



SPECIAL AND REGULAR MEETING AGENDA

Date: 3/14/2017
Time: 6:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

Mayor Keith and Councilmember Carlton will participate by telephone from the following location:
Washington Marriott Wardman Park
Park Tower Suite
2660 Woodley Road NW, Washington, DC 20008

6:30 p.m. Closed Session (City Hall Administration Building, 1st floor conference room)

Public Comment on this item will be taken before adjourning to Closed Session.

- CL1. Closed session conference with legal counsel pursuant to Government Code section 54956.9 (a) regarding existing litigation: 1 case

Case Name: Schuler v. City of Menlo Park

Case Number: Workers Compensation Case Numbers ADJ7111589; ADJ9611265; ADJ3718259 and ADJ318183

Attendees: Assistant City Manager Chip Taylor, City Attorney Bill McClure, Special Counsel for Workers Compensation Bill Armstrong, Administrative Services Director Nick Pegueros, Human Resources Manager Lenka Diaz, City Manager Alex McIntyre will participate by telephone from Washington, DC

7:00 p.m. Regular Session

- A. Call To Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Report from Closed Session**
- E. Presentations and Proclamations**
 - E1. Musical performance by Lucia Comnes in celebration of Saint Patrick's Day
- F. Commissioner Reports**
 - F1. Sister City Committee update to the City Council on proposed two-year work plan

G. Public Comment

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

H. Consent Calendar

- H1. Approve the 2017-19 Sister City Committee 2-year work plan and goals (Staff Report #17-058-CC)
- H2. Waive the reading and adopt an ordinance to amend the 2016 California Green Building Standards Code to increase the number of required electric vehicle charging stations in the life sciences, office and residential-mixed use zoning districts (Staff Report #17-053-CC)
- H3. Review and accept the annual report on the status and progress in implementing the City’s Housing Element for 2016 and the annual Housing Successor Report (Staff Report #17-052-CC)
- H4. Authorize the City Manager to enter into an agreement with AECOM for the Middle Avenue Pedestrian and Bicycle Rail Crossing Study and authorize the City Manager to enter into all necessary agreements for the project (Staff Report #17-059-CC)
- H5. Authorize the City Manager to amend the contract amount for 2016-2017 Public Works maintenance services contracts up to the City Council amended budget amount (Staff Report #17-060-CC)
- H6. Award a construction contract to Day’s Generator Service for the Administration Building Emergency Generator Replacement Project (Staff Report #17-055-CC)
- H7. Reject all bids for the Sand Hill Reservoir No. 2 Roof Replacement Project (Staff Report #17-054-CC)
- H8. Authorize the Mayor to sign a Letter of Support for the South Bay Salt Pond Restoration Project (Staff Report #17-057-CC)
- H9. Review and consider adopting a resolution approving a Standard Industrial/Commercial Single-Tenant Lease – Net with Xuereb Enterprises, Inc., a California corporation, for the premises commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park, with Guaranty by Sylvia Xuereb, and a Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor (Staff Report #17-061-CC)

I. Regular Business

- I1. Consider authorizing the City to join amicus briefs and/or other pleadings in *County of Santa Clara v. Trump*, Case No. 5:17-cv-00574 (N.D. Cal.) and *City and County of San Francisco v. Trump*, Case No. 3:17-cv-00485 (N.D. Cal.) challenging President Trump’s executive order threatening to withhold federal funds from so-called “sanctuary jurisdictions” (Staff Report #17-051-CC)
- I2. Approval of performance bonus for City Manager Alexander D. McIntyre (Staff Report #17-063-CC)

J. Informational Items

- J1. Update on the Water System Master Plan (WSMP) and staffing for operations and maintenance of functions (Staff Report #17-056-CC)
- J2. Review of the City's Investment Portfolio as of December 31, 2016 (Staff Report #17-062-CC)

K. City Manager's Report

L. Councilmember Reports

M. 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 any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the City Council's consideration of the item.

At every Special Meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

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 City Clerk's Office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours.

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STAFF REPORT

City Council

Meeting Date: 3/14/2017
Staff Report Number: 17-058-CC

Consent Calendar: Approve the 2017-19 Sister City Committee 2-year work plan and goals

Recommendation

Approve the proposed 2017-19 Sister City Committee 2-year work plan.

Policy Issues

The proposed action is consistent with City Council Policy CC-01-0004, Commissions/Committees policies, procedures, roles and responsibilities.

Background

City Council created The Sister City Committee on November 17, 2016 and gave the committee direction to, "Develop a program plan consisting of projects, exhibits, contacts and exchanges of all types to foster and promote the objectives of the mission statement." The new committee held its first meeting on June 27, 2016 and where they immediately began to organize themselves.

Analysis

At their first meeting, on June 26, 2016, the committee elected a Chair, Kristy Holch, Vice-Chair, Analisa Prat and created a Sister City Committee Mission Statement, "The mission of the Menlo Park Sister City Committee is to promote international goodwill, respect and cooperation by facilitating cultural, educational and economic exchanges."

On September 21, 2016, the Sister City Committee began the process of creating its first work plan. Over a series of committee and subcommittee meetings, the work plan focuses on creating a foundation of protocols, best practices and civic engagement for The Sister City Committee and enhancing The City of Menlo Park's current Sister City and Friendship Cities relationships (Sister City: Galway, Ireland and Friendship Cities: Bizen, Japan, Kochi, India and Changchun, China). On February 15, 2017, the Sister City Committee adopted its 2017-19 two-year work plan (Attachment A).

Impact on City Resources

City staff currently serves as liaison to the Sister City Committee, attending meetings, preparing agendas and minutes, interacting with committee members and stakeholders, and providing information as requested by other City staff, other commissions and the City Council regarding the Sister City Committee's activities. No additional resources requested at this time. Should the Sister City Committee develop projects as part of their work plan that will require more staff time and/or funds, staff will bring those projects to the Council for prioritization.

Environmental Review

This action is not a project under CEQA.

Public Notice

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

Attachments

A. Proposed Sister City Committee Work Plan for 2017-19

Report prepared by:

Meghan Revolinsky, Management Analyst II

Report reviewed by:

Jim Cogan, Housing and Economic Development Manager

SISTER CITY COMMITTEE

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



WORK PLAN 2017-2109

Mission Statement	
The mission of the Sister City Committee is to promote international goodwill, respect and cooperation by facilitating cultural, educational and economic exchanges.	
Committee Members Listing and Term Expirations	
Kristy Holch (Chair)	April 30, 2020
Analisa Pratt (Vice Chair)	April 30, 2020
Councilmember Catherine Carlton	December 31, 2017
Councilmember Peter Ohtaki	December 31, 2017
James Clendenin	April 30, 2020
Fran Dehn	April 30, 2020
Carol Schumacher	April 30, 2020
Committee Term Information: <ul style="list-style-type: none"> • 5 at large members of the Committee & two appointed Councilmembers • At large members have a 4-year term. Councilmembers appointments happen at the end of every year. <ul style="list-style-type: none"> ◦ During the next recruitment, 2 of the 5 terms will be changed to 2 year terms in order to stagger terms • Members may serve two consecutive terms. Committee member must fill out an application for reappointment to 2nd term. <ul style="list-style-type: none"> ◦ After two terms, must drop out 1 year and then becomes eligible again to serve. • Chair and Vice-Chair have 1-year terms, elected from among members. • Is a "Committee", not a "Commission", to have Councilmembers and Menlo Park Business owners as members • Source: Menlo Park's guidelines on Commissions and Committees (Commissions/Committees Policies and Procedures and Roles and Responsibilities, Amended 04/05/2011. Procedure # CC-01-0004)) 	
Priority List	
The Sister City Committee has identified the following priorities to focus on during 2017-19:	

1. Identify the general protocols for maintaining sister city relationships, i.e., selection criteria, handling visits, communication, annual evaluation, termination, lists of local contacts (business, school, hosts), annual master calendar
2. Identify details for each existing relationship, i.e., objectives, goals, strategy, calendar of activity, budget, subcommittee responsible, portfolio on city.
3. Develop processes for involving citizens and community, i.e., membership, youth participation, business participation, arts, music, etc.
4. Develop marketing, PR, communications strategies, timelines, templates, relationships
5. Seek best practices for future success, i.e., attend annual conference(s), monitor website, apply for grant money, find suitable partners and learn from Sister Cities International....

Work Plan Worksheet

Step 1 - Review purpose of Commission as defined by Menlo Park Council Policy CC-01-0004

Each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law

Step 2 - Develop or review a Mission Statement that reflects that purpose (*Who we are, what we do, who we do it for, and why we do it*)

The mission of the Sister City Committee is to promote international goodwill, respect and cooperation by facilitating cultural, educational and economic exchanges.

Step 3 - Discuss any priorities already established by Council

In Resolution No. 6294 the city council says, "WHEREAS, establishing a Sister City Committee will provide residents an opportunity to help guide the development and support the services of the new Menlo Park Sister Cities Program."

