plan

The property currently has a mortgage held by California Housing Finance Agency (CalHFA) and a soft loan held by the City of Menlo Park. Other financing includes a Mod Rehab rental assistance contract covering all 130 units, administered by the Housing Authority. Key to revitalization is the conversion of the current Mod Rehab contract to a Project Based Section 8 contract. MidPen and the San Mateo County Housing Authority are in the process of evaluating how best to go about this conversion; the Housing Authority is a committed partner in this process. The current proforma assumes that the 1200 block would have 44 project based vouchers based on the existing senior population at the site.

The financing plan for the redevelopment assumes restructuring/refinancing the existing mortgage with CalHFA to remove it from the 1200 block site, so that the loan is secured only by the 1300 block site. This will enable to the 1200 block to secure 9% tax credits. MidPen will also be working with the City of Menlo Park on a modification of its

existing loan; it is assumed that the existing City funds would roll over as part of the financing for the redevelopment.

Thus far, MidPen has received a commitment of \$400,000 in San Mateo County Affordable Housing Funds (AHF). In addition, at the request of the Housing Community Development Committee (HCDC) members, any AHF funds returned to the County will be split between the Gateway Senior Housing project and the University Avenue Senior Housing project. This request was made by the committee to emphasize that these are very worthy projects meriting additional County support. MidPen has also applied for \$2 million in HOME/CDBG from the County for the Gateway Senior project. County Staff has not recommended the project for funding in this round as they decided to prioritize projects that have city financing commitments and are ready to apply for tax credits in Round 2 2014 (July). City funding is one of the most important criteria for County funding. We expect that the County will have another funding cycle this year and that, with a City financing commitment, Gateway will be well positioned for an additional County commitment. In addition to County funding, MidPen has also recently applied for \$890,000 in Federal Home Loan Bank Affordable Housing Program funds. The financing plan also assumes seller take back financing and a commitment of existing replacement and operating reserves. MidPen will continue to apply for County funding in future rounds and plans to apply for tax credits in 2015.

VI. City of Menlo Park Funding Request

MidPen requested the full amount available in the NOFA of \$3.2 million. This amount represents approximately 10% of the project's anticipated cost. If we apply the 10% figure pro rata to the development's 89 low-income units, it yields 9 units available for a Menlo Park live/work preference. All 42 additional affordable units will create benefit to the City with respect to its Housing Element.

Gateway Senior Housing's first priority will be to house the senior households that currently reside at Gateway. These consist of approximately 44 households who are currently Menlo Park residents.

VII. Timeline

The current timeline is summarized below.

<u>Milestone</u>	<u>Target Completion Date</u>
Start of Community Outreach Process	01/2014
County of San Mateo AHF Funding Award	02/2014
Conceptual Design Finalized	04/2014
City of Menlo Park BMR Funds Award	05-06/2014

Schematic Design	09/2014
R-4-S Compliance Review (Design Review)	11/2014
TCAC Application	03/2015
TCAC Award	06/2015
Building Permits	12/2015
Construction Financing Closing	12/2015
Construction Start	12/2015
Construction Completion	12/2016
Initial Occupancy	12/2016
Conversion to Permanent Financing	05/2017

Gateway Senior Housing

Community Outreach Summary

Overview

MidPen has begun community outreach on the Gateway Senior Housing project, following up on initial outreach work done as part of the Housing Element update process in 2013. During Spring of 2013, we had several meetings, including a property tour of Gateway with community members. Starting in early 2014, we began meeting again with interested community members. We also held two resident meetings and a neighborhood meeting in March and April which are described in further detail below. MidPen has participated in the Belle Haven Vision and Action Plan meetings in 2013 and 2014. We intend to have further resident meetings and outreach to interested community members as our design progresses beyond conceptual design.

Meetings Held for Gateway Senior Housing

Individual and small group meetings (4/30/2013, 1/30/2014, 1/31/2014, 2/6/2014)

Tour of Gateway with neighbors and Council Member Keith on 5/15/2013

Resident Meeting on 3/18/2014

Resident Meeting on 3/24/2014

Community Meeting on 4/3/2014

What We Heard

Housing Element Process:

- Priority for senior housing given the real need (fixed incomes, overcrowding in multi-generational households)
- Importance of management and services
- Importance of security

We listened and focused on senior housing with a strong services component and a secure-access site.

Targeted Outreach to Stakeholders:

- Want to see a redeveloped property that is clean, attractive, with no loitering
- Want the redeveloped property to be a nice entrance to the community, both in terms of architecture and landscape
- Want to see examples of MidPen properties that are comparable to what is being proposed (we provided a list of examples and offered to arrange a tour)

- Heard from the Senior Center that housing is the major concern for seniors in the community; they want to live independently and they want to stay in the community and don't have many options

Resident Meetings:

We held two well-attended resident meetings, one on March 18th that had over 85 residents in attendance and one on March 24th that had over 40 in attendance. The first meeting provided an overview of the revitalization plans and the temporary relocation that will occur during construction. The second meeting was focused on getting input to incorporate into the design. At this meeting, we distributed a survey to residents to get their input on the types of community amenities and other features they would like to see in the redeveloped community. We had a discussion with residents about what they like about where they live and what they would improve. Some feedback from this conversation that we will incorporate into the design is below.

- Community: Preserve and enhance the strong sense of neighborliness currently enjoyed by residents. Many residents emphasized how they enjoy their neighbors.
- Outdoor Space: The openness of the current site helps support the social network. Through the resident survey, we will get a better sense of the kinds of open space that they would prefer. Some options include gardens, barbeque and picnic areas, and walking paths.
- Design for Aging in Place: They would like to see accessible homes and common areas for seniors to live independently as long as possible.
- Security: Consider a perimeter fence around the site
- Willow Road: Provide buffer from traffic and noise; but should be attractive

Community Meeting:

On April 3rd, we held a community meeting to discuss our Gateway Senior Housing plans at the Senior Center in Belle Haven. In terms of outreach for this meeting, in addition to reaching out to individuals, we mailed flyers to our neighboring properties within a 300' radius of the property, posted flyers at local businesses on Willow Road, made an announcement about the meeting at the Public Safety meeting on 3/26 and the meeting information went out in the blast that Patricia Maciel sent out on 3/28.

The purpose of this meeting was to solicit input from the community as we begin the design process. We plan to have additional community meetings to solicit further input as the design takes shape. Attendees included neighbors who abut the property, a number of Gateway residents and other community members. At the meeting, we gave an overview of the Gateway Senior Housing project and shared a preliminary conceptual site plan and sections. Representatives from MidPen's development, property management and resident services departments were there as well as our architect (Mithun). Below is a summary of the feedback we heard.

- This would be an improvement from the current condition
- Please take into consideration our privacy (our architect noted that the design is two and three stories and the three story portion of the building is sited as far from the single family homes as possible)
- Request for secured site
- Accessibility is important to seniors. They want to be able to request ground floor units or upper floors depending on their needs.

Future Outreach

As our plans progress, we will meet with our residents and check in with interested community members. We also plan to have a presentation to seniors at the Senior Center during lunch once we have incorporated feedback from our resident survey and have more material to get their input on.

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Current Site Plan



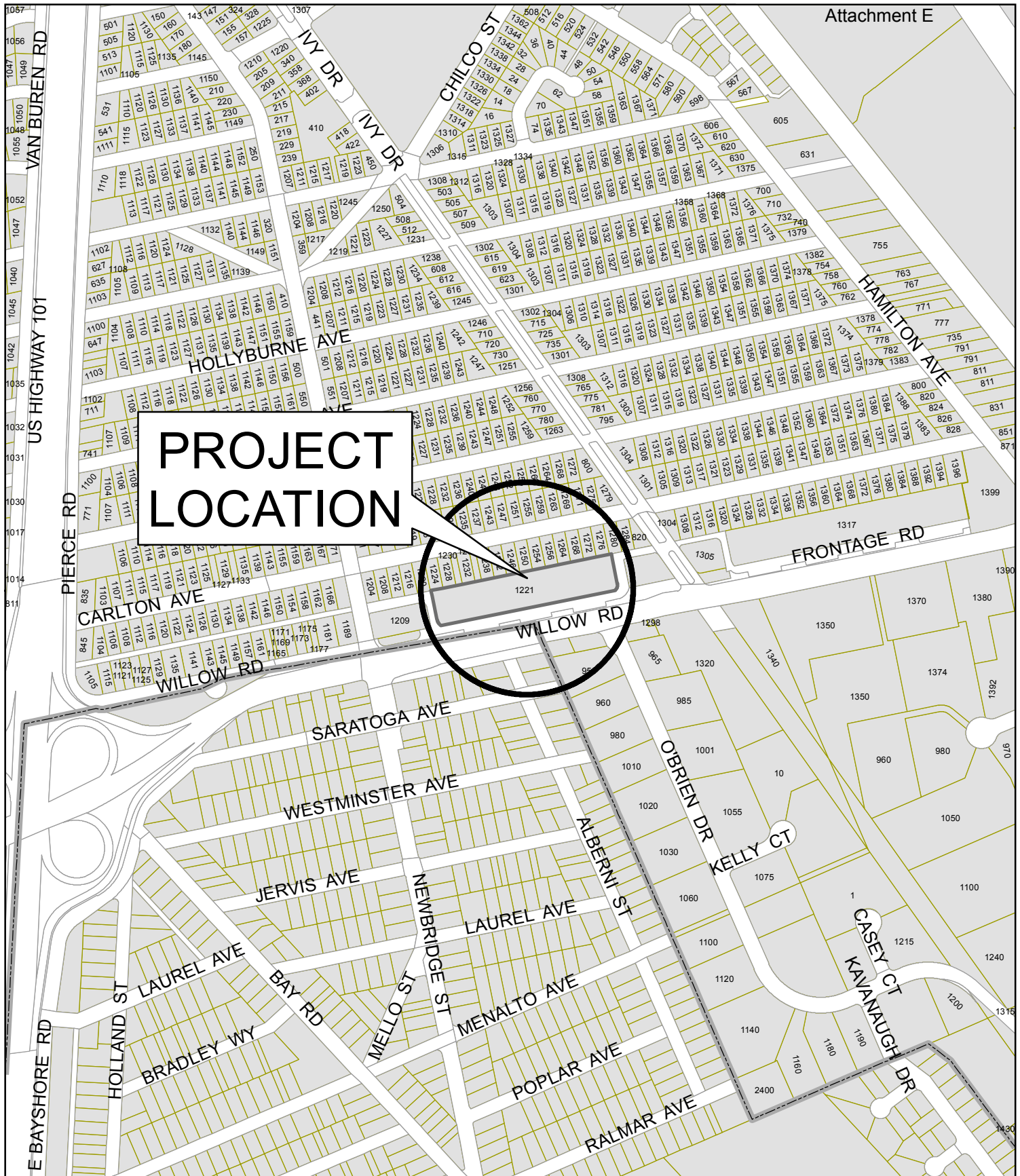
Note: Conceptual Illustration Only.

Existing Property Line

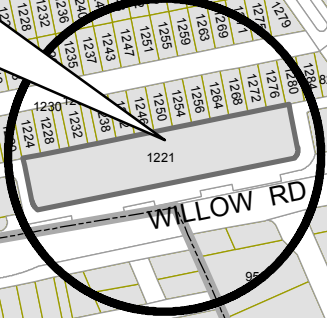
Existing Frontage Road

Proposed Conceptual Site Plan





**PROJECT
LOCATION**

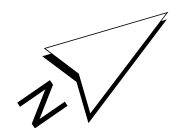


CITY OF MENLO PARK

LOCATION MAP

1221, 1227, 1229, 1233, 1235, 1239, 1243,
1247, 1253, 1255, 1263, 1271, 1275 WILLOW ROAD

DRAWN: EAS CHECKED: EAS DATE: 06/13/14 SCALE: 1" = 500' SHEET: 1



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Gateway Senior Housing

Project Description

I. MidPen Housing

Developer Experience

For more than forty years, MidPen Housing (“MidPen”) has been one of the largest, most trusted developers and owners of high-quality affordable rental housing in Northern California. We have played a leading role in the growth of the affordable housing industry in California, consistently setting new standards for best practices in development, property management, and resident services.

MidPen operates through three distinct non-profit companies that work closely together to manage corporate activities and partnerships, while furthering its mission to provide safe, affordable housing of high quality. MidPen has extensive experience in the development of affordable housing. Since it was founded in 1970, MidPen has achieved recognition as a leading non-profit sponsor and developer of affordable housing. MidPen has constructed or rehabilitated more than 7,400 residential units for low-income families, seniors, farm workers, and physically, mentally or developmentally disabled people throughout Northern California with developments in Alameda, Contra Costa, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba Counties. 1,500 of our apartment homes are located in San Mateo County. MidPen has a strong track record of leveraging local funds to raise additional funding sources, compete successfully for low income housing tax credits, and complete projects in a timely way.

Management Experience

MidPen Housing established an affiliated management company in 1981. Today, MidPen Property Management Corporation manages 6,397 units at over 90 properties, which are located from Fairfield to Monterey and house over 14,000 residents. MidPen Property Management both manages MidPen’s properties and offer fee-based management for other affordable housing communities. MidPen Management has a staff of approximately 200 employees. Our seasoned leadership team provides extensive experience in all aspects critical to exceptional property management including compliance, operations, training, facility maintenance and community relations.

Service Provider Experience

MidPen Resident Services Corporation provides and coordinates onsite support programs to help residents advance. Some of these programs include: computer and vocational training, tutoring and other afterschool programs, financial literacy classes, health and wellness programs and community referrals. With an annual investment of

\$5 million, an in-house staff of 65 and 300 service provider partners, MidPen Resident Services Corporation leads the affordable housing industry with its programs and services by helping over 7,000 MidPen residents each year.

II. Project Overview

MidPen Housing is proposing to develop Gateway Senior Housing, a 90-unit new construction affordable senior housing development at 1221 Willow Road in Menlo Park (between Newbridge Street and Ivy Drive). The project is located on a prominent corridor and would be transformative for current site residents as well as the neighborhood. Gateway Senior Housing has a critical role to play in preserving and expanding the supply of affordable housing.

The current Gateway Apartments is a 130-unit apartment complex on the 1200 and 1300 blocks of Willow Road in the Belle Haven neighborhood of Menlo Park. The property was originally built in the 1960s. MidPen Housing, a regional non-profit developer, has owned and managed the property since 1987. The property is 100% low-income housing, serving both senior and family populations with units ranging from studios to 3-bedrooms. MidPen intends to redevelop the property in light of its physical and functional needs. Gateway’s redevelopment is a valuable opportunity to increase the supply of affordable housing in Menlo Park given the scarcity and high cost of available land.

The Gateway Senior Housing project would increase the total number of units on that block from 48 units to 90 units, one of which would be an on-site manager’s unit. This block is where many of the current senior residents live. The apartments would be available to seniors 62 years of age and older. Units will be targeted at 30-45% of Area Median Income (please see proposed unit matrix below). The way that current residents’ rents are calculated would remain the same.

Unit Type	AMI %	Unit Quantity	Maximum Income (2014)	Rent Net of Utilities (2014)
1 br	30%	8	\$26,580	\$584
1 br	45%	77	\$39,870	\$896
2 br	30%	1	\$29,910	\$697
2 br	45%	3	\$44,865	\$1,071
2 br manager unit	n/a	1	n/a	n/a

III. Need for Senior Housing

This project would serve the critical local and regional needs for affordable senior housing. MidPen develops senior housing with a strong services component in order to support residents as they age in place and help them to live independently as long and successfully as possible. The 2007-2014 Housing Element identified that though the City has long had the goal of expanding housing opportunities for the elderly (in the

1992 Housing Element, the last Housing Element prior to the current version), no new housing for seniors has been developed since 1992 (p.66). According to the Housing Element, 25% of senior households in Menlo Park were extremely low income, while 17% were very low income, and approximately 68% of senior renters are cost burdened (p.71, p.80), demonstrating the need for affordable senior housing so that Menlo Park seniors can age in place. Staff at the Senior Center indicated that housing is the primary concern voiced by seniors; they want to stay in the community and live independently as long as possible but have limited options available to do so.