Step 4 - Brainstorm goals, projects or priorities of the Committee

<u>Brainstorm goals, projects or priorities of the Committee</u>	<u>Benefit, if completed</u>	<u>Mandated? by State/local law or by Council direction</u>	<u>Policy change? At Council level</u>	<u>Resources needed for completion Staff or creation of subcommittees</u>	<u>Estimated Completion Time</u>	<u>Measurement Criteria How will we know how we are doing?</u>	<u>Urgency 1-< 1 Year 2-1 Year 3-2 Years 4-Long Term</u>	<u>Priority # According to List Above</u>
Create criteria for selecting Sister/Friendship Cities	To have council policy on establish Sister/Friendship Cities in order to ensure best possible matches	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Staff will bring forward a report	March 2017	Committee create a policy and recommends it to City Council for adoption	1	1 Protocol
Create a general process for: maintaining sister city relationships, evaluating relationships and terminating relationships	Enrich and maintain working city relationship and terminate failing ones	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Staff will bring forward a report	3-6 months	Committee create a policy and recommends it to City Council for adoption	1	1 Protocol
Protocol for Initiating and Responding to communications letters, emails, contacts	Provide consistent, clear communication	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff will bring forward a report	3-6 months	Committee create a protocol	1	1 Protocol

Protocol/Checklist (including gifts, entertainment, publicity, dinners, etc.) for: - Mayors visiting MP - MP Mayor visiting other cities - Businessmen visits - Private citizens visits - Students visiting MP - MP students visiting other cities	The Mayor, City Councilmembers, Committee Members and staff will be prepared for visits and events	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff will bring forward a report	Mayors visiting MP: Feb 2017 Others: 3-6 months	Committee create a protocol	1	1 Protocol
Identify simple objective(s) of each relationship: what each city wants/gets from the relationship and existing responsibilities / obligations, and future	Comply with existing Friendship and Sister City agreements and enrich the relationships	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Subcommittee	6 months	Objectives identified and fulfilled	2	2 Protocol
2017 Calendar including all Sister city events, planned visits, things that cost money, need lead time, SCI Event, etc.	The Mayor, City Councilmembers, Committee Members and staff will be prepared for visits and events Will turns into a rolling yearly calendar for City Council, committee, citizens and staff	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff & Subcommittee	Feb 2017 Ongoing	Done Calendar is created and distributed	1	1 Protocol
Create a budget correlated with calendar of event and relationship obligations	Have a budget that meets the activates and objectives of the committee	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Staff will bring forward a report	3 months	Sister City Committee budget line item is submitted, to be included in the FY 17-18 budget	1	2 Protocol
Annual review, evaluation and recap of each Sister/Friendship City relationship	Keep city Council and citizens aware of Friendship and Sister City relationships and ensure compliance with the agreements	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff will bring forward a report	9-12 months	Committee create a policy and recommends it to City Council as an information item	2	2 Protocol
Tree Planting Exchange: find existing tree from previous planting ceremony and create plaques	To promote long term goodwill An added event during visits and increase community awareness and engagement	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Subcommittee	16 months	Trees are planted	3	4 Protocol
Identify host families for Bizen children 2017 trip	Plan ahead	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Subcommittee: Peter, Catharine	1-6 months	Host families are identified ahead of time and best practices are established	1	n/a Protocol
Incorporate a Staff Press Liaison	Increased community awareness and	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff	4-6 months	Press mentions related to the Sister City Program	1	4 Marketing

	engagement of Sister City relationships and program							
Create a comprehensive portfolio on each city relationship and The City of Menlo Park: create a template that includes history of the relationship, contacts, goals, relationship terms, subcommittee, publish on website, etc...	Historical documentation, can be used for marketing and cohesive understanding of each relationship	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff will bring forward a staff report	6-12 months	Each city portfolio will be documented, archived and upload to the website Menlo Park's information sent to our Sister/Friendship Cities	1	2 Marketing
Create an awareness campaign: establish an online presence, update City's webpage, create a Facebook page, etc...	Increased community awareness and engagement of Sister City relationships and program	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff and work with committee and/or subcommittee	6 months	Update City's webpage and create a Facebook page	1	2 Marketing
Develop a SC branding plan: SCC logo, article/handout in MP's activities bulletin (one main brochure; additional articles on an ad hoc basis), visibility at applicable community events	Increased community awareness and engagement of Sister City relationships and program	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff - consistent with city branding and staff to help develop articles and handouts	6 months	SCC logo used, article/handout in MP's activities bulletin, committee attendance at applicable community events	1	3 Marketing
Add directional signposts at City Hall for Friendship Cities	Consistent community awareness of SC relationships	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff to work with Public Works and report back to committee	3 months	Signs for Bizen, Changchun and Kochi are put up	1	3 Marketing
Leverage Sister Cities International membership	Understanding of SCI programs, resources, grant opportunities, support, etc.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff to work with Subcommittee	1 year and ongoing	Attend SCI Nor-Cal meetings and SCI annual meetings and learn from other cities, apply for grants etc.	1	5 Marketing
Search for cities we are interested in starting a relationship with, keeping in mind we need to remember, "How many can we handle?" Resources to tap into include: SCI's Cities seeking Cities, Mexico Consulate, etc.	Secure relationship with the most complementary cities to Menlo Park	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Subcommittee	2 years	Evaluate against selection criteria	4	2 Outreach
Engage the Community: the youth, business to business,	Enrich living in Menlo Park. Use global scope to: boost education, boost business,	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Subcommittee	2 years	Track how many new community members are	4	4 Outreach

schools, Scouts, the arts community, library commission Ideas include: pen pal program, students created Facebook group, artist exchange, book exchange in library, etc.	and create fun and educational opportunities					engaged and active with the Sister City Program		
Send a delegate to the annual SCI conference	To attain greater knowledge of Sister Cities and learn Best Practices from peers	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Need a travel budget for committee member	1 year	Debrief after meeting to see if there is something to be learned and if it is worth it	2	5 Outreach
Attend SCI annual Nor-Cal conference and have a committee member sit on their board	Send a delegate to the annual SCI conference To attain greater knowledge of Sister Cities and learn Best Practices from peers	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Subcommittee Registration Fee	Done	Four committee members attended the Nor-Cal Conference on October 28, 2016 Fran Dehn is Nor-Cal SCI board member	1	5 Outreach
Research grant opportunities, if we accept money: SCI grants	Generate funding for student exchange programs, cultural activities, etc.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff will bring forward a report	2 years	Find out if the committee can accept money and if so, apply for appropriate grant opportunities	4	5 Outreach
Step 5 - Prepare final work plan for submission to the City Council for review, possible direction and approval and attach the worksheets used to determine priorities, resources and time lines.								
Step 6 - Once approved, use this plan as a tool to help guide you in your work as an advisory body.								
Step 7 - Report out on status of items completed. Provide any information needed regarding additional resources needed or/and to indicate items that will need additional time in order to complete.								

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STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-053-CC

Consent Calendar:

Waive the reading and adopt an ordinance to amend the 2016 California Green Building Standards Code to increase the number of required electric vehicle charging stations in the life sciences, office and residential-mixed use zoning districts

Recommendation

Staff recommends that the City Council waive the full reading of, and adopt an ordinance amending the 2016 California Green Building Standards Code to increase the number of Electric Vehicle (EV) charging stations in the Life Sciences (LS), Office (O), and Residential-Mixed Use (R-MU) Zoning Districts (Attachment A).

Policy Issues

The adoption of the proposed local amendment to the 2016 California Green Building Standards Code (Cal Green) is a follow up action and consistent with the Council's recent adoption of the M-2 area zoning changes associated with the General Plan Update.

Background

The State adopted the updated 2016 Building Standards Code that became effective beginning January 1, 2017. City Council adopted the 2016 Building Standards Code and local amendments at the December 6, 2016 Council meeting. Later in December, the City Council adopted the General Plan and M-2 Area Zoning Update. As part of the M-2 Area Zoning Update, three new zoning districts (LS, O and R-MU) were established. The requirements associated with these districts include provisions for sustainable building regulations, which supports several of the General Plan's guiding principles and goals. The sustainable building requirements include the mandatory installation of EV chargers. During the development of the sustainability measures, it was determined that the mandatory installation of EV chargers exceeds the mandatory requirements of Cal Green and constitutes a local amendment to that code.

The Council reviewed the draft ordinance adopting the amendment to the 2016 Cal Green code at its February 28, 2017 meeting and acted to introduce the ordinance. Additionally, the Council directed that staff pursue a second amendment to Cal Green that would increase the number of pre-wired EV charging stations. This will be considered at a meeting later in the year.

Analysis

The adoption of the draft ordinance amending Cal Green to increase the number of required EV charging stations would serve to make enforceable the current provisions of the O, LS, and R-MU zoning districts. The draft ordinance included as Attachment A is consistent with the ordinance introduced by the Council. If the Council takes action to adopt the ordinance, the new requirements will become effective March 28, 2017.

In accordance with the Council's direction to consider increasing the required number of pre-wired EV charging stations, staff will conduct the necessary research and outreach to stakeholders in drafting increased EV charging requirements. It is staff's intent to return to Council with the proposed new regulations in late spring 2017.

Impact on City Resources

The adoption of the proposed local amendment will not result in direct costs to the City.

Environmental Review

The adoption of the proposed ordinance is not a project that has the potential for causing a significant adverse effect on the environment and therefore is not subject to review under the California Environmental Quality Act (CEQA).

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting and posting a notice at the City Hall Development Service Counter.

Attachments

- A. Ordinance No. ___ amending Title 12 (Buildings and Construction) of the Menlo Park Municipal Code adopting Amendments to Part 11 of The 2016 California Building Standards Code.

Report prepared by:
Ron La France
Assistant Community Development Director/Building

Report reviewed by:
Arlinda Heineck, Community Development Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING TITLE 12 [BUILDINGS AND CONSTRUCTION] OF THE MENLO PARK MUNICIPAL CODE TO AMEND THE 2016 CALIFORNIA GREEN BUILDING STANDARDS CODE, PART 11 OF THE 2016 CALIFORNIA BUILDING STANDARDS CODE

WHEREAS, the City of Menlo Park ("City") wishes to adopt a building code in accordance with law and to use the most updated regulations in the processing of development in the City; and

WHEREAS, because of the City's unique local climatic, geologic and topographic conditions, the City desires to make amendments and additions to the Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENLO PARK DOES ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS AND DETERMINATIONS. The following local geologic conditions justify modifications to California Building Standards Code.

- A. Geological: The City is located in Seismic Risk Zones D, E, and F, which are the most severe earthquake zones in the United States. The area includes various soils and areas with significant movement potential. Buildings and other structures in Zones D, E and F can experience major seismic damage. Lack of adequate building designs and detailing as well as the lack of flexible materials and/or building systems have been contributing factors to damage that reduces the life-safety of building occupants and increases the cost of the rehabilitation of structures.
- B. Climatic: The City is located in a climatic zone with precipitation ranging from 13 to 20 inches per year with an average of approximately 15 inches per year. Ninety-five percent of precipitation falls during the months of November through April, leaving a dry period of approximately six months each year. Relative humidity remains moderate most of the time. Temperatures in the summer average around 80 degrees Fahrenheit and in the winter in the mid 50 degrees Fahrenheit. Prevailing winds in the area come from the west with velocities generally in the 12 miles per hour range, gusting from 25 to 35 miles per hour. These climatic conditions require compliance with energy efficiency standards for building construction.
- C. Topographic: Areas of highly combustible dry grasses, weeds, brush and trees adjacent to structures are common throughout the City. Above ground electrical power transmission lines are suspended through trees and above large areas of

dry vegetation. The arrangement of man-made features around many buildings greatly limit any approach to all but one side of a building.

SECTION 2: AMENDMENT OF CODE: Chapter 12.18 of Title 12 [Buildings and Construction] is hereby amended to read as follows:

CALIFORNIA GREEN BUILDING STANDARDS CODE AMEDEMMENTS

Sections:

12.18.030 Section 4.106.4.2 of Chapter 4 amended

12.18.040 Section 4.106.5.3 of Chapter 5 amended

12.18.030 Section 4.106.4.2 of Chapter 4 amended

Section 4.106.4.2 of Chapter 4 is amended to read as follows:

4.106.4.2 New multifamily dwellings. New multifamily dwelling construction located in the City of Menlo Park's R-MU zoning districts shall comply with the R-MU Zoning District's requirement for the installation and pre-wire of EV chargers.

In all other new multifamily dwelling construction, where 17 or more multifamily dwelling units are constructed on a building site, 3 percent of the total number of parking spaces provided for all types of parking facilities, but in no case less than one, shall be electric vehicle charging spaces (EV spaces) capable of supporting future EVSE. Calculations for the required number of EV spaces shall be rounded up to the nearest whole number.

Note Construction documents are intended to demonstrate the project's capability and capacity for facilitating future EV charging. There is no requirement for EV spaces to be constructed or available until EV chargers are installed for use.

12.18.040 Section 5.106.5.3 of Chapter 5 amended

Section 5.106.5.3 of Chapter 5 is amended to read as follows:

5.106.5.3 Electric Vehicle (EV) charging. New construction and alterations to existing buildings located in the City of Menlo Park's LS, O or non-residential occupancies in R-MU zoning districts shall comply with the Zoning District's requirement for the installation and pre-wire of EV chargers. New construction not located in the City of Menlo Park's LS, O or R-MU zoning districts shall comply with Sections 5.106.5.3.1 of section 5.106.5.3.2 to facilitate future installation of electric vehicle supply equipment (EVSE). When EVSE is/are installed, it shall be in accordance with the *California Building Code, California Electric Code* and as follows:

SECTION 3: EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) that this ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a project that has the potential for causing a significant effect on the environment.

SECTION 4: SEVERABILITY. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5: EFFECTIVE DATE. This Ordinance shall become effective on the later of April 28, 2017 or thirty (30) days from adoption.

SECTION 6: POSTING. Within fifteen (15) days of its adoption, the Ordinance shall be posted in three (3) public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 28th day of February, 2017.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the 14th day of March, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

Kirsten Keith
Mayor

ATTEST:

Pamela Aguilar, City Clerk

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STAFF REPORT

City Council

Meeting Date: 3/14/2017

Staff Report Number: 17-052-CC

Consent Calendar: Review and accept the annual report on the status and progress in implementing the City's Housing Element for 2016 and the Annual Housing Successor Report

Recommendation

Staff recommends that the City Council accept the 2016 Housing Element Annual Report (Attachment A) and the 2016 Annual Housing Successor Report (Attachment B), and authorize the transmittal to the California Governor's Office of Planning and Research (OPR) and the California Department of Housing and Community Development.

Policy Issues

The preparation and submittal of the Housing Element Annual Report to the state Housing and Community Development Department (HCD) and Governor's Office of Planning and Research (OPR) is required by State law. The Annual Report documents past housing-related activities and may identify the timing of upcoming activities, but does not authorize the implementation of programs or expenditure of funds.

Background

Government Code 65400 requires each governing body to prepare an annual report on the status and progress of implementing the jurisdiction's Housing Element of the General Plan using forms and definitions adopted by the HCD. Housing Element Annual Reports are due annually by April 1 for the calendar year immediately preceding the April 1 reporting deadline. Therefore, this year's report evaluates the status of the implementation programs of the 2015-2023 Housing Element and housing production during the time period between January 1 and December 31, 2016. The 2016 Annual Housing Element Report is included as Attachment A. The 2015-2023 Housing Element is referenced as a hyperlink in Attachment B.

As part of the Housing Element Annual Review process, the Planning Commission and Housing Commission reviewed and commented on the report at their respective meetings on February 1, 2017 and February 6, 2017. The meetings also provided the public with an opportunity to provide comments on the Annual Report, but no members of the public spoke on the item. The Commissioners' reviews are not required by State law, but were previously recommended by staff as a means for sharing information and receiving input prior to Council's review.

Commission Review

Housing Commission

On February 1, 2017, the Housing Commission conducted its review of the Annual Report and had a good discussion pertaining to a number of housing-related topics. Housing and affordable housing, in particular, continues to be a local and regional issue. While the Housing Commission has been charged with reviewing a number of different strategies to address displacement as part of its two-year work plan, this work will be mostly in addition to the implementation of programs in the Housing Element. Much of the Housing Commission's discussion focused on housing production, including 1) investigating properties on Pierce Road and City-owned surplus land (Program H4.J) for redevelopment into affordable housing, 2) reducing the minimum lot size requirement for secondary dwelling units as a means to increase the number of properties eligible for a secondary dwelling unit without a discretionary review process (Program H4.E), and 3) modifying the language of the City's Notice of Funding Availability (NOFA) to relax the eligibility criteria as way to potentially encourage more applications (Program H1.H).

In recent years, staff and/or the City Council has reviewed the programs itemized 1 to 3 above. For reference, in 2014, the City Council adopted comprehensive revisions to the secondary dwelling unit ordinance per Program H4.E including modifications to the minimum lot size needed for a non-discretionary secondary dwelling unit. At that time, the Council adopted a change to reduce the minimum lot size requirement from 7,000 square feet to 6,000 square feet. The Council's discussion included even a greater reduction to the minimum lot size, but the smaller lot size was not adopted, given concerns about potential overcrowdedness expressed by community members. In 2015, the City Council supported several changes to the NOFA requirements prior to the release of the City's second NOFA for affordable housing in an effort to increase the interest level and the number of responses from eligible applicants. The modifications were 1) a reduction in the number of completed affordable housing projects, 2) to encourage, rather than require, that an applicant's previous projects be of similar size and complexity, and 3) to allow an entity to submit as an individual and a team. The City received three applications, which is an increase from the one application received during the 2013 NOFA. While the Council did not prioritize revisiting these programs during the 2017 calendar year, the Council may wish to consider these in the future. Staff may also have an opportunity to review the requirements in the NOFA prior to the City's release of its third affordable housing NOFA anticipated for this year.

Housing Commission members also suggested combining work on an anti-retaliation ordinance with an anti-discrimination ordinance, a preference to work on items that address displacement more directly, and a desire for greater marketing when affordable housing units become available. Staff agrees that coordination between the anti-retaliation (one of the 15 strategies that the Council would like the Housing Commission to consider) and work on an anti-discrimination ordinance would be appropriate and that marketing for all housing programs, not just when affordable housing units become available, should be increased.

Planning Commission

On February 6, 2017, the Planning Commission conducted its review of the Housing Element Annual Report. Although the Planning Commission did not have a formal recommendation on the Report, they were generally supportive of the housing efforts that have been done and for work identified in the Housing Element. During the Commission's discussion, members had clarifying questions about the City's

Below Market Rate (BMR) Housing Program, including the current revenues, the number of people on the waiting list, the preference for units instead of payment of an in-lieu fee, and the mechanism for pricing the units, as well as asked about the application of the affordable housing overlay (AHO) and the pending nexus study. Individual Commissioners also had several questions related to pending housing implementation programs. One Commissioner was interested in learning more about City-owned surplus land. As an example, staff explained that several of the downtown parking lots are seen as potentially underutilized and could be studied as part of a design contest to identify ways to incorporate housing, entertainment, parking and other mix of uses to complement the area.