IV. Gateway Senior Housing Goals

Goals of the project include:

- 1) Increase the supply of high-quality, permanently affordable senior housing in Menlo Park
- 2) Preserve and enhance existing resident community bonds
- 3) Create community gathering space that supports resident health and social activities
- 4) Design building(s) and landscaping to compliment the surrounding neighborhood
- 5) Improve security and access

V. Design and Amenities

The building type will be appropriate to and maximize use of the infill site. The height will be two and three stories. There will be a large common area and leasing office near the primary entry to create a welcoming presence for residents and guests. The building will be elevator served and the apartments will be accessible in order to promote independent living.

The design will embrace the R-4-S design standards and guidelines. MidPen recognizes the intent of the standards and guidelines to ensure that new building is of high-quality, enhances the neighborhood, and contributes to a healthy environment. Many of the R-4-S standards and guidelines correspond to MidPen's field tested Building Guidelines.

In addition to providing additional affordable housing, MidPen expects to address several existing challenges with the site's current design and physical condition, including the separation of the two housing blocks and problematic vehicular and pedestrian circulation patterns. Currently, the management office is on the 1300 block while the services space is on the 1200 block, with a considerable distance in between. Part of the revitalization will include creating dedicated space for on-site management and supportive services on both blocks. These community areas will be sufficiently sized and equipped to meet the needs of the residents and to facilitate MidPen's array of service programs. Redevelopment will allow one block to serve seniors and the other block to serve families; by having each block serve a specific population, MidPen will be able to provide more specialized service attention.

One of the property's most significant challenges is with circulation, especially with non-resident vehicle and pedestrian traffic through the site. We are proposing reconfiguration of Frontage Road at the 1200 block to allow us to address circulation and access, and create distinct public and private circulation routes. There are existing precedents of vacation and abandonment of Frontage Road along Willow Road, to allow for a distinct public sidewalk, including the neighboring property 1283 Willow Road. Abandonment will allow for provision of a public pedestrian route that is integrated with the rest of Willow Road, and a site layout reconfiguration that will greatly benefit residents, staff and the neighborhood, and create clearly delineated boundaries between public and private realms. The intention on the 1200 block is to demolish the wall, and construct a public sidewalk approximately where the current wall is. Next to the new sidewalk would be a new property boundary – a reconstructed decorative wall/fence – that would maintain security for the site, as well as a landscape buffer on both sides of the sidewalk.

Gateway Senior Housing will have dedicated spaces for on-site management and resident services, whose programs will be tailored specifically to our senior population. These community areas will be sufficiently sized and equipped to meet the needs of the residents and to facilitate MidPen's array of service programs. The design will incorporate programmed landscape areas (i.e. walking area, picnic/BBQ areas, tai chi, etc.) that we have found to be effective in encouraging our senior residents to spend time outside. Community spaces will include additional small flexible spaces that can be used for a wide array of activities and adapt as residents' needs evolve. These spaces can be used for activities that promote health and wellness for our residents, such as our balance therapy program. We have conducted a survey with residents to get their feedback on the type of open space and community space they would like to see in the new community. We have held resident meetings and meetings with interested community members to get input that will inform our design (see Community Outreach Summary).

V. Financing Plan

The property currently has a mortgage held by California Housing Finance Agency (CalHFA) and a soft loan held by the City of Menlo Park. Other financing includes a Mod Rehab rental assistance contract covering all 130 units, administered by the Housing Authority. Key to revitalization is the conversion of the current Mod Rehab contract to a Project Based Section 8 contract. MidPen and the San Mateo County Housing Authority are in the process of evaluating how best to go about this conversion; the Housing Authority is a committed partner in this process. The current proforma assumes that the 1200 block would have 44 project based vouchers based on the existing senior population at the site.

The financing plan for the redevelopment assumes restructuring/refinancing the existing mortgage with CalHFA to remove it from the 1200 block site, so that the loan is secured only by the 1300 block site. This will enable to the 1200 block to secure 9% tax credits. MidPen is also working with the City of Menlo Park on a modification of its

existing loan; it is assumed that the existing City funds would roll over with modifications as part of the financing.

Thus far, MidPen has received a commitment of \$400,000 in San Mateo County Affordable Housing Funds (AHF). In addition, at the request of the Housing Community Development Committee (HCDC) members, any AHF funds returned to the County will be split between the Gateway Senior Housing project and the University Avenue Senior Housing project. This request was made by the committee to emphasize that these are very worthy projects meriting additional County support. MidPen has also applied for \$2 million in HOME/CDBG from the County for the Gateway Senior project. County Staff did not recommend the project for funding in this round as they decided to prioritize projects that had city financing commitments and were ready to apply for tax credits in Round 2 2014 (July). City funding is one of the most important criteria for County funding. MidPen also recently applied for and received a commitment for \$890,000 in Federal Home Loan Bank Affordable Housing Program funds. The County currently has an additional NOFA due October 2, 2014 and MidPen intends to apply. City financing will again be a critical element in securing County funding. The financing plan also assumes seller take back financing and a commitment of existing replacement and operating reserves. MidPen will apply for County funding this fall and plans to apply for tax credits in 2015.

VI. City of Menlo Park Funding Request

MidPen requested the full amount available in the NOFA of \$3.2 million. This amount represents approximately 10% of the project's anticipated cost. Based on the recent core project formula, if we apply the 10% figure pro rata to the development's 89 low-income units, it yields 9 units available for a Menlo Park live/work preference. MidPen is open to additional live/work preference units, balanced with Fair Housing requirements. All 42 additional affordable units will create benefit to the City with respect to its Housing Element.

Gateway Senior Housing's first priority will be to house the senior households that currently reside at Gateway and are existing Menlo Park residents. These consist of approximately 44 households who are currently Menlo Park residents.

VII. Timeline

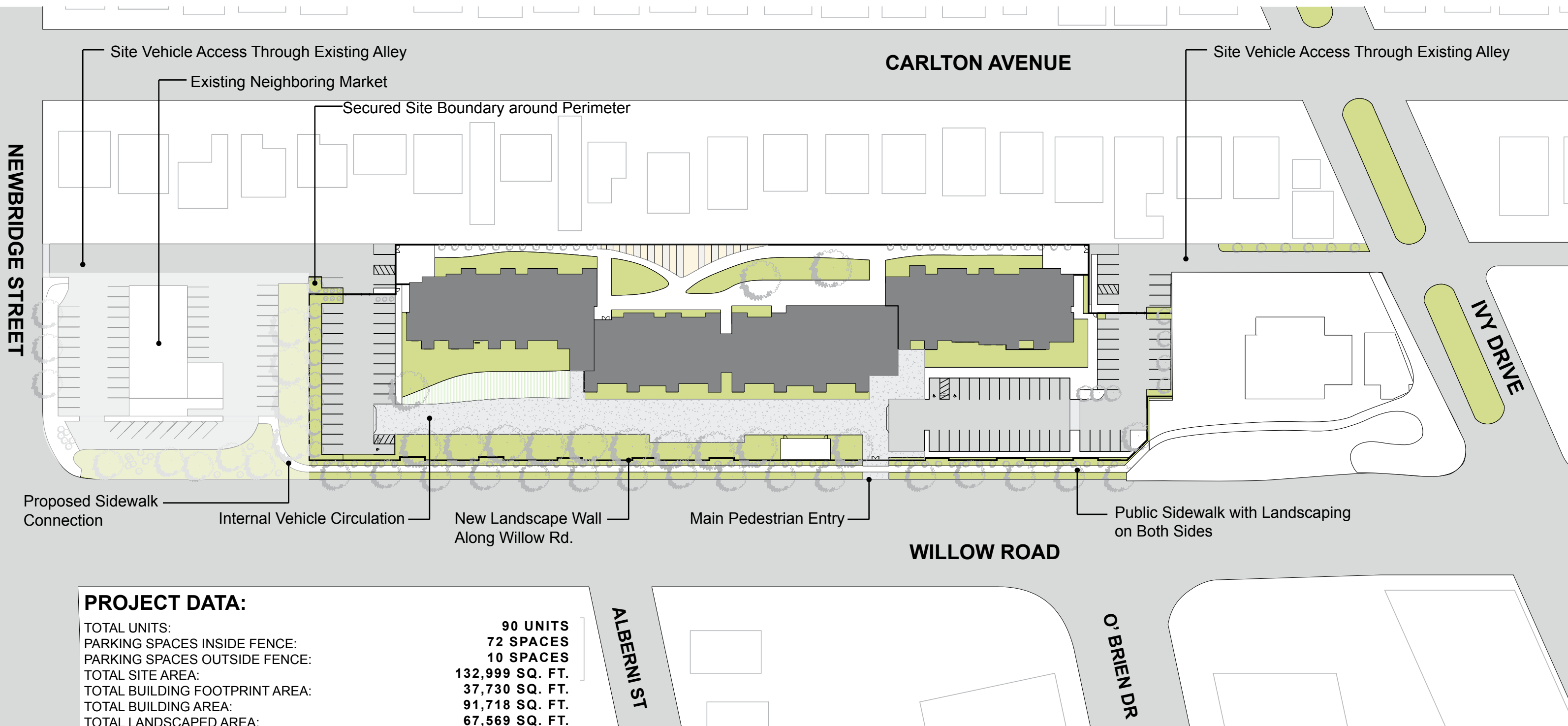
The current timeline is summarized below.

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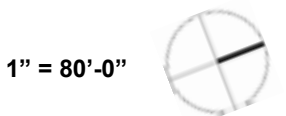
Gateway Senior Housing

Conceptual Site Plan



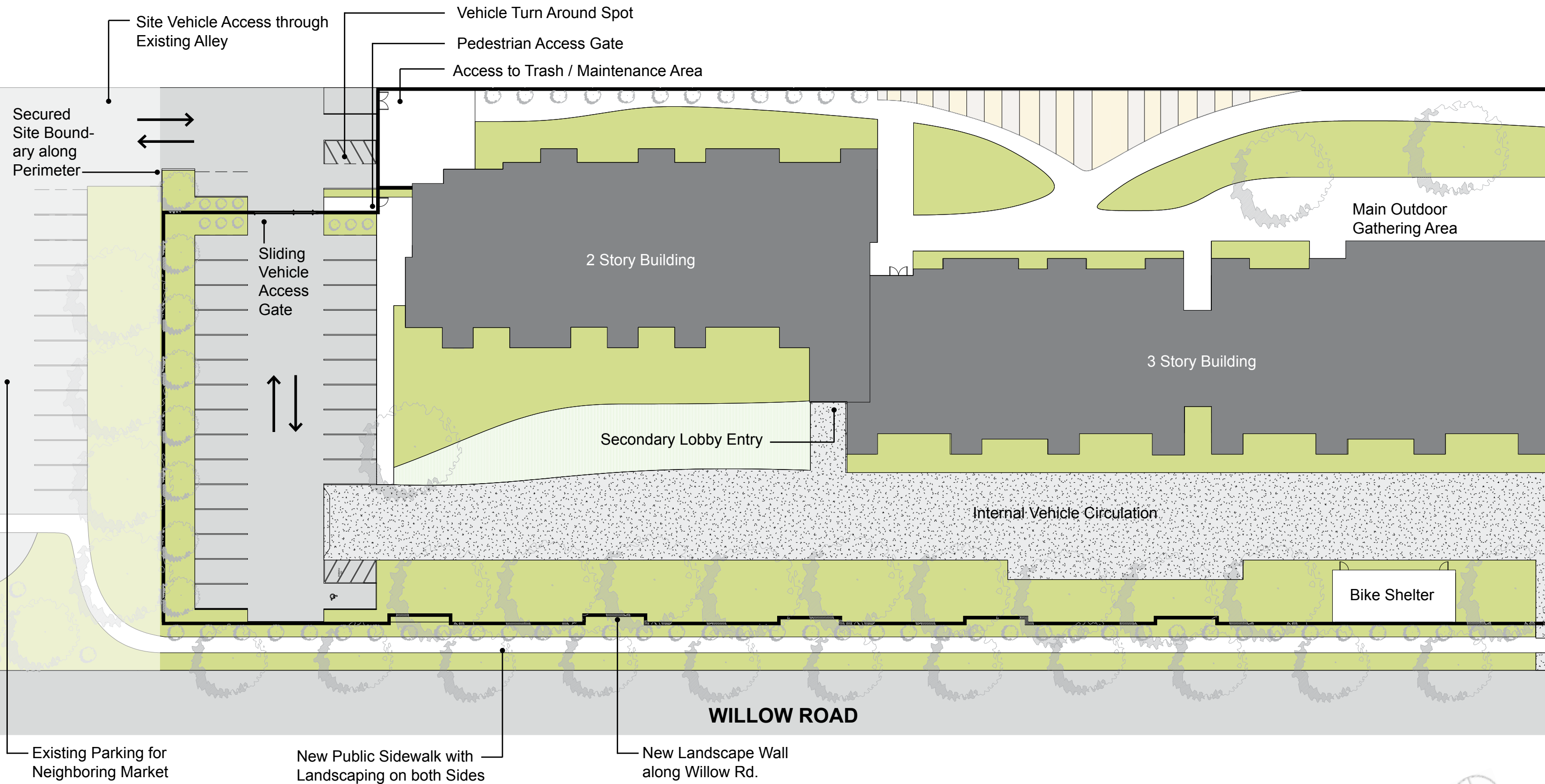
PROJECT DATA:

TOTAL UNITS:	90 UNITS
PARKING SPACES INSIDE FENCE:	72 SPACES
PARKING SPACES OUTSIDE FENCE:	10 SPACES
TOTAL SITE AREA:	132,999 SQ. FT.
TOTAL BUILDING FOOTPRINT AREA:	37,730 SQ. FT.
TOTAL BUILDING AREA:	91,718 SQ. FT.
TOTAL LANDSCAPED AREA:	67,569 SQ. FT.