With respect to Program H2.C (Protect Existing Housing Units), one Commissioner noted that we should not prohibit condominium conversions (rental apartment units converting into for-sale condominium units) since condominiums are often the entry point for home ownership and they serve a need in the housing market. The intent of the program is to protect existing housing and regulations and best practices will be reviewed as part of the program. One Commissioner also noted that regulations such as parking requirements could be reevaluated for affordable housing units. Currently, the AHO establishes lower parking ratios for affordable housing units, and there was interest by at least one Commissioner to see the regulations broadened to other zones. Program H4.A seeks to maximize unit potential in the R-2 zoning district. While a worthwhile effort, the sentiment seemed to be that the potential for additional units is potentially relatively small. The Commission's general sentiment was supportive of the overall breadth of the programs and it does not appear that there is any one thing that is missing. However, several Commissioners noted that higher density housing has been a concern to some because it is relatively conceptual, and it would be helpful to be able to point to a City or model to help people understand the visions.

Analysis

Attachment A includes the 2016 Housing Element Annual Report. The Annual Report includes a status update of the Housing Element's implementation programs and an inventory of housing production in the City for the 2016 calendar year. This staff report highlights a few key accomplishments and other programs that are in progress and will be continued in 2017, in more detail below.

Implementation Programs

General Plan Update

In 2016, the City Council adopted the Land Use and Circulation Elements of the General Plan and the M-2 Area Zoning Update after a multi-year, comprehensive and collaborative process. While the General Plan Update is not a Housing Element implementation program, a number of programs in the Housing Element were identified to be considered as part of the General Plan timeframe. The Housing Element includes 11 programs that were to be considered during the General Plan Update process. A few of the programs were directly related to the work of the General Plan and were implemented concurrently while other programs were considered more appropriate to be implemented at a future date, given the topic or geographic focus. The topic of housing, itself, was a major theme throughout the General Plan discussion that influenced policy, ordinance changes, and a dialogue that will continue beyond the conclusion of the General Plan process.

One way to address housing needs is through housing production. As part of a vision to create a

live/work/play environment in the former industrial and warehousing M-2 (zone) Area of the City, the General Plan Land Use Element and the newly crafted R-MU (Residential Mixed Use) zoning district would allow up to 4,500 net new housing units where no housing was previously permitted. In addition to the R-MU zoning district, the C-2-B zoning district, which is zoned at key intersections along the Willow Road Corridor north of Highway 101, was amended to allow residential uses and is consistent with Housing Element Program H4.N (Create Opportunities for Mixed Use Development). The zoning changes will provide opportunities for small-scale mixed use developments in the area. In addition, program H4.I (Create Multi-Family and Residential Mixed Use Design Guidelines) was fulfilled with the creation of a comprehensive set of design standards in the R-MU zoning district. The design standards create a number of provisions that address height variation, building modulation, site planning, and open space concepts that will help create cohesive and visually attractive development that activate the street and activity on a site.

One of the successes of the R-MU zoning district and the General Plan Update was the inclusion of an affordable housing requirement for residential/mixed-use projects seeking bonus level development. In exchange for higher density, more floor area or greater building height, a project sponsor is required to provide a minimum of 15 percent affordable housing of the total number of units in a project, regardless if the project is rental units or for ownership. The affordable levels target very low, low and moderate income households, and at a minimum would be commensurate with the percentage breakdown established by the regional housing need allocation (RHNA) for the Housing Element in effect at the time of the development application. Any lower income category could substitute for a higher income category. The Council also adopted a provision whereby current or recently displaced Belle Haven residents would have a preference for the units, in recognition that the community amenities should benefit the people and area that may be most directly impacted by increased development. Program H4.H (Work with Non-Profits and Property Owners on Housing Opportunity Sites) is an ongoing Housing Element program to identify incentives and procedures to facilitate the development of affordable housing on higher density housing sites. The R-MU zoning for bonus level development helps create an incentive and establishes a process to build more housing while recognizing the priority to provide affordable housing.

In 2016, the City Council also adopted an updated Circulation Element. The topic of traffic and congestion was often raised as a concern during the General Plan process. With the Circulation Element, the focus and vision for mobility in Menlo Park is to increasingly provide transportation options for residents and employees, to improve access to a safe and connected network of facilities, to encourage physical activity and health, and to reduce greenhouse emissions. As part of the M-2 Area zoning update, each of the three new zoning districts includes a requirement for transportation demand management measures, which requires all new projects to reduce vehicle trips by at least 20 percent below standard generation rates for the use at the subject site. This requirement, along with the standards for bicycle parking and multi-use pathways, will help improve transportation options and mobility. Program H4.S (Explore Creation of a Transportation Management Association) and program H4.P (Update Parking Stall and Driveway Design Guidelines) will complement the work that has already been completed and is expected to start in 2017 along with the Transportation Master Plan, which would review the City's multi-modal transportation needs and prioritize projects constructed across the City.

MidPen Housing

Through the 2013-2014 Notice of Funding Availability (NOFA) process, the City Council awarded MidPen

up to \$3.2 million from the City's Below Market Rate (BMR) housing fund for use towards the development of a 90-unit, affordable senior housing development at 1221 Willow Road. These funds were released to MidPen in 2016, which coincided with the issuance of the building permit for the development and commencement of construction.

The 90-unit development replaces a 48-unit apartment complex for a net new 42 dwelling units. The project consists of a combination of extremely low (up to 30% of Area Median Income) and very low-income (31 percent to 50 percent of Area Median Income) units and helps the City meet its regional allocation for the lower income household levels, which are often the hardest to meet. Twenty of the units in the development have been established with preferences for people who live and/or work in Menlo Park with a deed restriction period of 55 years. The City's collaboration and coordination with MidPen is an example of how to leverage Below Market Rate (BMR) funds and utilize the affordable housing overlay (AHO) to maximize the number of affordable dwelling units.

Affordable Housing Nexus Study

As part of a collaborative effort working with 13 jurisdictions in San Mateo County, San Mateo County and the City of Palo Alto, the City pursued an affordable housing nexus study. The nexus study would provide a defensible analysis to maintain legal justification for the City's BMR Housing Program, which includes both inclusionary zoning and affordable housing impact fees for commercial developments. Participation in this effort supports Program H4.D (Update the BMR Fee Nexus Study). In July 2016, the City Council received a presentation by the consultant and reviewed a draft of the nexus study. The City Council requested further information and additional review at a future meeting, and action is anticipated in 2017. The Housing Commission and Planning Commission will have opportunities to provide input on the nexus study, and the City Council will ultimately have a policy decision to make on whether to modify the City's BMR Program and/or adopt any other housing-related ordinances.

Housing Displacement

In October 2016, the City Council started more formal discussions on how to address housing displacement in the City. With an extremely robust economy, high housing rents and minimal vacancy rates, the concern about displacement has become more prevalent. At its initial meeting, the Council directed staff to return with recommendations for actions that the City Council could take in the short term as well as information that could be used to prioritize possible future actions aimed at further addressing the concerns of possible resident displacement. In December, the City Council adopted an ordinance requiring the option for 12-month lease agreements for apartments with four or more units. The Council referred the two other potential ordinances, mandatory mediation for rent conflicts and rental relocation assistance, to the Housing Commission for further review. These programs help implement Program H1.K (Address Rent Conflicts), and the Council and Housing Commission will be continuing its dialogue on how to address displacement in 2017.

Housing Production

In 2016, the City issued building permits for 66 net new dwelling units. Forty-two of those units are located within MidPen's Sequoia Belle Haven senior affordable development located at 1221 Willow Road and 15 units are located within a mixed-use development at 1285 El Camino Real. The remaining units are a mix of single-family residential and secondary dwelling units. While the number of residential building permits issued in 2016 decreased from 2015, the numbers are encouraging and are relatively high in comparison to previous years when there was no multi-family residential being developed in the city. The City continues to receive development proposals in the El Camino Real/Downtown Specific Plan Area. In 2016, the Planning Commission and/or City Council approved an additional 27 units (133 Encinal Avenue and 1275 El Camino Real). Of the 27 units, one unit would be made affordable at the low-income level and two would be affordable to moderate-income households. Although the projects were approved, building permits have not yet been issued and therefore, are not counted in this report.

In June 2016, the City Council adopted a resolution to extend the secondary dwelling unit conversion process for an additional three years. However, recent State legislation would supersede the City's ordinance and allow the conversion of accessory buildings meeting certain criteria into secondary dwelling units through a non-discretionary process. Of the seven secondary dwelling unit permits issued in 2016, one was from the conversion of a detached garage into a secondary dwelling unit. No other application for the conversion process was received in 2016.

While the City's housing production during the past two years exceed the City's Regional Housing Need Allocation of 655 units for the 8-year planning period, the City still needs to strive to meet its numbers for affordable housing. Consideration of the nexus study and potential changes to the City's BMR Ordinance and success in awarding BMR funds through the City's Notice of Funding Availability (NOFA) could have positive impacts to the City's affordable housing stock and are likely to be under consideration in 2017.

What is Ahead

Below is Table 1, which lists the Housing Element programs that were to be considered as part of the General Plan Update or in the 2016 timeframe, but have not yet been thoroughly evaluated. For the City Council goal-setting session on January 27, staff identified three programs for prioritization during 2017. The programs are H1.G (Adopt an Anti-Discrimination Ordinance), H2.C (Amend the Zoning Ordinance to Protect Existing Housing) and H4.A (Modify R-2 Zoning to Maximize Unit Potential). On February 7, 2017, the City Council approved these programs as part of the City's overall goals and work plan for this year.