Gateway Senior Housing

Conceptual Site Plan - South Side

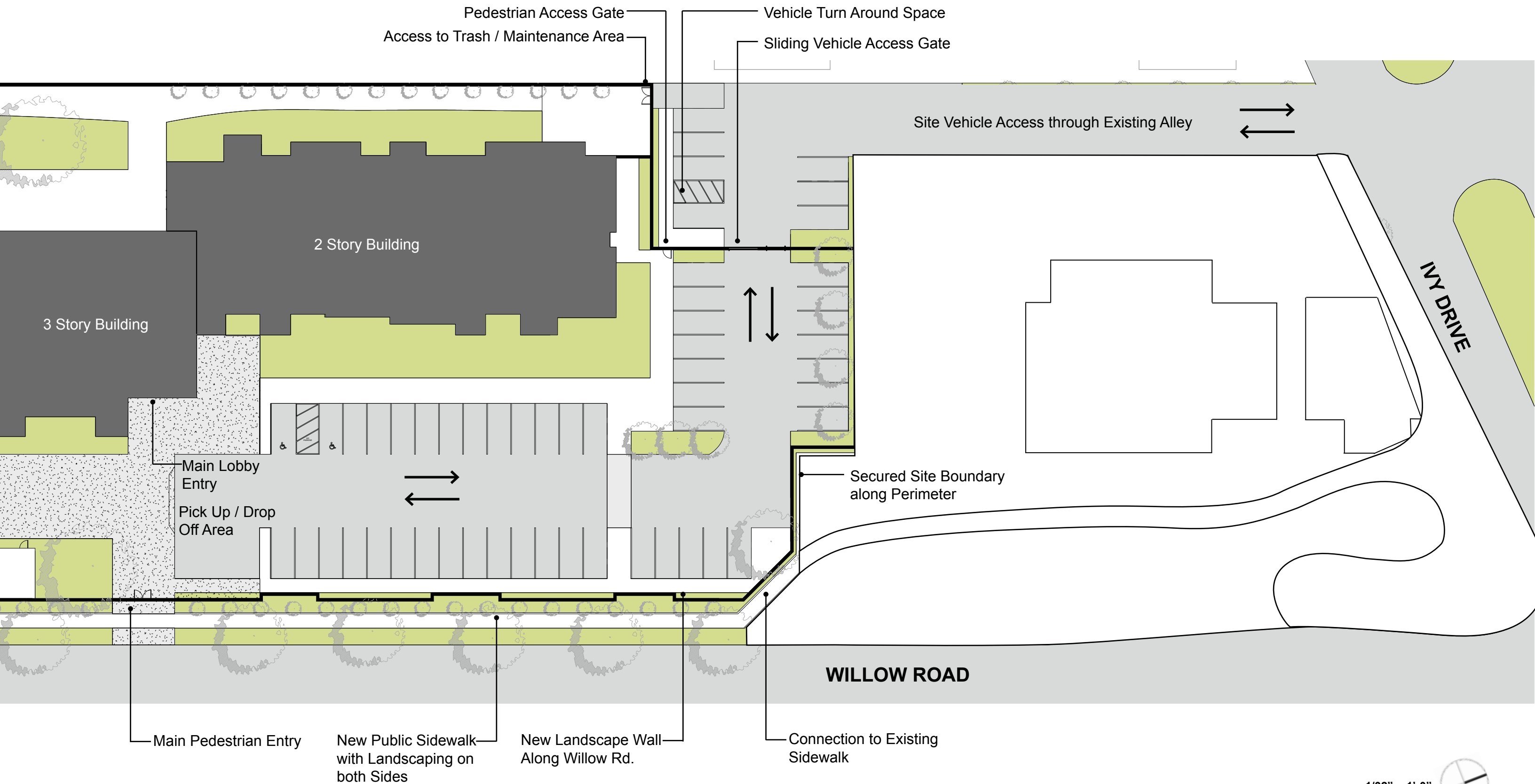


1/32" = 1'-0"



Gateway Senior Housing

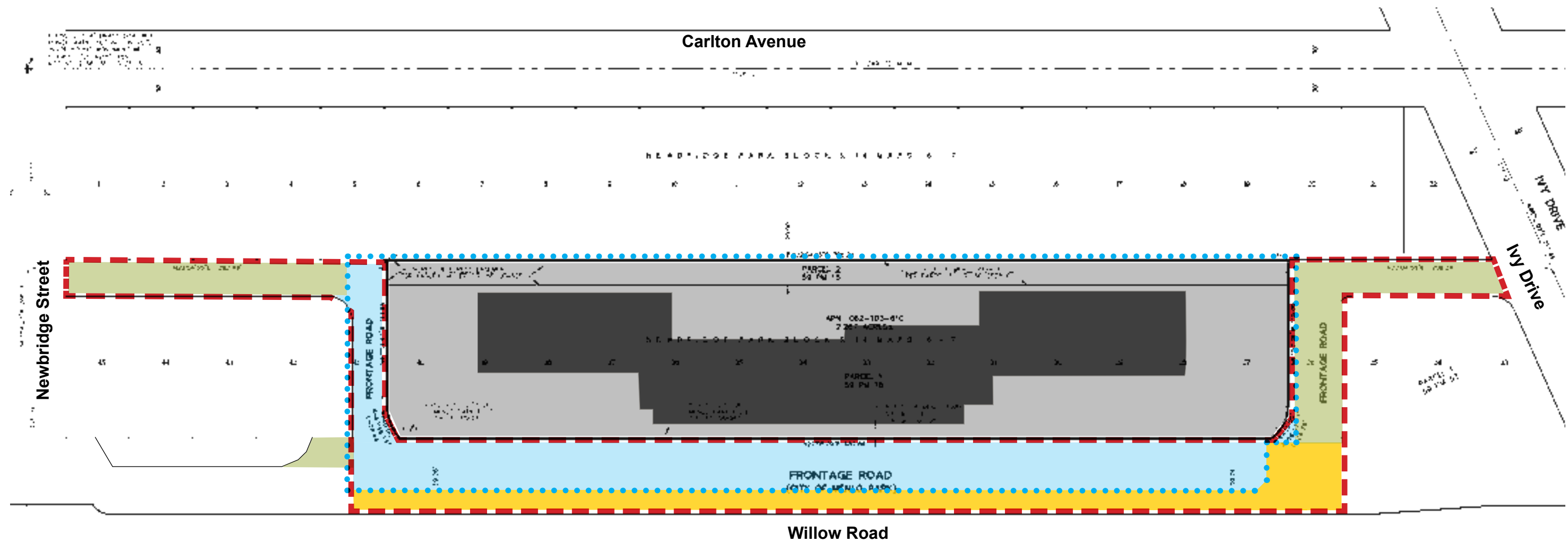
Conceptual Site Plan - North Side



Gateway Senior Housing

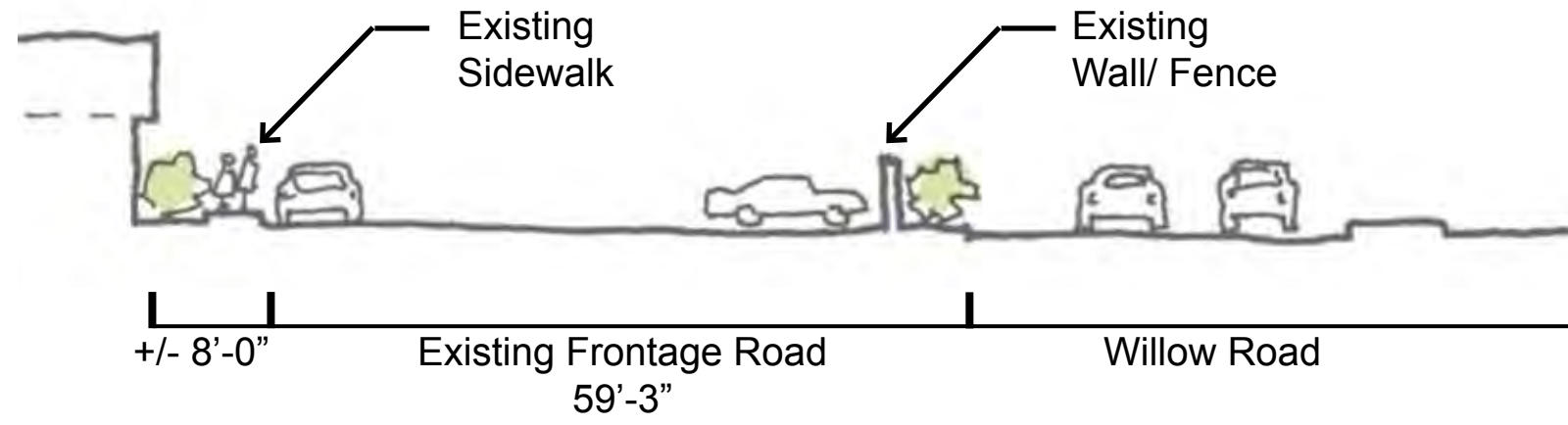
Site Boundary Diagram

- - - - Existing Frontage Road Public Right of Way
- Proposed Property Boundary
- Existing Site
- Proposed Building Footprint (approximate)
- Current City Right of Way, to be improved with new landscaped public sidewalk
- Proposed Abandonment
- Optional Abandonment (Abandonment not required for MidPen development)

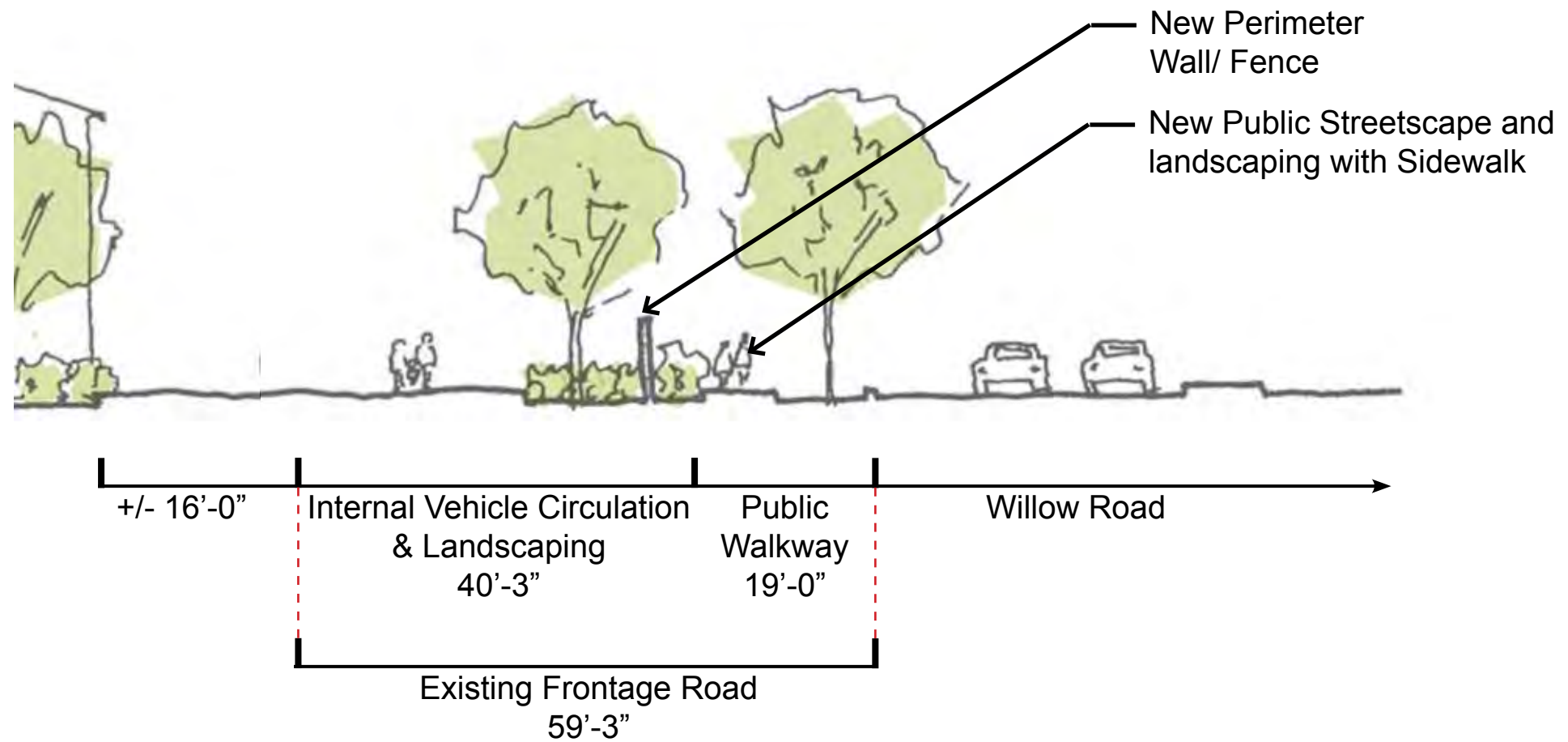


Gateway Senior Housing

Comparative Site Sections



Typical Existing Site Section



Proposed Site Section

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RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AUTHORIZING A LOAN IN THE AMOUNT OF UP TO \$3,200,000 FROM THE BELOW MARKET RATE (BMR) FUND TO MIDPEN HOUSING FOR THE CONSTRUCTION AND PERMANENT FINANCING OF A 90-UNIT APARTMENT COMPLEX LOCATED AT 1221 WILLOW ROAD

WHEREAS, the opportunity for lower income housing remains a need in Menlo Park; and

WHEREAS, the Below Market Rate (BMR) Fund allows the construction of units for inclusion in the BMR Program as an eligible use; and

WHEREAS, MidPen Housing proposes to develop, and manage these units located at 1221 Willow Road in Menlo Park; and

WHEREAS, the City of Menlo Park wishes to assist those eligible for BMR Housing by making units available.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Menlo Park hereby (a) approves a funding commitment for the construction of 90 rental units and a total loan of \$3.2 million (b) all loan proceeds shall be funded from the City's BMR Fund with the loan documents and affordability restrictions to be subject to review and approval of the City Attorney and City Manager consistent with the terms of other loans from the BMR Fund; and (c) the City Manager is authorized to execute any and all documents necessary to consummate such loan and fee payments on behalf of the City of Menlo Park.

I, Nicole Mariano, Deputy City Clerk of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the fourteenth day of September 9, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ninth day of September, 2014.

Nicole Mariano
Deputy City Clerk

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August 8, 2014

Starla Jerome-Robinson
Assistant City Manager
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025

Re: The Gateway Apartments – \$4.02M Soft Loan Modification Proposal to Facilitate Revitalization of the 1200 block of Willow Road as Affordable Senior Housing

Dear Ms. Jerome-Robinson,

MidPen Housing Corporation and its nonprofit public benefit affiliate Menlo Gateway, Inc. would like to request a modification of the Community Development Agency of the City of Menlo Park promissory note for \$4.02 million that was issued on June 1, 1987 and amended on October 28, 2002 (the “Note”). The Note was issued to Menlo Gateway, Inc. for the acquisition of 130 low-income housing units commonly known as Gateway Apartments located on the 1200 and 1300 blocks of Willow Road in the Belle Haven neighborhood of Menlo Park. This letter is a follow up to the proposal originally submitted to the City in January 2012. MidPen’s ultimate goal is to substantially revitalize the entire site to ensure the preservation of the existing 130 units of affordable housing and development of approximately 78 additional units of affordable housing as permitted through the combination of the R-4-S zoning district and Affordable Housing Overlay. This revised proposal reflects an updated understanding of our immediate development plans for the 1200 block of Willow Road.

The 1200 block revitalization is proposed as 90 new construction affordable senior apartments, including the demolition and replacement of existing 48 units. The new development will be financed through the utilization of 9% tax credits as well as County and Housing Authority financing.

To the extent MidPen Housing Corporation or its affiliate Menlo Gateway, Inc. is awarded additional funding from other financing sources and is able to proceed with the proposed affordable senior housing community on the 1200 block, the existing City loan would be separated into two loans – one loan for the 1300 block and one loan for the 1200 block.

The **existing loan** would be modified to:

- remove the 1200 block portion of the principal and accrued interest (48/130 or 37%),
- to remove the 1200 block as security and from the existing regulatory agreement.

The 1300 block would remain under the existing loan documents (82/130 or 63%).

The following are the proposed, modified terms needed for the **new 1200 block loan** in order to realize revitalization:

- Assign 48/130 or 37% of the existing principal and accrued interest to the owner of the 1200 block. A Limited Partnership will assume ownership of this block to facilitate the use of Low Income Housing Tax Credit equity and the revitalization. A MidPen affiliate will serve as the General Partner of the Limited Partnership.
- Extended loan term of 55 years, to align with the new financing.



Building Communities. Changing Lives.

- Modified interest rate of 0-3% simple, as necessary for feasibility. MidPen will retain a tax attorney and syndication consultant to assist in making this determination.
- Repayment through residual receipts. City to receive prorata share of the soft debt split of residual receipts.
- Remove the 1200 block from the existing City loan documents from 1987 and 2002, including the Grant Deed, Deed of Trust, Financing and Regulatory Agreement and Option Agreement. The terms of the Option Agreement for the City to repurchase the property will not work with the proposed refinancing and syndication of the property necessary to proceed with the development plans described above.

The 1200 block loan would be documented through a new Deed of Trust, Promissory Note, and Regulatory Agreement. These documents would be of record and put into effect at the time of construction loan closing for the 1200 block.