Table 1: Housing Element Programs to be Considered During the General Plan Update Timeframe	
Program No.	Housing Element Program
H1.G	Adopt an Anti-Discrimination Ordinance
H2.A	Adopt Ordinance for “At Risk” Units
H2.C	Amend the Zoning Ordinance to Protect Existing Housing
H3.G	Develop Incentives for Special Needs Housing
H4.A	Modify R-2 Zoning to Maximize Unit Potential
H4.J	Consider Surplus City Land for Housing
H4.M	Review the Subdivision Ordinance
H4.O	Review Transportation Impact Analysis Guidelines
H4.S	Explore Creation of a Transportation Management Association
H4.T	Explore Pedestrian and Bicycle Improvements (coordination with Redwood City)

Housing Successor Report

Successor Housing entities must provide an Annual Report that details compliance with the expenditure limitations detailed in SB 341 during each five year compliance period. The initial reporting period began on January 1, 2014 and ends on December 31, 2018. The information should be reported at the same time as the Housing Element Annual Report due April 1st of each year. The report is included as Attachment C.

For the fiscal year ending June 30, 2016, the Low and Moderate Income Housing Asset Fund received \$21,093 from the payments on housing loans (\$3,382) and interest earned on cash in the fund (\$17,711).

The Housing Successor does not have any interests in real property acquired by the former redevelopment agency. The last remaining real property acquired by the former agency was sold in August 2013 and the proceeds were remitted to the County of San Mateo. The Housing Successor also does not have any remaining housing replacement or production obligations.

Impact on City Resources

There are no impacts to City resources besides the preparation of the report. Program implementation may have impacts to staffing resources and/or projects/priorities and will be considered as part of the City’s annual Capital Improvement Plan and budget process.

Environmental Review

The Housing Element Annual Report is not considered a project. Implementation of Housing Programs may be subject to the California Environmental Quality Act (CEQA), and each program will be evaluated on a case-by-case basis.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. In addition, the City sent an email update to the subscribers of the Housing Element webpage.

Attachments

- A. 2016 Housing Element Annual Report
- B. Link to: Adopted Housing Element for the 2015-2023 Planning Period
<http://menlopark.org/DocumentCenter/View/4329>
- C. Housing Successor Report (FY2015-16)

Report prepared by:

Deanna Chow, Principal Planner

Jim Cogan, Housing and Economic Development Manager

Report reviewed by:

Linda Heineck, Community Development Director

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction City of Menlo Park
Reporting Period 1/1/2016 - 12/31/2016

Table A

Annual Building Activity Report Summary - New Construction
Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information								Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions	
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
1221 Willow Road	5+	R	42	0	0	0	42	42	TCAC; City BMR	DB; Affordable Housing Agreement	
1440 Mills Ct.	SU	R		1			1	1			
804 Woodland Ave.	SU	R	1				1	1			
321 Laurel Ave.	SU	R	1				1	1			
560 Olive St.	SU	R		1			1	1			
1121 Werth Ave.	SU	R		1			1	1			
2108 Clayton Dr.	SU	R		1			1	1			
220 Robin Way	SU	R	1				1	1			
SU Subtotal	SU	R	3	4	0	1					
(9) Total of Moderate and Above Moderate from Table A3			▶	▶	0	17	17	17			
(10) Total by income Table A/A3			▶	▶	45	4	0	18	66	66	
(11) Total Extremely Low-Income Units*			9 units at 1221 Willow Road are deed-restricted for extremely low income households								

* Note: These fields are voluntary

Second Unit (SU) affordability is consistent with the Housing Element assumptions and based on a survey of San Mateo County jurisdictions.

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Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction City of Menlo Park
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Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity				0	
(2) Preservation of Units At-Risk				0	
(3) Acquisition of Units				0	
(5) Total Units by Income	0	0	0	0	

* Note: This field is voluntary

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate	0	0	0	0	0	0	0
No. of Units Permitted for Above Moderate	0	2	15	0	0	17	17

* Note: This field is voluntary

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Housing Element Implementation

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Jurisdiction City of Menlo Park
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Table B
Regional Housing Needs Allocation Progress
Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.		2014	2015	2016	2017	2018	2019	2020	2021	2022	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9		
Very Low	Deed Restricted Non-deed restricted	233	59	22	42						123	103
	Deed Restricted Non-deed restricted		1	3	3						7	
Low	Deed Restricted Non-deed restricted	129	0	15	0						15	103
	Deed Restricted Non-deed restricted		2	5	4						11	
Moderate	Deed Restricted Non-deed restricted	143	0	0	0						0	143
	Deed Restricted Non-deed restricted		0	0	0						0	
Above Moderate		150	9	703	17						729	-579
Total RHNA by COG. Enter allocation number:		655										
Total Units ▶ ▶ ▶			71	748	66						885	-230
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶												

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

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Table C
Program Implementation Status

Program Description (By Housing Element Program Names)	Housing Programs Progress Report - Government Code Section 65583. Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
H1.A Establish City Staff Work Priorities for Implementing Housing Element Programs	Establish staff priorities for implementing Housing Element Programs	Annually	This will be done annually as part of the annual Housing Element review.
H1.B Review the Housing Element Annually	Review and monitor Housing Element implementation; conduct public review with the Housing Commission, Planning Commission and City Council, and submit Annual Report to HCD	Annually	Annual Review for the 2015 calendar year was accepted by the City Council on March 15, 2016 and submitted to HCD for review. Using forms provided by HCD, the 2016 Annual Review will be undertaken between February and March 2017, and reviewed by the Housing Commission, Planning Commission and accepted by the City Council.
H1.C Publicize Fair Housing Laws and Respond to Discrimination Complaints	Obtain and distribute materials (see Program 1H.D)	Ongoing	Materials available at the counter at City Hall and on the City's Web site.
H1.D Provide Information on Housing Programs	Obtain and distribute materials at public locations; conduct staff training	Annually	Materials available at the counter at City Hall and on the City's Web site. Housing Commission meetings were conducted on a quarterly basis, at a minimum. In 2016, the Housing Commission conducted eight meetings. Also, in 2016, the City created the Housing and Economic Development Division to dedicate staff to work on housing issues and programs. Housing Commission agendas and notices are posted at City Hall and on the City's website. As part of the Energy Workshop, Grid Alternatives, HERO, PACE and Water Rebate programs, the City conducted a variety of different outreach, including posts on social media, City Council Digest items, quarterly garbage bill inserts (which is sent to over 7,800 residential customers), quarterly water bill inserts (which is sent to over 4,300 customers), and for Grid Alternatives, 1,300 letters were mailed to residents in the Belle Haven neighborhood.
H1.E Undertake Community Outreach When Implementing Housing Element Programs	Conduct community outreach and distribute materials (see Programs H1.C and 1H.D)	Consistent with program timelines	Materials available at the counter at City Hall and on the City's Web site. Housing Commission meetings were conducted on a quarterly basis, at a minimum. In 2016, the Housing Commission conducted eight meetings. Agendas and notices are posted at City Hall and on the City's website. Email notifications are also sent to interested parties. Additional outreach to targeted populations and interested parties depending on program.
H1.F Work with the San Mateo County Department of Housing	Coordinate with County efforts to maintain and support affordable housing	Ongoing	Continued participation and coordination has occurred as part of the countywide 21 Elements process, coordination with the Department of Housing and other jurisdictions on a countywide nexus study and coordination in implementing Housing Element programs. The City also maintains a City Council representative on the Closing the Jobs/Housing Gap Task Force, which was established by the County of Board of Supervisors to address the regional affordable housing issues.

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H1.G Adopt an Anti-Discrimination Ordinance	Undertake Municipal Code amendment and ensure effective implementation of anti-discrimination policies and enforcement as needed	2016	No activity to date. An anti-discrimination ordinance is one tool that will be considered amongst a number of policy issues the City will be considering to address housing issues as part of its ongoing discussion about housing supply, affordable housing and displacement.
H1.H Utilize the City's Below Market Rate (BMR) Housing Fund	Accumulate and distribute funds for housing affordable to extremely low, very low, low and moderate income households	Ongoing	The City issued a Notice of Funding Availability (NOFA) in July 2013, and awarded MidPen a loan for up to \$3.2 million for an affordable senior development at 1221 Willow Road in September 2014. In June 2015, the Community Development Director issued a compliance letter indicating that the proposed 90-unit senior development is in compliance with the zoning regulations and design standards, and funds were distributed to MidPen for construction in 2016. The project targets extremely low and very low income senior households. In July 2015, the City issued its second NOFA for new affordable rental projects. Approximately \$7.8 million BMR housing funds are available under the NOFA to support the acquisition, rehabilitation and/or construction of housing that will provide long-term affordability. Staff received three applications and is working with one applicant on the viability of its application.
H1.I Work with Non-Profits on Housing	Maintain a working relationship with non-profit housing sponsors	Ongoing	The City has worked closely with MidPen to assist in their application submittal to redevelop its property on the 1200 block of Willow Road from 48 dwelling units to 90 dwelling units, including an application to abandon a portion of the public right-of-way for the proposed project, as well as other supportive documents needed for financing of the project. The building permits for MidPen's project were issued in 2016 and occupancy is expected in early 2017. The City will continue to undertake outreach to non-profit housing sponsors throughout the 2015-2023 Housing Element period. Annual funding provided to HIP and HEART.
H1.J Update the Housing Element	Assure consistency with SB375 and Housing Element law	2023	Completed. The City Council adopted the 2015-2023 Housing Element on April 1, 2014, and was certified by HCD on April 16, 2014.
H1.K Address Rent Conflicts	Resolve rent conflicts as they arise	Ongoing	The City Council held a study session on November 9, 2016 to discuss requiring landlords to provide tenants with a 12-month lease option, instituting mandatory mediation for rent conflicts and rental relocation assistance. In December 2016, the City Council adopted an ordinance requiring the option for 12-month lease agreements for apartments with four or more units. The Council referred the other two items to the Housing Commission for further review and consideration.
H1.L Update Priority Procedures for Providing Water Service to Affordable Housing Developments	Comply with Government Code Section 65589.7	2015 and 2020 (as part of Urban Water Management Plan updates)	Program completed in February 2014. No additional work on this program is needed at this time.
H1.M Lobby for Changes to State Housing Element Requirements	Work with other San Mateo County jurisdictions and lobby for modifications to Housing Element law (coordinate with Program H1.B)	Ongoing	Meet with State Representative and other jurisdictions and provided input on proposed legislation as needed.