Please let me know when would be a good time to meet to discuss our proposal. In the meantime, please contact me if you have any questions about this proposal at (650) 356-2958 or llewhailer@midpen-housing.org

Sincerely,

Lillian Lew-Hailer
Director of Housing Development

Cc: Jan Lindenthal, VP of Development

DRAFT 08-08-2014
The Gateway - City of Menlo Park Existing Loan

	Existing Terms Terms Continue for 1300 Block	Proposed Terms 1200 Block
Permanent Loan		
Amount (projected as of 12.31.2014)	\$ 3,044,921	\$ 1,782,393
Fraction of Current Loan	82/130 63%	48/130 37%
Term	Matures in 2043	55 Years (from construction closing)
Interest Rate	3% compounding	0-3% simple, as needed for feasibility
Repayment	Escalating payments from surplus cash	Residual Receipt; prorata share of the soft debt split of residual receipts
Purchase Option	City has option to repurchase properties for 6 months after the 654th month unless Optioner agrees to own property for 20 additional years	None. City option is incompatible with proposed refinancing, and with Low Income Housing Tax Credits.
Documentation	Modification of existing Deed of Trust, Promissory Note, and Regulatory Agreement to remove 1200 block as security and from Regulatory Agreement, and to reduce principal and accrued interest.	New Deed of Trust, Promissory Note, and Regulatory Agreement specific to 1200 block

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FINANCE DEPARTMENT

Council Meeting Date: September 9, 2014
Staff Report #: 14-159

Agenda Item #: I-1

**INFORMATIONAL ITEM: Draft Update of General Fund Reserve Policy
Incorporating Reserve for Pension Costs**

RECOMMENDATION

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

BACKGROUND

On June 7, 2011, Council adopted a resolution establishing a fund balance policy for the General Fund (staff report 11-087). This policy was established to comply with Government Accounting Standards Board (GASB) Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. The purpose of this statement is to improve financial reporting by providing fund balance categories that are more clearly defined, understood, and applied. As a part of this policy, Council formally committed available fund balance for two different purposes. \$6 million was committed for emergency contingencies such as natural disasters, catastrophic accidents, or other declared emergency incidents. Another \$8 million was committed to stabilize the delivery of City services during periods of severe operational budget deficits, and to mitigate the effects of major economic uncertainties.

On January 14, 2014, a study session was held to update Council on the current status of the City's pension plan, which is administered by the California Public Employees Retirement System (CalPERS). Council directed staff to establish a CalPERS-related reserve and provide initial funding of \$1 million from the General Fund's unassigned fund balance. Council also directed staff to return with a recommended utilization policy and plan to provide additional funding to this reserve.

The Finance and Audit Committee reviewed the updated fund balance policy for the General Fund at its July 16, 2014 meeting and supports the proposed changes.

ANALYSIS

Per Council direction, staff has drafted an amended General Fund Reserve Policy to incorporate the newly established Strategic Pension Funding Reserve. This update includes utilization criteria and a plan for additional funding. Specifically, the amendment to the policy reads:

Strategic Pension Funding Reserve

The City of Menlo Park participates in the California Public Employees Retirement System (CalPERS), which provides members with a defined-benefit pension based on years of service. CalPERS is funded by a combination of investment earnings on the CalPERS portfolio, contributions by employees, and contributions by employers (the City). Contribution rates for employers are variable and change annually based on a number of factors, including investment returns, benefits changes, and changes to actuarial assumptions. To mitigate the operational impact of employer contribution rate volatility, as well as to set aside funding for strategic opportunities to reduce the City's pension liability, \$1 million of the General Fund's previously unassigned reserve was committed by Council action on January 14, 2014, to establish the Strategic Pension Funding Reserve. Subsequent to January 14, 2014, 25% of the General Fund's final operating surplus, should there be one, will be added annually to the Strategic Pension Fund Reserve upon completion of the City's Comprehensive Annual Financial Report. City Council approval shall be required before expending any portion of this committed fund balance. Examples of the types of situations in which funds would be expended from the Strategic Pension Fund Reserve include, but are not limited to:

- To mitigate the impact of a significant year-over-year increase in employer contribution rates due to actions outside of the City's control, such as poor investment returns in the CalPERS portfolio and/or changes to actuarial assumptions.
- To take advantage of opportunities to make non-recurring payments to CalPERS that will reduce the City's pension liabilities, such as paying down or paying off a side fund or other unfunded liability.

Prior to proceeding with a resolution to amend the General Fund Reserve Policy to incorporate this change, the draft update is being provided to Council to present an opportunity for feedback or further direction. Should Council wish to provide feedback or further direction, an updated draft policy amendment will be brought back in another informational staff report. If Council is satisfied that the draft policy amendment meets the intended outcome, a formal resolution to modify the General Fund Reserve Policy will be provided to Council at an upcoming meeting.

IMPACT ON CITY RESOURCES

There is no net fiscal impact to the General Fund for amending the General Fund Reserve Policy, as total fund balance remains unchanged.

POLICY ISSUES

Amending the General Fund Reserve Policy to incorporate a Strategic Pension Funding Reserve provides a mechanism to mitigate employer contribution rate volatility that impacts the City's pension costs, as well as provide funding to make non-recurring payments to CalPERS to reduce pension liabilities as it makes financial sense. This will

help ensure that the City continues to prudently fund its pension obligation while mitigating the impact of employer contribution rate volatility on service delivery.

ENVIRONMENTAL REVIEW

No environmental review is required.

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. Draft General Fund Reserve Policy (Redline Version)

Report prepared by:

Drew Corbett

Finance Director

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City of Menlo Park		City Council Policy
Department City Council	Page 1 of 4	Effective Date
Subject Fund Balance for the General Fund	Approved by	Procedure #

Purpose:

A fund balance policy helps ensure that the City can:

- Quickly respond to unexpected situations such as natural disasters.
- Weather economic recessions and other cyclical revenue downturns while avoiding large variations in taxes and fees or variations in the type and quality of municipal services provided.
- Avoid the need for short-term borrowing to cover delays in revenue receipt.
- Pursue strategic and opportunistic projects or activities.

This policy establishes the amounts the City of Menlo Park will strive to maintain in its fund balance, how the fund balance will be funded, and the conditions under which fund balance may be spent.

Background:

The City of Menlo Park has always maintained a high level of General Fund reserves, which has contributed to good standings with credit rating agencies; provided financial flexibility in economic downturns; contributed a source of investment income for General Fund operations; and assured financial coverage in the event of future emergencies.

Policy:

This Fund Balance Policy establishes the procedures for reporting unrestricted fund balance in the General Fund financial statements. Certain commitments and assignments of fund balance will help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Finance Director to prepare financial reports which accurately categorize fund balance as per Governmental Accounting Standards Board (GASB) Statement no. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. The policy will be reviewed annual by the Council for revisions as appropriate.

Procedures:

Fund balance is essentially the difference between the assets and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purposes for which amounts can be spent.

- Nonspendable fund balance (inherently nonspendable)
- Restricted fund balance (externally enforceable limitation on use)
- Committed fund balance (self-imposed limitations on use)
- Assigned fund balance (limitation resulting from intended use)
- Unassigned fund balance (residual net resources)

The first two components listed above are not addressed in this policy due to the nature of their restrictions. An example of nonspendable fund balance is inventory. Restricted fund balance is either imposed by law or constrained by grantors, contributors, or laws or regulations of other governments. This policy is focused on financial reporting of unrestricted fund balance, or the last three components listed above. These three components are further defined below.

City of Menlo Park

City Council Policy

Department City Council	Page 2 of 4	Effective Date
Subject Fund Balance for the General Fund	Approved by	Procedure #

Committed Fund Balance –

The City Council, as the City’s highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specific use through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period; however the amount can be determined subsequently.

General Fund Emergency Contingency

The City of Menlo Park’s General Fund balance committed for emergency contingencies is established at \$6,000,000. The City Council may wish to increase or decrease this amount, with the goal of providing an amount equivalent to 15-20 percent of the City’s annual operating budget for the General Fund. This range should be sufficient to allow for a quick and decisive municipal response to events such as natural disasters, catastrophic accidents, or other declared emergency incidents. As defined in the resolution establishing this commitment, the specific uses are listed as the declaration of a state or federal state of emergency or a local emergency as defined in the Menlo Park Municipal Code Section 2.44.010. The City Council may, by the affirming vote of three members, change the amount of this commitment and/or the specific uses of these monies.

Economic Stabilization

The City of Menlo Park’s General Fund balance committed for the purpose of stabilizing the delivery of City services during periods of severe operational budget deficits and to mitigate the effects of major economic uncertainties resulting from unforeseen change in revenues and/or expenditures is established at \$8,000,000. The City Council may wish to increase or decrease this amount, with the goal of providing an amount equivalent to 20-25 percent of the City’s annual operating budget for the General Fund. This range serves as a sufficient cushion, safeguarding the City’s fiscal health against fluctuations in revenues and costs due to economic volatility. City Council approval shall be required before expending any portion of this committed fund balance. Access to these funds will be reserved for economic emergency situations. Examples of such emergencies include, but are not limited to:

- An unplanned, major event such as a catastrophic disaster requiring expenditures which exceed the General Fund Emergency Contingency Reserve
- Budgeted revenue taken over by another entity
- Drop in projected/actual revenue of more than five percent of the General Fund’s adopted revenue budget

City of Menlo Park

City Council Policy

Department
City Council

Page 3 of 4

Effective Date

Subject

Fund Balance for the General Fund

Approved by

Procedure #

Strategic Pension Funding Reserve

The City of Menlo Park participates in the California Public Employees Retirement System (CalPERS), which provides members with a defined-benefit pension based on years of service. CalPERS is funded by a combination of investment earnings on the CalPERS portfolio, contributions by employees, and contributions by employers (the City). Contribution rates for employers are variable and change annually based on a number of factors, including investment returns, benefits changes, and changes to actuarial assumptions. To mitigate the operational impact of employer contribution rate volatility, as well as to set aside funding for strategic opportunities to reduce the City's pension liability, \$1 million of the General Fund's previously unassigned reserve was committed by Council action on January 14, 2014, to establishing the Strategic Pension Funding Reserve. Subsequent to January 14, 2014, 25% of the General Fund's final operating surplus, should there be one, will be added annually to the Strategic Pension Fund Reserve upon completion of the City's Comprehensive Annual Financial Report. City Council approval shall be required before expending any portion of this committed fund balance. Examples of the types of situations in which funds would be expended from the Strategic Pension Fund Reserve include, but are not limited to:

- To mitigate the impact of a significant year-over-year increase in employer contribution rates due to actions outside of the City's control, such as poor investment returns in the CalPERS portfolio and/or changes to actuarial assumptions.
- To take advantage of opportunities to make non-recurring payments to CalPERS that will reduce the City's pension liabilities, such as paying down or paying off a side fund or other unfunded liability.

Assigned Fund Balance –

Amounts that are constrained by the City's intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. This policy hereby delegates the authority to assign amounts to be used for specific purposes to the City Manager for the purpose of reporting these amounts in the annual financial statements. A few examples of assigned fund balance follow.

- Encumbrances – materials and services on purchase order and contracts which are unperformed
- Reappropriations – appropriated by the Council for specific projects or programs that were not completed and not encumbered by year end
- GASB 31 Adjustment – unrealized investment gains that have been recorded in the financial statements in accordance with GASB 31
- Infrastructure Maintenance Projects – amounts to be transferred to the General CIP Fund for such projects in the subsequent fiscal year adopted budget
- Comprehensive Planning Projects – amounts needed to fully fund such projects as outlined in the 5-Year Capital Improvement Plan for the subsequent fiscal year

Unassigned Fund Balance –

These are residual positive net resources of the General Fund in excess of what can properly be classified in one of the other four categories.

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City of Menlo Park

City Council Policy

Department City Council	Page 4 of 4	Effective Date
Subject Fund Balance for the General Fund	Approved by	Procedure #

Amounts held in reserve:

The total goal range for the City's unrestricted fund balance (includes Commitments and Assignments of fund balance) is 43% to 55% of General Fund expenditures.

From time-to-time, the Council may find it prudent to set aside funds for an existing need, priority or investment in the community. Amounts in excess of the established target levels may be shown as additional commitments or assignments of the General Fund balance. Such assignments will be reviewed with each fiscal year operating budget to determine if the funding is still necessary or can be released to the General Fund reserves.

Funding of General Fund balance targets:

Funding of General Fund balance targets will come generally from one-time revenues, one-time expenditure savings, excess fund balance (e.g., unused or reversed assignment or commitments), and revenues in excess of projected expenditures.

Conditions for use and replenishment of reserves:

Use of Reserves

It is the intent of the City to limit use of General Fund balances to address unanticipated, one-time needs or opportunities. Fund balances shall not be applied to recurring annual operating expenditures. Reserves will be used to the extent annual expenditures exceed revenues as reported in the City's annual audited financial statements (an operating deficit). Reserves may also be used to allow for an investment in the City's long-term assets as approved by the City Council.

Authority to Use Reserves

The City Manager may authorize use of reserves consistent with the purposes described above, including amounts authorized in the fiscal period's budget.

Replenishment of Reserves

Reserves will be replenished to the extent annual revenues exceed expenditures as reported in the City's annual audited financial statements (an operating surplus). Revenues in excess of expenditures at the end of a fiscal year shall be used to first satisfy committed contingency requirements before appropriating for other uses.

Flow of funds:

Restricted fund balances will be expended before unrestricted fund balances when expenditures are incurred for purposes for which both are available. Unrestricted fund balances will be exhausted in the order of assigned, unassigned, and committed when expenditures are incurred for which any of these fund balances are available.



Office of Economic Development

Quarterly Update Q3 2014



[Sign up to receive the Quarterly Update regularly](#)

IN THIS ISSUE:

- The Economic Haps 'Round Town
- Tax Revenue Report
- Vacancy Report
- Innovate or Die
- ConnectMenlo: General Plan Update



Inside the BBC's renovations

September 2014

The Economic Haps 'Round Town

I often get questions like: “what’s happening with that vacant building, what’s new in Menlo Park, what are you doing to bring more people downtown and when is the next Small Business Roundtable?” To answer some of the more frequently asked questions this is the “Haps ‘Round Town”. If you have other questions you would like answered, please email me at jccogan@menlopark.org.

BBC

Rob Fisher, owner of [Reposado](#) and [The Creamery](#), is working hard to renovate the BBC. His proposal includes gutting the historic building to provide Menlo Park an amazing new restaurant. In Rob’s words, “it will be unlike anything on the Peninsula. The approximately 250 seat restaurant will include a mezzanine event space and roof top dining. Rob is still working on the concept and name, but may retain the BBC moniker as part of his creative reuse of this historic resource. He is hoping to be serving drinks up (on the roof that is) by the mid-2015.

Bradley’s Fine Diner (BFD)

Those who have long lamented the loss of Lisa’s Tea Treasures and more recently Crepe’s Café may take some solace in knowing that soon the space will once again be teaming with diners. I regularly poke my head in and touch base with the construction superintendent. His team has been transforming the space at 1175 Merrill for the last few months and has it close to opening. In fact, we are hoping to know what the BFD is sometime next month.



Transformation of BFD



Off the Grid food truck market



Welcome Mama Coco to El Camino



Mayor Pro Tem Catherine Carlton, Mayor Ray Mueller and Councilmember Peter Ohtaki enjoying the Enhanced Seating Pilot Program at Left Bank

Off the Grid

On September 8th, the Planning Commission will host a 6-month review of the Wednesday night [Off the Grid](#) food truck market to see if it has been the hip addition that it was billed to be. The immediately well-attended weekly event has remained popular and has even improved Wednesday night business for some of our downtown restaurants.

Mama Coco

One of those restaurants is our newest downtown addition, [Mama Coco](#) at 1081 El Camino Real. The owner reported running out of sangria very early the first Wednesday night he was open. Have no fear though, they are prepared now and will be able to serve even the latest of thirsty visitors to downtown. If you haven't tried it yet, I recommend the huarache. It is just one of the authentic dishes that the owners have brought back from Mexico City, and may be a unique offering among Bay Area restaurants.

Enhanced Downtown Seating Pilot Program

On August 11th, the City installed what may be the first of many street seating opportunity sites downtown. The City selected the area in front of [Left Bank](#), because the restaurant has complied with downtown seating requirements and offered an opportunity that would support safety and minimize the loss of parking. The new seating is being assessed for popularity and potential concerns before expansion. This program is a direct result of direction the City Council gave at the beginning of the year to help enhance downtown vibrancy.

Flegel's 60th Anniversary Celebration

In June, the City of Menlo Park joined 3 generations of [Flegels](#) and their friends celebrate 60 years of serving Menlo Park. This stalwart downtown establishment threw a party to commemorate the occasion. Mayor Ray Mueller and Councilmember Peter Ohtaki were in attendance to deliver a proclamation.

Refuge Celebrates 1 year in Menlo Park

In contrast, June also saw the one-year anniversary of [Refuge](#) in Menlo Park. Mayor Ray Mueller was joined by Mayor Pro Tem Catherine Carlton and Councilmembers Kirsten Keith and Peter Ohtaki to deliver a proclamation celebrating the milestone. With 25% of restaurants failing in their first year (Bloomberg Businessweek) and 60% within 3 years it is exciting that Refuge has passed this first hurdle. Here's to many more years of Belgian Beers on tap. If your business is celebrating a milestone, we want to support you. Please let us know.

Downtown Family Fitness Extravaganza

On August 13th, Menlo Park hosted the first ever Family Fitness Extravaganza, transforming Santa Cruz Ave. into a smorgasbord of 32 different exhibitors with fun ways to get or stay fit. Mayor Mueller served as the Master of Ceremonies for the event which "ran" 6-9pm. Many of the exhibitors commented that they did not expect so many attendees and will definitely return next year. While it was a successful event, there are always opportunities for improvement. So let us know how we can make it better next year. Feel free to shoot me an email at jccogan@menlopark.org.



3 generations of Flegels at thier 60th Anniversary Celebration



Refuge owners Matt Levin and Melody Roth and thier family with Mayor Mueller during thier 1 Year Anniversary Celebration



Families enjoying the Downtown Family Fitness Extraganza



Small Business Round Table

Small Business Roundtable

The second meeting of the Small Business Roundtable (SBR) will be held on **Monday, September 15th at 6:00pm in the Elm Room of the Arrillaga Family Recreation Center, 700 Alma St. Menlo Park 94025.** At the first meeting of the SBR, we discussed a number of ways the City could improve communication with downtown merchants. To that end, we have collected contact information through door-to-door outreach from all of the Downtown businesses that would provide it. We sent out a survey to those businesses soliciting feedback on possible ways the City can help generate foot traffic. We have not received many responses, but are interested in hearing from businesses.

At our next meeting, we will be discussing the update of the Economic Development Plan. Menlo Park is ground zero for the evolution of the economy from a manufacturing based economy to an innovation based economy. We will discuss the impacts and opportunities that might come of this evolution and how we intend to develop a plan which plays to our strengths. Finally, our goal is always to provide value and we will be hearing from a company called [Yiftee](#) and what they might be able to do to help make the most out of this holiday season.

Looking Ahead to the Holidays

Finally, there are only 120 shopping days until Christmas, which if you're like me means 115 days of procrastination. I am an excellent supporter of local merchants in my shopping habits, because I never allow enough time for shipping. For the planners out there, we are working to determine how we might make the most of Small Business Saturday, November 29th. We are also considering how to improve on last year's holiday decorations and celebration. Please let us know what you think.

Tax Revenue Report

Sales Tax

Year to year, Menlo Park's sales tax revenue is up 12% compared to 3.7% for the San Francisco Bay Area and 3.3% statewide. Quarter to Quarter, Menlo Park is down 1.8% compared to the San Francisco Bay Area's increase of 2.9% and the State's increase of 2.7%. This decrease is largely due to one-time payments we received in Q1 2014 compared to Q1 2013, and a reduction in Business to Business sales.

Property Tax

Property tax represents the largest source of General Fund revenue, and results through June 30th are positive, as revenues have exceeded estimates by \$300,000 for a total of \$15,019,232 for Fiscal Year 2013-14. While this amount exceeded our estimate it is down from Fiscal Year 2012-13's \$15,591,002. This reduction is due to one-time revenues related to the dissolution of the Redevelopment Agency and was expected.

TOT

Overall, transient oriented tax (TOT) revenues are up 25% over the same period from last fiscal year. This is largely the result of the 20% increase in the TOT rate (10% to 12% effective January 1, 2013), as well as strong occupancy and room rates. Revenue in this area is expected to exceed adjusted budget estimates.

Licensing and Permitting

License and permit revenues are up significantly due to development activity in the City. Revenues in this area are well above last fiscal year through the fourth quarter; however, the

TOP 25 SALES TAX GENERATORS:

- [Acclarent](#)
- [Automatic Rain Company](#)
- [Beltramos Wine & Liquor](#)
- [Cafe Borrone](#)
- [Captial Dynamics](#)
- [Chevron Service Stations](#)
- [CVS Pharmacy](#)
- [DM Figley Company](#)
- [Draegers Supermarkets](#)
- [Flegel's Home Furnishings](#)
- [Forte Bio](#)
- [Hayward Lumber Co.](#)
- [OfficeMax](#)
- [Safeway Stores](#)
- [Sand Hill Resort & Hotel](#)
- [Sharon Heights Golf Country Club](#)
- [Shell Service Stations](#)
- [Stanford Park Hotel and Restaurant](#)
- [Staples Office Superstore](#)
- [Tesla Motors](#)
- [The Herrick Corporation](#)
- [Trader Joe's](#)
- [Triplepoint Capital](#)
- [Walgreen's Drug Stores](#)
- Willow Cove Service Stations

Vacancy Report

Retail

Menlo Park's retail vacancy remains at an all-time low, falling from last quarter's 1.3% to 0.9%, while San Mateo County, standing at 2.9%, has the lowest vacancy rate in the Bay Area. Although this tight retail market reflects a strengthening economy, it also stymies growth in two ways. First, such a tight market leaves few options for tenants looking to expand, and often the remaining retail stock is challenged in some way. Second, it drives up rental rates, especially in the desirable high quality space. While the average asking rent in SMC is \$29.24 (7% increase since last year), according to [Terranomics](#), \$60.00 per sq. plus has become the new norm for small, high quality space in the County. In fact, over the past four years rent prices in SMC have increased 66%. With virtually no new quality retail space in the pipeline, the upward rent trend is expected to continue.

revised estimate for this fiscal year appears to be behind due to development revenue of approximately \$700,000 that was expected to come in during fiscal year 2013-14 that will instead be recognized in the 2014-15 fiscal year.

Innovate or Die

Menlo Park is losing ground compared to our neighboring cities. While Palo Alto and Mountain View are seeing their office vacancy rates drop to record lows, Menlo Park's office vacancy rate is rising. One likely reason for this is the lack of the right type of office space. In response to this situation, the City is taking a number of steps. We are updating the General Plan for the area known as the M-2 (industrial area between Highway 101 and the bay, yes where Facebook is located), as detailed in another article, and we are updating the Economic Development Plan. The Economic Development Plan is important, because it will help ensure that the land use changes we envision in the General Plan Update align with current and future market demand. The zoning rules for that part of town are currently on the cutting edge of 1979. In the meantime, we have two recent examples of how the City is working to make up ground in embracing the innovation economy.

Economic Development Plan

We have hired [Up Urban Inc.](#) a company out of San Francisco to help with the update of the Economic Development Plan. One of Up's founders Michael Yarne recently contributed to a story in the [New Yorker](#) about the issues associated with developing in San Francisco. The article explains that, "San Francisco has one of the country's most arcane planning codes. There are more than sixty zoning divisions, and all construction is subject to discretionary review, so projects that might get swiftly under way in other cities can struggle through bureaucracy for years." This is very similar to the issues we face in Menlo Park. Yarne and Up Urban are working with San Francisco and San Jose to see how to better capture the value of development aimed at supporting the tech sector while also streamlining approval processes.

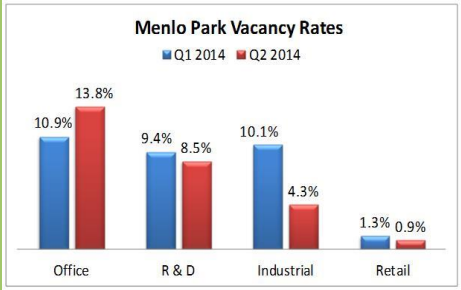
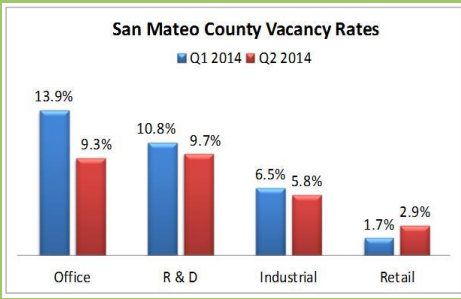
Yarne introduced me to a book written by University of California, Berkeley Professor Enrico Moretti, *The New Geography of Jobs*. In his book, Moretti examines the transition of the basis of US economy from manufacturing to innovation and how government can help maximize the benefits of this transition. His work shows innovation jobs have a multiplier effect, producing jobs in sectors that support tech employment. These support jobs offer higher salaries and therefore more discretionary income than similar jobs in other geographic areas. Moretti will be assisting with our Economic Development Plan Update as part of Yarne's team and I am sure his insights will be invaluable. What's more, the first two words in his book are "Menlo Park." To learn more about his research, you can listen to [Moretti's recent discussion with Michael Krasny on KQED's Forum](#).

HelloStartups



[HelloStartups](#) is one concrete example of how the City is working to better embrace the innovation economy. We have worked to connect property owners Greenheart Land Company with veteran innovation experts. HelloStartups is a groundbreaking joint venture between [BootUp Ventures](#) and [SOMA Central](#). The magic of HelloStartups is that it combines a unique physical space, within walking distance of Caltrain and Downtown Menlo Park, to some of Silicon Valley's brightest founders like Scott Hassan, Marco Ten Vaanholt, Mukul Agarwal, Ken Thom, Tony Perkins and a host of others to form a one of a kind ecosystem catering to local and

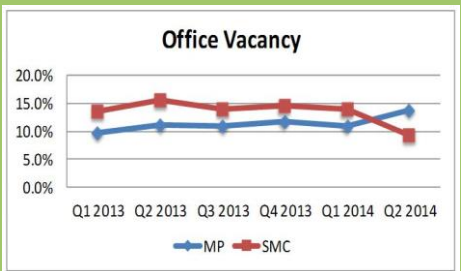
global startups. [Check out this video produced by the City of Menlo Park to learn more.](#)



Source: [Cassidy/Turley](#) and [CoStar](#)

Office

Office vacancy in Menlo Park increased 3%, from Q1's 10.9% to 13.8% in Q2. Menlo Park's upward vacancy trend this quarter is opposite the County's trend. South San Mateo County has the lowest vacancy rate in the county at 10.8% and has accounted for over 51% of the entire region's growth since the start of the recovery in 2010. As you can see in the Office Vacancy graph, for the past year, San Mateo County's Office vacancy has steadily declined, whereas Menlo Park's vacancy rate has steadily increased. Possible explanations for why Menlo Park is experiencing a higher vacancy rate than other cities in South County are that some office properties were undergoing renovations during Q2, and that there are still properties in the process of turning over. The best explanation, however, is that Menlo Park lacks the Class A office and nearby amenities that the market demands and that our neighbors, such as Redwood City and Palo Alto provide.



Sobrato's Commonwealth Project

As I mentioned at the beginning of this article, Menlo Park's office vacancy rate is increasing while neighboring cities are dropping and one reason is that we have the wrong kind of office space. To help address that problem, the City Council approved a proposal from the [Sobrato Organization](#) for a new 260,000 sqft. office complex in the M-2. There is no master tenant yet, as it is being built on speculation, because of the market demand for this kind of space. Recognizing that a speculative development cannot promise the lucrative sales tax revenue of some tenants, Sobrato offered to pay the City of Menlo Park an in lieu fee for ten years in addition to all of the mitigations and fees they were required to pay.



Perhaps more exciting though, is the opportunity that this type of development provides for the City of Menlo Park to retain the great startup companies that have historically had to move when they outgrow the available space. Commonwealth will provide Menlo Park with the right kind of office space and no doubt provide a model for future projects in the M-2.

ConnectMenlo: General Plan Update

To avoid losing more ground compared to other cities within the epicenter of innovation, Menlo Park's land use and transportation policies must facilitate the growth of the innovation economy. The 1970's era manufacturing economy that the current zoning code reflects is not sufficient. In an effort to catchup, the City of Menlo Park is beginning its General Plan Update. The General Plan Update process was appropriately given the moniker "ConnectMenlo: Menlo Park Mobility and Land Use Update", because it focuses on city-wide transportation issues such as connectivity, and a localized focus on land use in the M-2 (General Industrial) designation area. The M-2 is the section of the city between Highway 101 and the bay where the majority of the city's major employers and innovators, including Facebook, are located (see General Plan Update map below).



Source: [Cassidy/Turley](#)

Industrial

County wide, the industrial market is growing, as evident by Menlo Park's Industrial vacancy rate plummeting from 10% in Q1 2014 to 4% in Q2. Three key lease transactions that aided this decrease occurred in the M-2 at [ProLogis](#) properties on [Hamilton Court](#). These lease transactions include [Inside Source Inc.'s](#) renewal of 59,575 sq. ft. and 26,234 sq. ft. expansion, and the 31,899 sq. ft. relocation of WalMart.

R&D

R&D vacancy in San Mateo County has continued to fall for four consecutive quarters, and now stands at 9.7% compared to 12.9% last year. In Menlo Park the vacancy rate stands at 8.5%, which is down from last quarter's 9.4%. Similar to Industrial properties, many of the key lease transactions in Menlo Park during Q2 are concentrated in Prologis properties on [Hamilton Avenue](#) and [Hamilton Court](#). These transactions include the relocation of [3-V Biosciences](#) (20,686 sq ft) and [Invisage Technologies, Inc.](#) (19,950 sq ft). Another key lease transaction is the relocation of [Transcriptic](#) (9,956 sq ft) to a [Caprock Partners](#) property at [3565 Haven Ave](#). Countywide, deal activity seems to be plateauing due to limited availability rather than lagging demand. According to Cassidy Turley, most remaining R&D space borders on functionally obsolete. As vacancy continues to slowly fall it is possible the lack of quality space will restrict growth since no new development is on the horizon.

RESOURCES:

[Menlo Park Office of Economic Development](#)

[Menlo Park Community Development](#)

[ConnectMenlo Project Page](#)

[Menlo Park Chamber of Commerce](#)

[Silicon Valley Economic Development Alliance \(SVEDA\)](#)

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Between February and June, the Consultant Selection Advisory Panel, comprised of elected official and City Staff, worked diligently to define ConnectMenlo's Scope of Work and to vet the best consultant to assist with the project. Ultimately, [PlaceWorks](#) (formerly The Planning Center/DC&E) was selected as the most suitable candidate due to their ability to lead the community driven process and their technical expertise. On August 19th, the City Council appointed members to the [General Plan Advisory Committee \(GPAC\)](#). The GPAC is a Brown Act Body comprised of representatives from the City's various committees and community groups who will guide the process and provide policy direction and feedback during the two year update. The first meeting of the GPAC was held on August 25th and focused on orienting members with PlaceWorks, the update process and preparing for the upcoming community workshops and symposia.