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H2.A Adopt Ordinance for "At Risk" Units	Protect existing affordable housing	2016	In early 2016, the City facilitated the sale and purchase of two below market rate units in order to maintain them in the City's BMR portfolio. There are currently no "at risk" subsidized affordable units in Menlo Park at the current time. "At risk" units are those that appear to be in danger of conversion from subsidized housing units to market rents.
H2.B Promote Energy Efficient/Renewable Programs	50 or more homes and businesses participating in a program	Establish policy and programs by 2017; Participation rate by 2022	In addition to 2015 activities previously reported, in 2016, the City, in partnership with San Mateo County and BayRen, hosted a home energy upgrade workshop in summer 2016. The City worked with non-profits Grid Alternatives and Menlo Spark, and funder Facebook, to provide 15 qualifying low-income Belle Haven homeowners with free solar systems. 28 households participated in the City's Washing Machine Rebate programs administered by both the Menlo Park Municipal Water District and PG&E. In 2016, a total of 5 Menlo Park properties participated in the HERO Program which is a Property Assessed Clean Energy (PACE) financing program. PACE allows qualified property owners the ability to finance renewable energy and water efficient retrofits through a voluntary special assessment or tax placed on their annual tax bill. The 5 completed projects amount to 1.21M KWh in energy savings and a reduction of 367 tons of GHG emissions.
H2.C Amend the Zoning Ordinance to Protect Existing Housing	Protect existing rental housing as part of infill implementation and other Zoning Ordinance changes	Consider as part of the City's General Plan Update (2014-2017)	The topic of housing was a key theme throughout the General Plan Update. As part of the General Plan Update, which was adopted in November and December 2016, properties in the M-2 (General Industrial) zoning area were rezoned to allow up to 4,500 net new residential units. The zoning ordinance efforts during the General Plan process focused on the creation of new housing in an area that previously did not allow residential uses. Staff recognizes that potential ordinance changes to limit the loss of residential units or the conversion of units can be strategies to maintain the City's housing stock and will consider them along with a number of other housing strategies the City Council and Housing Commission will be considering in 2017.

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H2.D Assist in Implementing Housing Rehabilitation Programs	Apply to the County for CDBG funds to provide loans to rehabilitate very low and low income housing (20 loans from 2015-2023)	2015-2023	The County has temporarily stopped administering the CDBG rehabilitation loan program, except in emergency situations.
H3.A Zone for Emergency Shelter for the Homeless	Amend the Zoning Ordinance	2014; concurrent with RHNA 5 Housing Element Update	Completed. Ordinance adopted on April 29, 2014. Ordinance identifies the location of the overlay to allow an emergency shelter for the homeless for up to 16 beds as a use by right and includes standards consistent with State law as established in SB2.
H3.B Zone for Transitional and Supportive Housing	Amend the Zoning Ordinance	2014; concurrent with RHNA 5 Housing Element Update	Completed. Ordinance adopted on April 29, 2014 to update the definitions of transitional and supportive housing to be consistent with State law and adds transitional, supportive housing and small (6 or fewer) residential care facilities as part of the definition of a "dwelling" in the Zoning Ordinance so these uses are treated the same way as other residential uses as required by State law under SB2.
H3.C Adopt Procedures for Reasonable Accommodation	Amend the Zoning Ordinance and/or modify administrative procedures; create public handout	2014; concurrent with RHNA 5 Housing Element Update	Completed. Ordinance adopted April 29, 2014 to establish procedures, criteria and findings for enabling individuals with disabilities to make improvements and overcome barriers to their housing.
H3.D Encourage Rental Housing Assistance Programs	Provide assistance at current Section 8 funding levels to assist 220 extremely low and very low-income households per year (assumes continued funding of program)	2015-2023	There are 222 households provided rental assistance in Menlo Park through Section 8 and other programs. In addition, many of the tenants at the new 60-unit affordable housing project at the VA Campus receive rental assistance, including project-based HUD VASH (Veterans Affairs Supportive Housing) from the Housing Authority of San Mateo County and HUD-VASH tenant based assistance.
H3.E Investigate Possible Multi-Jurisdictional Emergency Shelter	Coordinate in the construction of homeless facility (if determined feasible)	Longer term program as the opportunity arises	There are no plans for a specific facility at this time.
H3.F Assist in Providing Housing for Persons Living with Disabilities	Provide housing and services for disabled persons	Ongoing	Annual funding provided to HIP.
H3.G Develop Incentives for Special Needs Housing	Amend the Zoning Ordinance to provide opportunities for housing and adequate support services for seniors and people living with disabilities	Consider as part of the City's General Plan Update (2014-2017)	The City's Affordable Housing Overlay (AHO), which was established in 2013, was applied to MidPen's 90-unit affordable, senior housing development. Along with financial incentives, the AHO provides density bonuses and a parking reduction for senior housing.
H3.H Continue Support for Countywide Homeless Programs	Support housing and services for the homeless and at-risk persons and families	Ongoing	The City has continued to support HEART and has participated in countywide activities to address homeless needs. In addition, through the City's Community Funding program, the City supports LifeMoves.

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H3.I Work with the Department of Veterans Affairs on Homeless Issues	Coordination in addressing the needs of the homeless	2014; ongoing thereafter	In January 2014 the City Council authorized a loan increase from the City's BMR funds to CORE Housing for up to \$2.86 million for affordable housing at 605 Willow Road (Veterans Affairs Campus). The development includes 60 dwelling units and would provide permanent housing to extremely low- and very low-income veterans. The development received its certificate of occupancy in December 2015.
H4.A Modify R-2 Zoning to Maximize Unit Potential	Amend the Zoning Ordinance to minimize underutilization of R-2 development potential	Consider as part of the City's General Plan Update (2014-2017)	The General Plan Update focused on the M-2 Area, which was primarily the City's office and industrial area. The geographic area did not contain properties zoned R-2 and therefore, changes were not evaluated as part of the General Plan and M-2 Area Zoning Update, which was completed in November and December 2016. In 2016, the Council also began a broader housing discussion and potential policies, particularly to address displacement. In 2017, the Housing Commission will be reviewing those programs. Potential ordinance changes to minimize underutilization of R-2 properties, while not directly related to displacement, may be considered as part of a strategy to address overall housing in the City.
H4.B Implement Inclusionary Housing Regulations	Implement requirements to assist in providing housing affordable to extremely low, very low, low and moderate income households in Menlo Park	Ongoing	To comply with the City's BMR Ordinance for commercial and industrial projects, new commercial/industrial development (meeting certain criteria) in the City contributed \$4,385,311.46 of BMR in-lieu fees to the City's BMR fund in 2016. The funds will be used to help house extremely low, very low, low and moderate-income households (see Program H1.H).
H4.C Modify BMR Guidelines	Amend the Zoning Ordinance to require affordable units in market rate developments	2015	Modification to the City's BMR Guidelines will be considered as part of the Housing Commission's 2017-2019 work plan for recommendation to the City Council (see Program H4.D).
H4.D Update the BMR Fee Nexus Study	Update to fees consistent with the nexus of potential impacts on affordable housing need	2015	The City participated in a multi-jurisdictional nexus study that would provide a defensible analysis to maintain the legal justification for inclusionary zoning and affordable housing impact fees. The study was reviewed by the City Council in July 2016. The City Council requested further review and action is anticipated in 2017.