How can I get involved?

We want as much community input as possible, so we will be providing a variety of ways to get involved including workshops, educational symposia, mobile tours, an online survey and social media outreach. Below is a list of some of the upcoming General Plan events.

Kick-Off Event – Community Workshop # 1: Guiding Principles

Thursday, September 11, 2014

Wednesday, September 17, 2014

7:00 pm -9:00 pm

7:00 pm – 9:00 pm

Menlo Presbyterian Church Social Hall

Senior Center Ball Room

[700B Santa Cruz Avenue](#)

[100 Terminal Avenue](#)

Workshop #1 will be held at two different locations and times in order to provide flexibility for the public and ample opportunities to participate. This workshop will encourage all Menlo Park community members to share their vision for the city and the M-2 area in particular. The workshops will include interactive visioning exercises that encourage participation, brainstorming and meaningful dialogue about the future of Menlo Park.

Symposium #1: Growth Management & Economic Development

Tuesday, September 23, 2014

7:00 pm – 9:00 pm

City Council Chambers

[701 Laurel Street](#)

This symposium will involve a detailed discussion of key issues and opportunities relating to sustainability, growth management and appropriate development and design in Menlo Park. Expert practitioners will offer a broad perspective on successful growth management strategies from a variety of places.

To get involved and stay up to date, visit the [ConnectMenlo project page](#)



OFFICE OF THE CITY MANAGER

Council Meeting Date: September 9, 2014
Staff Report #: 14-170

Agenda Item #: I-3

INFORMATIONAL ITEM: **Lisa Wise Consulting Inc. Response to Documents Authored and Commissioned by Supporters of the Save Menlo Group Critiquing the Ballot Measure Impact Analysis**

RECOMMENDATION

This is an informational item and does not require City Council action

BACKGROUND

On March 18, 2014, the City Council approved an appropriation of \$150,000 and authorized the City Manager to execute agreements, not to exceed a total of \$150,000, with various consultants to provide professional and objective analyses of the potential impacts related to the proposed Ballot Initiative. This action was taken in compliance with California Elections Code Section 9212, which allows the City Council to “refer the proposed initiative measure to any city agency or agencies for a report on any or all of the [impacts]” of the proposed initiative.

The Elections Code also requires that “[t]he report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.” Staff and the City Council agreed that in order to maintain the objectivity of this review, it must be conducted by a consultant or consultant team without prior experience working in Menlo Park.

The City Council assigned a Subcommittee, consisting of Mayor Ray Mueller and Council Member Rich Cline, to aid staff in scoping the review and selection of the consultant. Staff and the Subcommittee met to develop the consultant’s scope of work and selected Lisa Wise Consulting, Inc. (LWC) as the appropriate consultant to perform the ballot measure impact analysis. The City executed an agreement with LWC on May 12th.

On July 15th, LWC presented their independent ballot measure impact analysis to Council. Over 20 individuals spoke during public comment for and against the Initiative.

The authors of the Initiative presented a letter with additional concerns that they requested the City Council have LWC review.

On August 19th, the City Council approved an additional appropriation of \$15,000, for a total appropriation not to exceed \$165,000 in order to have LWC respond to the concerns raised by the authors of the Initiative. LWC's response to the concerns raised by the authors of the Initiative is attached as Attachment A.

ANALYSIS

Proponents of the Initiative further requested that the LWC ballot measure impact analysis be amended to reflect their concerns or presumably LWC's response to their concerns. Unfortunately, California Elections Code Section 9212 requires that the report be presented "no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition." Therefore, the report on the potential impacts of the Initiative cannot be amended, however the responses included in Attachment A are being made available to the public through this informational item.

IMPACT ON CITY RESOURCES

This item will have no impact City resources.

POLICY ISSUES

The LWC response to the concerns raised by the authors of the ballot initiative to amend the Menlo Park El Camino Real/Downtown Specific Plan objective information on potential impacts of the proposed ballot initiative does not represent a change in policy direction.

ENVIRONMENTAL REVIEW

This report is not subject to the California Environmental Quality Act (CEQA).

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. Lisa Wise Consulting Inc. Response to Documents Authored and Commissioned by Supporters of the Save Menlo Group Critiquing the Ballot Measure Impact Analysis

Report prepared by:

Jim Cogan

Economic Development Manager

Memo

To: City of Menlo Park

From: Lisa Wise (Lisa Wise Consulting, Inc.)

Date: September 3, 2014

Re: Response to Documents Authored and Commissioned by Supporters of the Save Menlo Group Critiquing the Ballot Measure Impact Analysis

At the July 15, 2014, Menlo Park City Council meeting, Lisa Wise Consulting, Inc. ("LWC") presented to the City Council a report entitled Ballot Measure Impact Analysis (the "LWC Report"). The report was commissioned by the City Council consistent with California Election Code Section 9212¹ to study the potential impacts of the proposed ballot measure (now known as Measure M, but referred to here as the "Ballot Measure"), to amend the El Camino Real/Downtown Specific Plan ("ECR/D Specific Plan").² Subsequent to a presentation by LWC, public comments, and questions from the councilmembers, the City Council voted unanimously to accept the LWC Report.

Since the acceptance of the LWC Report, the City Council has received written comments critiquing the LWC Report. The letters were prepared by members and representatives of Save Menlo—a group comprised of the drafters and supports of the Ballot Measure. These written comments are included across the following documents:

- A letter dated July 31, 2014 addressed to Mayor Ray Mueller, the City Council, and the City Manager. The letter is signed by Patti Fry, Mike Lanza, Heyward Robinson, Gail Slocum, Paul Collacchi, Kelly Fergusson, and Steve Schmidt and provides responses to the LWC Report (the "Fry, et al Letter").³
- An attachment to the Fry, et al Letter containing 35 comments critiquing the LWC Report (the "Fry, et al Attachment").⁴

¹ Lisa Wise Consulting, Inc. *Ballot Measure Impact Analysis*, Menlo Park, CA: City of Menlo Park, 2014, 1-3 to 1-4. (This source is subsequently cited as the *LWC Report*.)

² Generally, the proposed Ballot Measure would amend the ECR/D Specific Plan to change open space regulations, introduce restrictions on office space development, and require voter approval to change a series of ECR/D Specific Plan components. *LWC Report*, 1-4.

³ Fry, Patti, Mike Lanza, Heyward Robinson, Gail Slocum, Paul Collacchi, Kelly Fergusson, and Steve Schmidt, letter to Mayor Ray Mueller, the City Council, and City Manager of Menlo Park, 31 July 2014. (This source is subsequently cited as the *Fry, et al Letter*.)

⁴ Fry, Patti, Mike Lanza, Heyward Robinson, Gail Slocum, Paul Collacchi, Kelly Fergusson, and Steve Schmidt, attachment entitled "Comments on Ballot Measure Impact Analysis Report Findings" in letter to Mayor Ray

- A letter dated August 6, 2014 addressed to Gregory W. Stepanicich, Special Council to the City. The letter is signed by Richard C. Miadich, an attorney representing Ballot Measure supports and addresses concerns over the LWC Report's traffic impact analysis (the "Miadich Letter").⁵
- A letter dated July 31, 2014 addressed to George C. Fisher. The letter is signed by Tom Brohard and critiques the LWC Report's traffic impact analysis (the "Brohard Letter").⁶ The Brohard Letter was referenced in the Miadich Letter.⁷

The City has asked LWC to respond to the comments presented in the above documents.

LWC has carefully reviewed each of the four documents with the understanding that those individuals who authored and commissioned the above documents are distinguished and respected community leaders in Menlo Park. Although a few comments in the documents express agreement with the findings of the LWC Report, the remaining are largely critical of the LWC Report's conclusions and methods. Overall, the comments either (1) suggest additional work that was outside of the LWC Report's scope or (2) present interpretive disagreement with the LWC Report's conclusions.

This Memorandum's responses to the comments are organized into the following nine areas, based on the key topics presented in the four documents:

1. Scope of the LWC Report: Proposed Development and Traffic Analysis
2. Due Diligence in Methodology
3. Policy Consistency
4. Open Space Modeling
5. Development Rate, Public Benefits, and Enforcement
6. Job Growth
7. Voter Control Impacts
8. Fiscal Impact of Office Space Development
9. Infrastructure Impacts: Greenhouse Gas Emissions and Traffic

Mueller, the City Council, and City Manager of Menlo Park, 31 July 2014. (This source is subsequently cited as the Fry, et al Attachment.) The Fry, et al Attachment as divided into two parts: Attachment A and Attachment B. Attachment A contains the 35 comments as derived from the bold subheadings used to organize the document. Most comments include an explanation under the subheading. Attachment B contains a separate table of comments responding to the LWC Report presented to the City Council on July 15, 2014. Because the comments in Attachment B are substantially similar to those in Attachment A, this memorandum will address the comments in Attachment A.

⁵ Miadich, Richard C., letter to Gregory W. Stepanicich, 6 August 2014.

⁶ Brohard, Tom, letter to George C. Fisher, 31 July 2014.

⁷ Miadich Letter, 2.

An index for responses to the comments is provided below. The table includes each of the 35 comments from the Fry, et al Attachment.⁸ The Fry, et al Attachment comments are substantially inclusive of the comments found in the other three documents.⁹ For each comment, the relevant topic area is listed and a brief response stating “interpretive disagreement” or “outside of scope” is provided with reference to the relevant detailed response(s) in this Memorandum.

As shown in the index, 24 of the comments are “interpretive disagreement” and 11 are “outside of scope.” Following the index, detailed responses to the comments are provided organized by the nine topic areas.

Index of Responses

No.	Comment	Topic Area	Response
1	The Report fails to clearly state that the listed fiscal “impact” of the Initiative is beneficial to the City. (Fry, et al Attachment, 5.)	Fiscal Impact of Office Space Development	<i>Interpretive Disagreement</i> See Response 8.1 of this Memorandum.
2	The Report fails to clearly state that excessive area-wide office development worsens net revenue and that the Initiative’s office limit could increase net revenue to the City’s General Fund. (Ibid.)	Fiscal Impact of Office Space Development	<i>Interpretive Disagreement</i> See Response 8.1.
3	The Report fails to clearly state that approving the proposed Greenheart and Stanford projects will cause a net revenue loss from the Specific Plan area, resulting from their overbuilding of office and net loss of retail/hotel space. (Ibid., 6.)	Scope of the LWC Report: Proposed Development and Traffic Analysis	<i>Outside of Scope</i> See Responses 1.1 and 8.2.
4	The Report fails to clearly state that empty lots won’t remain empty, and that the Initiative may hasten, rather than delay, development in the Specific Plan Area. (Ibid.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Response 5.1.
5	The Report fails to call out and analyze the fact that, two years after Plan adoption, with most of the planned development complete or proposed, the City of Menlo Park has no mechanism in place to capture developer-provided benefits from most of that development. (Ibid.)	Development Rate, Public Benefits, and Enforcement	<i>Outside of Scope</i> See Response 5.1.

⁸ The 35 Fry, et al Amendment comments listed in the index are taken verbatim from the bold subheadings used to organize the document and listed in the order they appear. In the document, most comments were accompanied by further explanation.

⁹ The text and footnotes of the detailed response that follow the index refer to and cite any of the four documents when relevant.

No.	Comment	Topic Area	Response
6	The Report fails to connect the dots to conclude that "as built and currently proposed" the Specific Plan can only produce a net loss to the General Fund and that the large office projects, Stanford and Greenheart, would be the cause. (Ibid., 6 to 7.)	Scope of the LWC Report: Proposed Development and Traffic Analysis	<i>Outside of Scope</i> See Responses 1.1 and 8.2.
7	The Report is silent about the critical fact that the Initiative's office caps represent the way to reverse the foreseeable net financial loss and to preserve the opportunity for net revenue gain. (Ibid., 7.)	Fiscal Impact of Office Space Development	<i>Interpretive Disagreement</i> See Response 8.1.
8	The Report's finding of "No Initiative Impact" for traffic and greenhouse gas emissions ("GHG") is openly contradicted by the City's certified Environmental Checklist for the Greenheart project. The Initiative would eliminate these impacts. (Ibid.)	Infrastructure Impacts: Greenhouse Gases Emissions and Traffic	<i>Outside of Scope</i> See Response 9.1.
9	The Report conceals and alters its own traffic findings. A favorable "positive impact" of the Initiative in the analysis is modified and transcribed as "No Impact" in the Introduction. (Ibid.)	Infrastructure Impacts: Greenhouse Gases Emissions and Traffic	<i>Interpretive Disagreement</i> See Responses 9 and 9.2.
10	The Report provides traffic "trip generation" analysis not "transportation impact analysis." It misleads by conflating them. (Ibid.)	Infrastructure Impacts: Greenhouse Gases Emissions and Traffic	<i>Outside of Scope</i> See Response 9.2.
11	The Report neglects to analyze the Initiative with respect to the City's adopted Specific Plan Vision goals, or even the Specific Plan Guiding Principles, yet it analyzes the Initiative for consistency with regional planning initiatives not adopted by Menlo Park. (Ibid., 7 to 8.)	Policy Consistency	<i>Outside of Scope</i> See Response 3.1.
12	The Report discloses flaws in the Specific Plan and in the City's 2011 Fiscal Impact Analysis, but incorrectly implicitly blames them on the Initiative. (Ibid., 8 to 9.)	Due Diligence in Methodology	<i>Interpretive Disagreement</i> See Response 2.1.
13	The Report implicitly cites the Initiative as the cause of the Specific Plan's FAR and open space standards in the ECR NE-L zoning district. (Ibid., 9.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.3.
14	The Report neglects to state that Council retains full control over ECR NE-L open space, parking, and FAR standards. (Ibid.)	Voter Control Impacts	<i>Outside of Scope</i> See Response 7.1.

No.	Comment	Topic Area	Response
15	The Report neglects to clearly describe that its finding of "no impact" on the Specific Plan Zoning Ordinance confirms no "unintended consequences" to other regulations and development in other areas of the city, including the Fire District parcels. (Ibid.)	Policy Consistency	<i>Interpretive Disagreement</i> See Response 3.1.
16	The Report neglects to clearly state that the City Council retains complete control over all Specific Plan rules, standards, and guidelines apart from the four (4) Specific Plan parameters modified by the Initiative. (Ibid., 9 to 10.)	Voter Control Impacts	<i>Outside of Scope</i> See Response 7.1.
17	The Report blames the Initiative for uncertainties that are inherent in the Specific Plan, with or without the Initiative. (Ibid., 10.)	Voter Control Impacts	<i>Interpretive Disagreement</i> See Response 7.2.
18	The Report fails to state that an orderly planning process, with the Initiative, would eliminate more uncertainties than would exist under an ad hoc process without the Initiative. (Ibid.)	Voter Control Impacts	<i>Interpretive Disagreement</i> See Response 7.3.
19	The Report fails to discuss the ironies and implications of raising a 30-year building cap every several years or modifying the Plan through ad hoc project-by-project approvals. (Ibid.)	Voter Control Impacts	<i>Interpretive Disagreement</i> See Response 7.3.
20	The Report implicitly blames the Initiative for Council's failure to adopt a capture mechanism for public benefits. It fails to note that adoption of the Initiative would give council time to adopt a public benefit capture mechanism that applies to the Stanford Project. (Ibid., 11.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Response 5.1.
21	The Report blames the Initiative for a square foot counting issue introduced by adoption of the Specific Plan itself. The issue cannot be consistently reconciled, and clouds all past and future analysis and counting of net new development and maximum build-out, independent of the Initiative. (Ibid.)	Due Diligence in Methodology	<i>Interpretive Disagreement</i> See Response 2.1.
22	The error puts the City at far greater uncertainty and liability risk to developers with or without the Initiative. (Ibid.)	Due Diligence in Methodology	<i>Outside of Scope</i> See Response 2.2.
23	The Report uncovers a fatal inconsistency between Specific Plan analyses that amplifies space conflicts between office and hotel that further weaken the 2011 revenue forecasts. (Ibid.)	Due Diligence in Methodology	<i>Outside of Scope</i> See Response 2.2.

No.	Comment	Topic Area	Response
24	The Report asserts "ground floor competition" in zoning districts that have no requirement for project open space. It propagates the error into numerous false findings of Initiative "impacts" on hard costs, housing affordability, provision of private open space, project feasibility, and BMR production, that are uncorrected. (Ibid., 12.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.1.
25	The Report fabricates a finding of "impact" on residential development by mistakenly analyzing a mixed-use retail/residential project rather than an all-residential project. (Ibid., 12 to 13.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.2.
26	The fabricated impact is insignificant, and can be easily avoided, as the Report notes; nevertheless, the Report uses it to propagate negative findings throughout the Report. (Ibid., 13.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.2.
27	The Report constructs an underground parking cost for commercial development by analyzing a three story all-retail project. It fails to note that the same project already requires extensive underground parking, without the Initiative. (Ibid., 13 to 14.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.4.
28	Mixed-use fixes the problem even in the lowest-density districts. The Report could conclude that the Initiative favors mixed-use residential, a Vision Plan goal, but instead propagates a "hard cost" impact throughout the Report, and implies that moderate to high density districts are similarly affected. (Ibid., 14.)	Open Space Modeling	<i>Interpretive Disagreement</i> See Response 4.4.
29	The Reports speculates about the likelihood of outcomes without a basis for doing so, a fact admitted plainly in City documents describing its scope and limitations. (Ibid.)	Due Diligence in Methodology	<i>Interpretive Disagreement</i> See Responses 2 and 5.3.
30	The Report overstates the impact of the Initiative on the Specific Plan. (Ibid.)	Voter Control Impacts	<i>Outside of Scope</i> See Responses 7.2 and 7.3.
31	The Report falsely describes the shift from offices and office jobs to retail/hotel and retail/hotel jobs as a limit on "growth" and a limit on "job growth." (Ibid., 15.)	Job Growth	<i>Interpretive Disagreement</i> See Response 6.
32	The Report overstates impacts on staff costs. (Ibid.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Response 5.2.

No.	Comment	Topic Area	Response
33	The Report requires a 600-word footnote to document how staff currently counts square footage under the Specific Plan without the Initiative and then blames accounting complexities on the Initiative. (Ibid.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Responses 2.1 and 5.2.
34	The Report fabricates staff work where there is no work. (Ibid., 15 to 16.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Response 5.2.
35	The Report overstates staff costs related to definition of a "project." (Ibid., 16.)	Development Rate, Public Benefits, and Enforcement	<i>Interpretive Disagreement</i> See Response 5.3.

Detailed Responses

1 Scope of the LWC Report

The scope of the LWC Report was defined by the City of Menlo Park consistent with California Election Code Section 9212.¹⁰ Under Section 9212(a), the City Council may request a report on a ballot measure's impacts as to the following:

- Consistency with the city's general plan and zoning ordinance
- Availability, location, and affordability of housing
- Uses of vacant parcels of land
- Attraction and retention of business and employment
- Infrastructure
- Any other matters the City Council requests¹¹

As discussed in the subsequent sections, the Fry, et al Attachment and the Brohard Letter state that the LWC failed to perform adequate analyses. However, the additional analyses were not performed as they were outside of LWC's scope of work. Two analyses, outside the scope, were of particular importance in the documents:

¹⁰ LWC Report, 1-3 to 1-4.

¹¹ California Election Code § 9212. The Supreme Court of California held in a unanimous decision that "[a] [S]ection 9212 report is the exclusive means for assessing the potential environmental impact of such initiatives." *Tuolumne Jobs & Small Business Alliance v. Superior Court of Tuolumne County*, No. S207173 (Cal. August 7, 2014), 6.

- A separate fiscal and other impact analyses of the proposed Stanford (500 El Camino Real) and Greenheart (1300 El Camino Real) projects¹²
- A traffic study compliant with the City's Transportation Impact Analysis Guidelines¹³

As explained below, each of the above tasks fell outside of the scope of the LWC Report.

1.1 Stanford and Greenheart Projects

The LWC Report discussed, in general terms, the potential impact of the Ballot Measure on the feasibility of the proposed Stanford and Greenheart projects,¹⁴ but did not conduct a separate fiscal impact analysis of the two projects. LWC scope was to perform an impact analysis of the Ballot Measure's impact consistent with Section 9212, not an analysis of any proposed development project's impacts.

1.2 The City's Transportation Impact Analysis Guidelines

The Brohard Letter argues that the LWC traffic impact analysis did not comply with the Report's scope of work,¹⁵ in part for the following reason:

By including only daily trip generation calculations, the July 10, 2014 LWC Report fails to meet the requirements of the City's "Transportation Impact Analysis Guidelines."¹⁶

The LWC traffic analysis did comply with the scope of work. The scope of work specifically tasked LWC to conduct a "traffic trip generation analysis" to assess the impact of the potential land uses under the Ballot Measure as compared to land uses evaluated in the ECR/D Specific Plan's Final Environmental Impact Report ("Final EIR").¹⁷

In addition, the City's Transportation Impact Analysis Guidelines were developed to provide a framework for projects (defined in the Guidelines as residential projects five units or greater and commercial projects greater than 10,000 square feet) to follow for completing a traffic study as required under the California Environmental Quality Act ("CEQA").¹⁸ The LWC Report was not a "project" as defined by California law.¹⁹ Moreover, the Guidelines list items that "would generally be exempt from [its] requirements," including those "that are determined to be exempt or categorically exempt under CEQA [the California Environmental Quality Act]."²⁰ The Supreme Court

¹² Fry, et al Attachment, 6; Fry, et al Letter, 1.

¹³ Miadich Letter, 2; Brohard Letter, 3 to 4.

¹⁴ LWC Report, 4-10 to 4-12.

¹⁵ Brohard Letter, 2.

¹⁶ Ibid., 3 to 4.

¹⁷ Menlo Park, Office of City Manager of, August 19, 2014 City Council Meeting Agenda Item D-9 Staff Report, 14-148, (Menlo Park, CA, 2014), 148.

¹⁸ City of Menlo Park, *Transportation Impact Analysis Guidelines*, 1.

¹⁹ California Code of Regulations Title 14 § 15375.

²⁰ Ibid.

of California has affirmed that ballot measures, such as the one at issue here, are not subject to the requirements of CEQA.²¹

For further discussion as to the validity of trip generation analysis, please see Section 9.2 of this Memorandum.

2 Due Diligence in Methodology

Chapter 1 of the LWC Report outlined a methodology for modeling buildout scenarios (combinations of residential, office, retail, and hotel uses) to evaluate the Ballot Measure's impacts.²² Chapter 5 and Appendix 3 of the LWC Report apply those buildout models to a fiscal impact analysis based on assumptions developed by Strategic Economics for the ECR/D Draft Specific Plan Fiscal Impact Analysis dated August 31, 2011 ("SE FIA 2011").²³ As part of its due diligence in conducting the buildout and fiscal modeling, the LWC Report explained potential deviations from the methodologies employed by the City to track net new development under the ECR/D Specific Plan²⁴ and from the SEI FIA 2011 to calculate fiscal impact.²⁵

The Fry, et al Attachment presents two comments on the due diligence findings:

- The LWC Report "implicitly blames" the Ballot Measure for inconsistencies presented in City's calculations of net new development the SEI FIA 2011's fiscal analysis.²⁶
- These inconsistencies create a liability risk for the City.²⁷

These comments are addressed below.

2.1 Inconsistencies

The LWC Report did not intend to attribute "blame," explicitly or implicitly, to the Ballot Measure for any potential variations or inconsistencies the ECR/D Specific Plan and EIR. However, because revenues anticipated under the Specific Plan, such as transient-occupancy tax, are an important contributor to General Fund revenues, it was necessary to illustrate how the models, and the resulting calculations, were developed.

For example, in outlining its approach to the quantitative impact analysis in Chapter 1, the LWC Report provided detail regarding different approaches found in City and

²¹ *Tuolumne Jobs*, 1.

²² *LWC Report*, 1-21 to 1-28.

²³ *Ibid.*, 5-2 to 5-3, A3-22.

²⁴ *Ibid.*, 1-23 to 1-24, fn. 13.

²⁵ *Ibid.*, A3-22 to A3-23.

²⁶ Fry, et al Attachment, 8, 11.

²⁷ *Ibid.*, 11.

ECR/D Specific Plan reports for calculating square footage associated with hotel room numbers.²⁸ Also, as stated in Appendix 3 of the LWC Report, “[e]very attempt was made to develop an FIA [fiscal impact analysis] model that would replicate the output provided by the SE FIA 2011.”²⁹ Appendix 3 also states assumptions the LWC Report followed to develop outputs consistent with the SEI FIA 2011.³⁰

LWC’s scope of services did not entail a peer review of the ECR/D Specific Plan and EIR. Therefore, no conclusions were drawn on the quality, impacts, or methods of that work.

3 Policy Consistency

Chapter 2 of the LWC Report presents an analysis of Ballot Measure policy consistency with the two governing documents—Menlo Park’s General Plan and Zoning Ordinance—and two important regional planning efforts—Plan Bay Area and the Grand Boulevard Initiative.³¹ Because the Ballot Measure is not a stand-alone policy and would amend the ECR/D Specific Plan, the LWC Report considered the ECR/D Specific Plan as amended by the Ballot Measure for purposes of the policy consistency analysis. The LWC Report found that the Ballot Measure would be consistent with the General Plan and the Zoning Ordinance.³²

The Fry, et al Attachment takes issue with the extent and conclusions of this analysis. Specifically, that:

- The LWC Report did not consider the ECR/D Specific Plan Guiding Principles.³³
- The LWC Report’s omission of any discussion regarding concerns that the Ballot Measure would affect the Fire District’s intention for particular parcels implies a finding that the concern is unfounded.³⁴

These comments are addressed below.

3.1 ECR/D Specific Plan Guiding Principles

The LWC Report did not include discussion of the ECR/D Specific Plan Guiding Principles, because the Ballot Measure did not specifically amend the Guiding Principles or propose language that would substantially alter the ECR/D Specific Plan Guiding

²⁸ LWC Report, 1-23 to 1-24, fn. 13.

²⁹ Ibid., A3-22.

³⁰ Ibid., A3-22 to A3-24.

³¹ Ibid., 2-1.

³² Ibid., 2-2, 2-7. Because the General Plan and Zoning Code were both amended to accommodate the ECR/D Specific Plan, certain modifications to the ECR/D Specific Plan, such as the Ballot Measure’s amendments, would also be consistent with the General Plan and Zoning Code.

³³ Fry, et al. Attachment, 8.

³⁴ Ibid.

Principles. Further, since the proposed ECR/D Specific Plan amendments were found consistent with the General Plan, no further policy analysis was deemed necessary.³⁵

3.2 The Fire District's Parcels

The Fry, et al Attachment states the following:

The Report denies, by silence, the false allegations that the Initiative would prevent the Fire District from merging and/or rezoning its two downtown parcels, one in and one not in the Specific Plan Area.³⁶

While the LWC Report's consistency analysis concluded that the ECR/D Specific Plan, as amended by the Ballot Measure, would remain consistent with the Menlo Park General Plan and Zoning Code³⁷, the Report made no findings and issued no opinion on this matter. Omission on this matter or any other does not imply denial, acceptance, or any other position.

4 Open Space Modeling

Chapters 3 and 4 of the LWC Report use parcel models to assess the physical possibility and development feasibility of buildout in the ECR/D Specific Plan area under the Ballot Measure's open space requirements. These models were applied to the El Camino Real North-East—Low Density ("ECR NE-L") and Station Area West ("SA W") zoning districts.³⁸

Regarding the possibility of buildout, the LWC Report concluded:

Adoption of the Ballot Measure's Open Space requirements does not preclude the possibility to develop the maximum residential density allowed in both the highest intensity (ECR SA-W) and lowest (ECR NE-L) ECR/D Specific Plan area zoning designations.³⁹

Regarding the feasibility of development, the LWC Report concluded:

By requiring open space to occur within four (4) feet of ground level, the Ballot Measure creates a competition between open space and other ground floor uses, such as parking, and puts pressure on the project pro forma (by increasing costs associated with structured parking) to maintain financial feasibility and a required project return measure.⁴⁰

Concerning the open space model and above findings, the Fry, et al Attachment states that the LWC Report:

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³⁶ Fry, et al Attachment, 9.

³⁷ LWC Report, 2-2 and 2-7.

³⁸ LWC Report, 3-1 to 3-2.

³⁹ Ibid., 3-6.

⁴⁰ Ibid., 4-7.

- Applies open space regulations to the SA W zoning district not required by the ECR/D Specific Plan.⁴¹
- Improperly applies a mixed-use parcel model to the ECR NE-L zoning district.⁴²
- “Implicitly cites” the Ballot Measure’s requirements, instead of the ECR/D Specific Plan’s requirements, as the reason for the infeasibility of one-story development in the ECR-NE-L zoning district.⁴³
- Constructs costs for underground parking under the Ballot Measure that would already be required by the ECR/D Specific Plan.⁴⁴

Responses to these comments are below.

4.1 Open Space Requirements in the SA-W Zoning District

Chapter 4 of the LWC Report acknowledges:

[a]s no open space is required for non-residential uses in the SA-W zone, the Ballot Measure would not impact enabling a non-residential project to maximize allowable FAR [Floor Area Ratio] on a given SA-W site.⁴⁵

However, the ECR/D Specific Plan establishes open space requirements in SA W for “development that includes residential.”⁴⁶ These open space requirements include:

- Minimum of 100 square feet of open space per unit shall be created as common open space or minimum of 80 square feet of open space per unit shall be created as private open space.
- Private open space shall have a minimum least dimension of 6 feet.
- Residential open space, whether in common or private areas, shall count toward the minimum open space requirement for the development.
- Accessible open space above parking podiums up to 16 feet high shall count toward the common open space requirement.⁴⁷

⁴¹ Fry, et al Attachment., 12.

⁴² Ibid., 12 to 13.

⁴³ Ibid., 9.

⁴⁴ Ibid., 13 to 14.

⁴⁵ LWC Report, 4-4.

⁴⁶ ECR/D Specific Plan, E86.

⁴⁷ Ibid. (Bullet points added.)

The SA W parcel model constructed and studied Chapter 3 of the LWC Report assumed mixed-use development, which could include residential uses.⁴⁸ Accordingly, the ECR/D Specific Plan open space regulations for SA W would apply to the LWC Report's parcel model for this zoning district.

4.2 Mixed-use Parcel Model in the ECR NE-L Zoning District

The ECR/D Specific Plan designates the ECR NE-L zoning district as "Mixed-Use/Residential".⁴⁹ Accordingly, the ECR NE-L parcel model constructed and studied in Chapter 3 was assumed to be mixed-use development.⁵⁰

4.3 Infeasibility of One-Story Buildout in the ECR NE-L Zoning District

Chapter 4 of the LWC Report states the following concerning one-story buildout in the ECR NE-L zoning district:

A one story development that allows maximum build-out is not feasible with ground floor open space, as the building footprint and open space would exceed the parcel size.⁵¹

Under the Ballot Measure, open space requirements could only be satisfied by open space located four feet and below from ground floor.⁵² While a one-story building may be difficult under the ECR/D Specific Plan, it is possible with underground parking and open space above four feet.

4.4 Underground Parking Costs

The LWC Report identifies a delta increase in structured parking that would be required in the Ballot Measure scenario when compared to the ECR/D SP scenario.⁵³ The delta increase presents added hard costs to a given project.