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<p>H4.E Modify Second Dwelling Unit Development Standards and Permit Process</p>	<p>Amend the Zoning Ordinance to reduce the minimum lot size to create greater opportunities for new second units to be built. Achieve Housing Element target for new second units (40 new secondary dwelling units between 2015-2023, with 5 per year) — 18 very low, 18 low and 4 moderate income second units.</p>	<p>2014; ongoing thereafter</p>	<p>Concurrent with the adoption of the 2007-2014 Housing Element in May 2013, the City of Menlo Park reviewed a Zoning Ordinance amendment for modifications to the Secondary Dwelling Unit Ordinance in recognition that secondary dwelling units can be a valuable source of affordable units because they often house family members at low or no cost, and many are limited in size and therefore, have lower rents. Besides making the City's ordinance compliant with State law, the Zoning Ordinance amendment included a number of revisions to provide greater flexibility in the development regulations to encourage more development of secondary dwelling units, which exceeds the target of 5 per year.</p> <p>As part of the Housing Element for the 2015-2023 Housing Element, the City of Menlo Park continued this program to further explore opportunities for additional revisions to the Secondary Dwelling Unit Ordinance. In April 2014, the City Council adopted additional revisions to the secondary dwelling unit ordinance, including increasing the maximum unit size for units that comply with accessibility requirements, establishing a new daylight plane requirement in lieu of the wall height requirement, and providing flexibility in the tenancy requirement.</p> <p>In 2016, the Planning Commission considered and recommended approval of changes to the secondary dwelling unit ordinance for consistency with State law changes. The Council is considering the proposed amendments in January 2017. In 2016, building permits for 7 new secondary dwelling units were issued.</p>
<p>H4.F Establish a Process and Standards to Allow the Conversion of Accessory Buildings and Structures to a Secondary Dwelling Unit</p>	<p>Adopt procedures and requirements to allow conversion of accessory structures and buildings (15 new secondary dwelling units — 6 very low income, 6 low income and 3 moderate income units)</p>	<p>2014; review the effectiveness of the ordinance in 2015</p>	<p>In April 2014, the City adopted an ordinance, that would allow legally permitted accessory buildings that do not meet the setback requirements for a secondary dwelling unit to be converted to a secondary dwelling unit through an administrative permit process. This conversion process through the administrative permit process was set to expire in one year from ordinance adoption, but was extended in May 2015 for one additional year, expiring in June 2016. In 2016, the City Council extended the conversion provision for an additional three years. Of the 7 building permits issued for secondary dwelling units in 2016, one resulted from the conversion process. New state law requirements would supersede the City's local ordinance regarding the conversion of accessory buildings into secondary dwelling units, and the City is currently in the process of updating its secondary dwelling unit ordinance for consistency with State law. The Planning Commission reviewed the changes in December 2016 and the City Council is considering the amendments in January 2017.</p>
<p>H4.G Implement First-Time Homebuyer Program</p>	<p>Provide referrals</p>	<p>2015-2023</p>	<p>The City is referring first time homebuyers to HEART for down payment assistance since BMR funds are no longer available for this program. Information is available on the City's Housing webpage per Housing Programs H1.C and H1.D.</p>

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H4.H Work with Non-Profits and Property Owners on Housing Opportunity Sites	Identify incentives and procedures to facilitate development of housing affordable to extremely low, very low, low and moderate income households on higher density housing sites	Ongoing	The City continues to work with Mid-Pen Housing on potential housing projects in the City. As part of the General Plan Update, zoning amendments were adopted to allow housing and mixed use developments in the C-2-B zone, which provides an opportunity to increase housing supply while adding services to key locations in the City. During the General Plan Update, the City also adopted provisions for community amenities. One of the required amenities identified was affordable housing. In exchange for increased density, height or floor area ratio, an applicant would need to commit to a minimum of 15 percent affordable housing of the total number of dwelling units in the project, regardless of whether the residential units are rental or ownership. This requirement is in addition to any BMR requirements applicable to the project.
H4.I Create Multi-Family and Residential Mixed Use Design Guidelines	Adopt design guidelines for multi-family and mixed use housing developments	Consider as part of the City's General Plan Update (2014-2017)	As part of the General Plan and M-2 Area Zoning Update, the City Council adopted the new R-MU (Residential Mixed Use) zoning district. The proposed zoning district includes design standards, which include a number of provisions addressing building modulation, height variation, site design, and open space requirements.
H4.J Consider Surplus City-Owned Land for Housing	Identify opportunities for housing as they arise	Consider as part of the City's General Plan Update (2014-2017)	As part of the General Plan and M-2 Area Zoning Update, the geographic focus was on the M-2 Area and there was no City-owned land suitable for housing. As part of a Council study session in May 2016, the Council considered potential ways to redevelop the City-owned parking plazas in the downtown with retail, entertainment and housing options.
H4.K Work with the Fire District	Undertake local amendments to the State Fire Code and approve City Council Resolution ratifying the Fire District's local amendments	2014 (in progress)	Staff worked with the Menlo Park Fire Protection District to develop a draft ordinance to the 2016 Fire Code, and Council review is expected in early 2017.
H4.L Coordinate with School Districts to Link Housing with School District Planning Activities	Coordinate and consider school districts long-range planning, resources and capacity in planning for housing	Ongoing with Housing Element program implementation. Consider as part of the City's General Plan Update (2014-2017)	Continued coordination on new residential development (unit type, timing, etc.) and implications for enrollment growth and facility planning with various school districts. As part of the General Plan and M-2 Area Zoning Update, staff provided the potentially affected school districts in the area with an opportunity to provide input on the Environmental Impact Report and Fiscal Impact Study prepared for the project. In addition, as part of the project, property owned by the Sequoia Union High School District was rezoned to PF (Public Facilities) to reflect the school district's desire to use the property as a future school site.
H4.M Review the Subdivision Ordinance	Modify the Subdivision Ordinance as needed	Consider as part of the City's General Plan Update (2014-2017)	No activity to date. Review is anticipated to commence in 2018.
H4.N Create Opportunities for Mixed Use Development	Conduct study and establish regulations to allow housing in commercial zones	Consider as part of the City's General Plan Update (2014-2017)	As part of the General Plan and M-2 Area Update approval in December 2016, the Council adopted zoning amendments to the C-2-B zoning district to allow residential uses to create mixed-use opportunities in key areas along the Willow Road Corridor.

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Jurisdiction City of Menlo Park

Reporting Period 1/1/2016 - 12/31/2016

H4.O Review Transportation Impact Analysis Guidelines	Modify Transportation Impact Analysis (TIA) guidelines	Consider as part of the City's General Plan Update (2014-2017)	In December 2016, the City Council adopted a new Circulation Element, recognizing that work on the Transportation Master Plan was a high priority. Work on modifications to the TIA will be considered a future program and may be informed by the work of the Transportation Master Plan that is underway.
H4.P Update Parking Stall and Driveway Design Guidelines	Modify Parking Stall and Driveway Design Guidelines	2014	No activity to date. Program is to be considered in 2017.
H4.Q Achieve Long-Term Viability of Affordable Housing	Establish project management and other ongoing project coordination needs	As developments are proposed and ongoing thereafter	As part of creating the R-MU (Residential Mixed Use) zoning district concurrent with the General Plan Update, the Council included a provision that stated a preference for current or recently displaced Belle Haven residents for the affordable housing units created through the community amenity process. The City continues to partner with Hello Housing to administer the City's BMR list and to coordinate with project sponsors on qualifying tenants for affordable housing in the City per the BMR Guidelines.
H4.R Modify Overnight Parking Requirements to include the R-4-S Zoning District	Modify Section 11.24.050 [Night Parking Prohibited] of the Municipal Code as needed	2014	In October 2015, the City Council approved the removal of on-street parking along the north side of Haven Avenue as part of the Haven Avenue Streetscape Project. Identified as housing opportunity sites in the Housing Element, two parcels along Haven Avenue are currently being redeveloped with 540 multi-family residential units. The objective of the Haven Avenue Streetscape Project is to provide a direct connection for bicyclists and pedestrians between the Bay Trail and the City of Redwood City's bikeway and sidewalk network by constructing sidewalks and bicycle facilities along Haven Avenue. The removal of on-street parking is helping facilitate the enhanced multi-modal improvements along this corridor.
H4.S Explore Creation of a Transportation Management Association	Explore creation of a Transportation Management Association	Consider as part of the City's General Plan Update (2014-2017)	As part of the General Plan and M-2 Area Update, the theme of multi-modal transportation was important. As part of three new zoning districts for the former M-2 Area, transportation demand management measures are required to reduce the number of vehicle trips by at least 20 percent below standard generation rates based on the use of the site. The creation of a TMA will be further discussed in 2017.
H4.T Explore Pedestrian and Bicycle Improvements	Coordinate with Redwood City on potential pedestrian and bicycle improvements	Consider as part of the City's General Plan Update (2014-2017)	The City was awarded a grant from the San Mateo County Transportation Authority (Measure A funds) to implement the Haven Avenue bicycle/pedestrian improvements. The improvements include new facilities to a key corridor that connects Menlo Park, San Mateo County and Redwood City. The project area includes Haven Avenue between Marsh Road and the Redwood City boundary, an area where several properties were recently rezoned to higher density housing. Through work on the Transportation Master Plan, improvements in the area can be identified. In addition, as part of the Menlo Gateway hotel and office project, pedestrian and bicycle improvements will be implemented.

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City of Menlo Park as Housing Successor for the
 former City of Menlo Park Redevelopment Agency
 701 Laurel Street, Menlo Park, CA 94025
 Telephone (650) 330-6640 www.menlopark.org

**SENATE BILL 341 ANNUAL HOUSING SUCCESSOR REPORT
 For the Fiscal Year ending June 30, 2016**

- 1) During the fiscal year, the Low and Moderate Income Housing Asset Fund received \$21,093 in amounts deposited. It received \$3,382 for payments on housing loans and \$17,711 for interest earned on cash in fund. There are no amounts deposited for items listed on the Recognized Obligation Schedule.
- 2) At June 30, 2016, the Low and Moderate Income Housing Asset Fund had a cash balance of \$430,573 and a fund balance of \$4,822,471. There are no amounts held for items listed on the Recognized Obligation Payment Schedule.
- 3) During the fiscal year, the fund spent \$4,942 in personnel expenditures to administer housing loans for preserving the long-term affordability of housing units.
- 4) Values as of June 30, 2016:

Real property -	\$0
Loans receivable -	<u>\$5,547,027</u>
Total -	\$5,547,027
- 5) There were no funds transferred during the fiscal year. The Low and Moderate Income Housing Asset Fund does not have any projects on the Recognized Obligation Payment Schedule and will not have any transfers into or out of the fund in the foreseeable future.
- 6) The Low and Moderate Income Housing Asset Fund does not have any projects for which the housing successor holds or receives property tax revenue pursuant to the Recognized Obligation Payment Schedule.
- 7) As of June 30, 2016, the Housing Successor does not have interests in real property acquired by the former redevelopment agency. The last remaining real property acquired by the former redevelopment agency was sold in August 2013 and the proceeds were remitted to the County of San Mateo.
- 8) As of June 30, 2016, the Housing Successor does not have any remaining obligations.