5 Development Rate, Public Benefits, and Enforcement

Chapter 4 of the LWC Report explains that one possible impact of the Ballot Measure's caps on office space development could be to increase the rate of development applications if the demand for office space development exceeds the limits imposed by the Ballot Measure. As stated in the LWC Report:

This dynamic [a cap on Office Space below marked demand] could create a rush of applications for Office Space project entitlements, where developers compete for space under the cap by offering the City more

⁴⁸ LWC Report, 3-2 to 3-4.

⁴⁹ ECR/D Specific Plan, E15.

⁵⁰ LWC Report, 3-2 to 3-6.

⁵¹ Ibid., 4-4.

⁵² Ibid., 1-5 to 1-6.

⁵³ Ibid., 4-5 to 4-8.

public benefits attached to their projects...However, the City currently does not have a mechanism in place to capture potential benefits from increased competition for entitlements.⁵⁴

The LWC Report also discusses potential challenges to enforcing the development caps under the Ballot Measure. In particular, the LWC Report explains that the Ballot Measure's definition of office space could complicate monitoring of the certain development regulations and potentially invite disputes from developers.⁵⁵

The Fry, et al Attachment suggests that the above analysis is overstated. Specifically, the Fry, et al Attachment argues that the LWC Report

- Does not clearly state that, under the Ballot Measure, “empty lots won’t remain empty and did not analyze, but “implicitly blames” the Ballot Measure for the City’s lack of a mechanism to capture public benefits from a rush of development applications.⁵⁶
- Exaggerates the complications associated with enforcing office space development under the Ballot Measure, including the expenditure of City resources.⁵⁷
- Exaggerates the risk of increased disputes generated from adoption of the Ballot Measure, specifically concerning the definition of a “project,” which the City Council previously resolved.⁵⁸

Responses to these comments are below.

5.1 Vacant Land and Public Benefit Capture Mechanism

Because future demand and development mixes are unknown, it would not be possible to state with absolute certainty that “lots won’t remain empty.”

Further, the Ballot Measure’s proposed language did not modify or propose creation of a mechanism to “capture developer-provided benefits.” As a result, an analysis was not performed on this component of the ECR/D Specific Plan. The LWC Report did not intend to attribute blame, implicitly or explicitly, to the Ballot Measure or any other entity on this matter.

⁵⁴ Ibid., 4-12.

⁵⁵ Ibid., 4-13 to 4-16.

⁵⁶ Fry, et al Attachment, 6, 11.

⁵⁷ Ibid., 15 to 16.

⁵⁸ Ibid., 16.

5.2 Development Enforcement Complications

Chapter 4 of the LWC Report explains that the Ballot Measure's definition of Office Space (the aggregate of "Offices, Business and Professional; Offices, Medical and Dental; and Banks and Other Financial Institutions") could generally complicate enforcement of the development cap. For example, there are similar uses that could be in Ballot Measure-defined Office Space (e.g., advertising is an Office Space use, but graphic design is not), but would be up to interpretation.⁵⁹

It is true, as stated in the Fry, et al Attachment,⁶⁰ that the ECR/D Specific Plan outlines a process for resolving uncertainty of use⁶¹ and that the ECR/D Specific Plan already places Floor Area Ratio (FAR) limits on "Offices, Business and Professional" and "Offices, Medical and Dental."⁶² However, the prospect of voter approval to raise the development caps (already in the ECR/D Specific Plan) and new per-project Office Space restrictions adds heightened importance to this process for developers. In the case of new office space development (while still under the non-residential cap), a developer may rely on this ambiguity as a means to dispute enforcement and avoid the costs of a ballot initiative.

5.3 Escalated Disputes

The Report does not state that a developer "should" challenge the cap enforcement process if the Ballot Measure Pass. Nor does the Report evaluate a developer's level of success in a possible challenge. The Report only assesses the possibility that a developer "could" or "would" challenge the process.

Regarding the definition of a "project," the LWC Report addressed Ballot Measure Section 3.3.6, which states: "all phases of a multi-phased project proposal shall be collectively considered an individual project."⁶³ The issue is not the definition of a "project," but what constitutes "phases of a multi-phased project." The City Council addition of the 33,333 square feet per-project cap on Medical and Dental Office was not accompanied by standards or guidelines regarding the definitions of "project" or "phases of a multi-phased project."⁶⁴

⁵⁹ LWC Report, 4-14 to 4-15.

⁶⁰ Ibid., 15.

⁶¹ City of Menlo Park, *Menlo Park El Camino Real/Downtown Specific Plan*, Menlo Park, CA, 2012, H3. (This source will subsequently be cited as the *ECR/D Specific Plan*.)

⁶² LWC Report, 1-12 to 1-13.

⁶³ Ibid., 1-13.

⁶⁴ Menlo Park City Council, *Camino Real/Downtown Specific Plan, City Council-Directed Changes*, November 19, 2013, Menlo Park, CA, 2013.

6 Job Growth

The Fry, et al Attachment states that the LWC Report improperly “describes the shift from offices and office jobs to retail/hotel and retail/hotel jobs as a limit on ‘growth’ and a limit on ‘job growth.’”⁶⁵

As noted Table A3-3, even though there may be a shift in the type of jobs, as noted in the Fry, et al Attachment, the employment population would not be substantially different if the ballot measure passes.⁶⁶ In addition, as the proposed housing units would not change, the Jobs:Housing ratio would also not be substantially altered. It is important to note the scenarios assume full buildout, whereas the separate analyses of the Ballot Measure’s impact (e.g., limits on office space, voter control) reflect the possibility that development within the ECR/D Specific Plan boundary may affect the ability to reach buildout. In addition, Fry, et al Attachment correctly notes that jobs could shift from office to non-office jobs. However, some of the growth in retail and other downtown services was predicated on the anticipated office space (and discretionary spending by employees).

7 Voter Control Impacts

Chapter 1 of the LWC Report details 13 provisions of the Ballot Measure requiring voter approval for subsequent changes to the ECR/D Specific Plan.⁶⁷ Seven provisions amend the ECR/D Specific Plan and require voter approval for future changes. Six provisions do not textually amend the ECR/D Specific Plan, but still subject certain elements to voter control. The LWC Report also explained that “[o]ne provision is expressly exempted from the voter control requirement—ECR/D Specific Plan’s cap of 680 units of net new residential uses.”⁶⁸ Chapter 4 of the LWC Report that the Ballot Measure’s voter approval requirements could create an “open-ended” political process and additional uncertainty and costs in the planning process.⁶⁹

The Fry, et al Attachment expresses certain concerns about the above presentation and perspective concerning the Ballot Measure’s voter control provisions. Specifically, that the LWC Report:

- Did not list all aspects of the ECR/D Specific Plan where the City Council would retain control outside of the Ballot Measure’s voter control provisions.⁷⁰

⁶⁵ Fry, et al Attachment, 15.

⁶⁶ Ibid., A3-12.

⁶⁷ Ibid., 1-16 to 1-21.

⁶⁸ Ibid., 1-19.

⁶⁹ Ibid., 4-16 to 4-18.

⁷⁰ Fry, et al Attachment, 9 to 10; Fry, et al Letter, 4.

- “[B]lames” the Ballot Measure for uncertainties exist whether or not the Ballot Measure’s voter controls are enacted.⁷¹
- Did not address the implications that ECR/D Specific Plan maximum buildout could occur prior to the 30-year timeframe referenced in the Plan in an “orderly planning process” with the Ballot Measure versus “ad hoc project-by-project approvals” without the Ballot Measure.⁷²

These comments are addressed below.

7.1 ECR/D Specific Plan Aspects Under City Council Control

The Purpose of the LWC Report was to assess the areas of impact resulting from passage of the Ballot Measure and then analyze the impacts. Therefore, the LWC Report did not assess, or provide a list of, all the ECR/D Specific Plan rules, standards, and guidelines or other Menlo Park codes, regulations, and plans unaffected by the Ballot Measure.

7.2 Uncertainties With or Without Voter Controls

The ECR/D Specific Plan imposes a maximum net new development cap that can be increased by the City without voter approval.⁷³ Chapter 4 of the Report explains how the Ballot Measure would add additional uncertainties in the development process not already inherent in the ECR/D Specific Plan, as a direct result of the voter approval requirement. The Ballot Measure would require voter approval to increase the maximum net new development cap. Citing peer-reviewed sources, the Report explains that the addition of a voter approval mechanism has led to increases in development uncertainty and “development costs that go beyond conventional planning review and may reduce the willingness of developers to risk capital investment.”⁷⁴

7.3 “Ad Hoc Project-by-Project Planning” and the 30-year Timeframe

Under the ECR/D Specific Plan, amendments to the Plan are not passed through an “ad hoc process.” Concerning increases to the maximum development caps, the ECR/D Specific Plan states:

The Planning Division shall provide the Planning Commission and City Council with yearly informational updates of this record. After the granting of entitlements or building permits for 80 percent or more of either the maximum residential units or maximum non-residential square footage, the Community Development Director will report to the City Council. The

⁷¹ Ibid., 10.

⁷² Ibid.

⁷³ LWC Report, 1-18; ECR/D Specific Plan, G16.

⁷⁴ LWC Report, 4-18.

Council would then consider whether it wished to consider amending the Plan and completing the required environmental review, or the Council could choose to make no changes in the Plan.⁷⁵

Under current conditions, the Community Development Department and the City Council conduct ongoing monitoring of development under the Plan and increasing the maximum development caps would require amendment of the ECR/D Specific Plan, an environmental review, and City Council approval (allowable on a project by project basis or comprehensive ECR/D Specific Plan amendment). The Ballot Measure requires additional approval by the voters after environmental review and City Council approval.

8 Fiscal Impact of Office Space Development

Chapter 5 and Appendix A3 of the LWC Report discuss the fiscal impacts of the Ballot Measure. The LWC Report acknowledges the potential benefits of the Ballot Measure stating:

The Ballot Measure's constraint on Office Space development could hedge the possibility of negative fiscal impacts to the General Fund by limiting the Office Development. The Ballot Measure should not lead to a negative fiscal impact on the ECR/D Specific Plan as long as there is market demand for a non-residential development mix that is revenue generating positive.⁷⁶

The Fry, et al Attachment would make two modifications to this explanation:

First, the above statement would be reworded as follows:

Office development in excess of the Initiative cap reduces revenues and leads to eventual net revenue loss to the General Fund; office development within the Initiative cap could lead to positive net revenue gain that may exceed Plan revenue forecasts.⁷⁷

Second, the Fry, et al Attachment suggests adding a clear statement that:

...approving the proposed Greenheart and Stanford projects will cause a net revenue loss from the Specific Plan area, resulting from their overbuilding of office and net loss of retail/hotel space.⁷⁸

Responses to these two items are below.

⁷⁵ ECR/D Specific Plan, G16.

⁷⁶ Ibid., 5-6.

⁷⁷ Fry, et al Attachment, 6.

⁷⁸ Ibid.

8.1 Rewording of Statement Concerning Fiscal Impact of Office Development

As previously stated, the LWC Report evaluated the potential fiscal benefits of the Ballot Measure under three buildout scenarios. As the probability of these scenarios is unknown, the LWC Report did not state with absolute certainty that the impact of the Ballot Measure would necessarily be “beneficial to the City” and “enable net revenue production from retail and hotel uses.”⁷⁹

8.2 Stating Proposed Stanford and Greenheart Projects will Cause Net Revenue Loss

As explained earlier, a separate fiscal impact analysis of the proposed Stanford Greenheart projects was outside the scope of the LWC Report.⁸⁰ Therefore, no findings were presented.

9 Infrastructure Impacts: Greenhouse Gas Emissions and Traffic

The Ballot Measure proposes changes to the ECR/D Specific Plan, therefore “[t]he ECR/D Specific Plan’s Final Environmental Impact Review (“[the Final] EIR”) (certified June 5, 2012) served as the basis for the Ballot Measure infrastructure impact analysis.”⁸¹ As the project description studied in the Final EIR is possible under both the ECR/D Specific Plan and the Ballot Measure, the Final EIR findings would be applicable to both.

Concerning greenhouse gas emissions, the LWC Report stated:

As the Ballot Measure could have the effect of stymieing private development, it is unknown whether approval of the Ballot Measure would lead to increases in GHG emissions as compared to the ECR/D Specific Plan. However, the City can provide GHG emissions mitigation measures to a developer during the entitlement process.⁸²

For the traffic analysis, the LWC Report applied trip generation figures derived from the Final EIR to the Report’s buildout model.⁸³ From this approach, the LWC Report concluded

Passage of the Ballot Measure potentially could impact traffic. However, the Ballot Measure would not uniquely create more additional trips than the ECR/D Specific Plan Baseline scenario. Although, in that the Ballot Measure would preclude net new office build-out in excess of 240,820 square feet, the Ballot Measure would preclude some traffic scenarios that could entail fewer trips than the ECR/D Specific Plan Base scenario

⁷⁹ Ibid., 5.

⁸⁰ See Response 1.1 in Memorandum.

⁸¹ LWC Report, 6-1.

⁸² Ibid., 6-5.

⁸³ Ibid., 6-3.

because office uses produce lower trip generation rates than other uses such as retail, but more than uses such as hotels.⁸⁴

Concerning infrastructure impacts, the Fry, et al Attachment states that the LWC Report's

- Findings of “no impact” concerning greenhouse gas emissions is “contradicted by the City's certified Environmental Checklist for the Greenheart project”.⁸⁵
- Trip generation calculations alone do not constitute sufficient impact analysis, as they do consider the impact to the City's roadway network.⁸⁶

Responses to these comments are below.

9.1 Greenhouse Gas Emissions

As explained earlier, a separate infrastructure analysis of the proposed Greenheart project was outside the scope of the LWC Report,⁸⁷ and therefore the greenhouse gas emissions of the individual proposed project were not assessed in the LWC Report. The same is true concerning traffic impacts of the individual proposed project.

9.2 Traffic Calculations

There are three components to traffic analysis, each able to stand on its own: trip generation (analysis of the impacts of land use on traffic), trip distribution (analysis of the where traffic originates and what roads it takes), and trip assignment (analysis of impacts to the entire roadway network).

The scope of the LWC Report was to study impact of land use on traffic—a trip generation analysis consistent with the ECR/D Specific Plan's Final EIR.⁸⁸ As was done in the Final EIR, the LWC traffic analysis employed peak hour and trip generation figures provided by Institute of Transportation Engineer (“ITE”) Trip Generation to determine the number of trips stemming from various land uses (residential, office, retail, and hotel).⁸⁹

⁸⁴ *Ibid.*, 6-3 to 6-4.

⁸⁵ Fry, et al Attachment, 7.

⁸⁶ Fry, et al Attachment, 7; Fry, et al Letter, 4; Miadich Letter, 2; Brohard Letter, 3 to 5.

⁸⁷ See Response 1.1 in this Memorandum.

⁸⁸ *Agenda Item D-9 Staff Report*, 3.

⁸⁹ *LWC Report*, 6-3, A4-3 to A4-4. As explained in footnote 4 on page 3-3 of the LWC Report:

The EIR used the 8th edition of this [ITE] manual, which was determined to be substantially similar to the more recent 9th edition. The models for bookends relied on the 8th edition for purposes of consistency.

Conclusion

As explained in the introduction of this Memorandum, the City requested that LWC review the comments from four documents critical of the LWC Report. As demonstrated in the responses in this Memorandum, LWC has carefully considered each comment on the LWC Report to determine if they were of a nature that would warrant revisions to the original report.

Based on this review, LWC believes the comments in these documents either (1) suggest additional work that is outside of the LWC Report's scope or (2) present interpretive disagreement with the LWC Report's conclusions. Therefore, LWC finds no reason to rescind or revise the conclusions or methods of the LWC Report.

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