Senate Bill 341 Annual Housing Report, continued

- 9) With the limited funds, the Housing Successor is just providing maintenance on low and moderate income housing loans.
- 10) As of June 30, 2016, the Low and Moderate Income Housing Fund does not foresee any loan repayments.
- 11) The former redevelopment agency area does not contain any deed-restricted senior rental housing.
- 12) As of June 30, 2016, the Low and Moderate Income Housing Fund does not have any excess surplus.
- 13) As of June 30, 2016, the Low and Moderate Income Housing Fund has no inventory of homeownership units.



STAFF REPORT

City Council
Meeting Date: 3/14/2017
Staff Report Number: 17-059-CC

Consent Calendar: **Authorize the City Manager to enter into an agreement with AECOM for the Middle Avenue Pedestrian & Bicycle Rail Crossing Study and authorize the City Manager to enter into all necessary agreements for the project**

Recommendation

Staff recommends that the City Council authorize the City Manager to enter into an agreement with AECOM for the Middle Avenue Pedestrian & Bicycle Rail Crossing Study (Project) in the amount of \$581,635 and authorize the City Manager to enter into all necessary agreements and contract amendments without changes to the budget (\$700,000) for this project.

Policy Issues

The project is consistent with policies stated in the 2016 General Plan Circulation Element. These policies seek to maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout Menlo Park. The Project is item number 51 in the 2017 City Council Work Plan.

Background

On November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the San Mateo County Transportation Authority (SMCTA) of the Measure A half-cent transportation sales tax and accompanying Transportation Expenditure Plan for an additional 25 years, beginning January 1, 2009 (new Measure A).

On November 10, 2015, the SMCTA issued a call for projects for the Measure A Pedestrian and Bicycle Program. In response to the call for projects, the City of Menlo Park (City) requested \$490,000 in Measure A funds with a 30 percent local match of \$210,000 for the Project. The application for the project was approved by City Council on December 15, 2015. On July 20, 2016, SMCTA programmed funds for the Project from the Measure A Grade Pedestrian and Bicycle Program for the Project.

On May 20, 2008, City Council authorized the City Manager to enter into an agreement with Alta Planning and Design to develop a bicycle/pedestrian undercrossing location and plan line. In September 2008, after considering numerous factors, including feedback from community meetings and the consultant retained on the project, proximity to desirable destinations, relative costs, projected usage by the community, convenience and accessibility, both the Bicycle Commission and the Transportation Commission recommended the pedestrian and bicycle undercrossing of the Caltrain railroad tracks to be located at Middle Avenue. No Council action was taken on this recommendation, but the selection of the Pedestrian and Bicycle Undercrossing location at Middle Avenue was included as part of the El Camino Real Downtown Specific Plan.

As identified in the El Camino Real Downtown Specific Plan, the Middle Avenue Pedestrian and Bicycle Crossing would be constructed adjacent to the Stanford University property along El Camino Real and is dependent on their property being redeveloped. Stanford University has submitted an application to redevelop its property under the “500 El Camino Real” project with a focal point being a publicly accessible plaza at Middle Avenue. An important community feature of the Middle Plaza will be its integration with the pedestrian promenade along El Camino Real and its role as a linking element to the crossing of the Caltrain railroad tracks. Stanford University has also agreed to make a significant contribution towards construction of the crossing.

The Project was included in the City’s Capital Improvement Plan (CIP) for Fiscal Year (FY) 2016-17. The scope of work includes data collection, preparation and evaluation of conceptual designs, understanding of impacts of the Caltrain facilities, assessment of circulation and property impacts, community engagement, selection of preferred alternative (overcrossing vs. undercrossing), 30 percent design plans of preferred alternative, and environmental clearance and documentation.

Analysis

The Crossing Project is critical to provide greater East-West connectivity, as the Caltrain railroad tracks are both a real and perceived barrier. This new crossing would improve connectivity for neighborhoods on both sides of the Caltrain tracks with City amenities, and access to public transit and downtown Menlo Park. It would encourage the use of alternative modes of transportation and contribute to a healthier Menlo Park.

On January 5, 2017, staff issued a Request for Proposals for this Project and on February 2, 2017, two consultant teams submitted proposals. A panel of City staff reviewed the proposals and on February 16, 2017, City staff interviewed the consultant teams. After considering the proposals and the interviews, staff selected AECOM as the most qualified team based upon their expertise in similar rail grade separation projects, community engagement strategy, and ability to coordinate on the adjacent Ravenswood Rail Crossing Study. Since both consultants submitted proposals with nearly identical costs, it was not a determining factor in the selection.

The proposed scope of work for the Project (Attachment A) consists of project management and coordination; data collection and analysis with preparation of an existing conditions report; community engagement; identification and development of grade separation conceptual designs; evaluation of grade separation conceptual designs and selection of preferred alternative; environmental clearance and documentation; 30 percent design documents; and final project report. The community engagement process will include three public outreach meetings, one Complete Streets commission meeting, one City Council meeting for selection of crossing alternative, three-dimensional graphic renderings, and extensive communications with the various stakeholders. The Project would allow the City Council to select a preferred alternative to advance to the environmental and design phases.

Staff requests that City Council authorize the City Manager to enter into all necessary agreements, such as contract amendments and minor modifications to the scope of work, that do not require modifications to the budget.

Some key milestones are shown below:

Key Project Milestones	
Sign Agreement	Late March 2017
First Community Meeting	Spring 2017
Preferred Crossing Alternative Selection by Council	December 2017
Project Completion (i.e., alternative selection, 30% design, environmental clearance and final project report)	Summer 2018

Other projects that will be closely coordinated with this Project include Ravenswood Avenue/Caltrain Grade Separation Study, 500 El Camino Real Project, Caltrain Electrification, and High Speed Rail planning.

Impact on City Resources

The Project was included in the CIP for FY 2016-17, with a total budget in the amount of \$700,000. Through the Measure A Pedestrian & Bicycle Program grant awarded for this Project, the SMCTA will reimburse the City up to \$490,000.

The budget for the Project consists of the following:

Middle Avenue Pedestrian & Bicycle Rail Crossing Study	
Consultant Contract Amount	\$581,635
Optional Tasks	\$32,970
Contingency	\$20,000
Staff Time	\$65,395
Total Budget Approval	\$700,000

Environmental Review

The Project is categorically exempt under Class 6 of the current State of California Environmental Quality Act Guidelines, which allows for information collection, research, and resource evaluation activities as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. The results of the Project will identify and complete required environmental reviews and studies necessary to advance the project.

Public Notice

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

Attachments

- A. Scope of Work
- B. Project Location

Report prepared by:
Octavio Duran Jr., Assistant Engineer

Report reviewed by:
Nicole H. Nagaya, P.E., Assistant Public Works Director

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EXHIBIT A-1: SCOPE OF SERVICES

The City of Menlo Park seeks to plan, design, and ultimately construct a grade-separated railroad crossing for pedestrians and bicyclists in the southern segment of the City in the vicinity of Middle Avenue. The crossing will provide a safe and convenient east/west connection across the City; and allow non-motorized traffic on the west side of the tracks at the currently-planned development at 500 El Camino Real, access to/from Alma Street, Burgess Park and other nearby destinations on the east side of the railroad corridor, such as Arrillaga Gymnasium, Menlo Park Library and City Hall.

A crossing at Middle Avenue was incorporated into the City's El Camino Real and Downtown Specific Plan in 2012, but the planning for the crossing dates back even further, to 2008, when a study was prepared to determine the most desirable location. A new crossing at Middle Avenue was chosen because there are no crossings in the City south of Ravenswood Avenue, which is about 1,500 feet (~ 0.3 mile) to the north and the closest crossing to the south is one-half mile away at Palo Alto Avenue in the City of Palo Alto.

This crossing, in conjunction with the City's Ravenswood Avenue Railroad Crossing Project, will encourage the use of non-motorized travel by Menlo Park residents and visitors, including students, commuters, shoppers and those simply wanting enjoy a stroll through one of the most charming cities in the San Francisco Bay Area.

The Study will evaluate two crossing options for two potential future railroad options for a total of four possible alternatives:

- An overcrossing and undercrossing that maintains the existing tracks at their current elevation profile
- An overcrossing and undercrossing that raises the tracks

These two railroad options are currently being studied by the AECOM team for the Ravenswood Avenue Railroad Crossing Project. The AECOM team understands that a comprehensive Project Report and a well-developed 30% Plans, Specifications and Estimate (PS&E) package will help the City obtain future funding and move the project into final design and construction.

Task 1 - Project Management and Coordination**1.1 Meetings and General Coordination**

AECOM will provide leadership and direction for each task for the duration of the project. Our project manager, Peter DeStefano, will check in with the team's task leaders and hold meetings, as needed, to confirm each task is on schedule and within budget. A kick-off meeting will be held shortly after notice to proceed (NTP) and a Project Execution Plan (PXP) will be developed to assure the project gets off to a healthy start. The PXP will include the project's scope, budget for each task, team organization, roles, contacts, a milestone schedule, list of deliverables, and quality control reviewers, procedures and estimated timelines.

Status update meetings with the City will be scheduled on a monthly basis, either via WebEx or in-person. We will develop an agenda prior to each meeting and complete a summary after each meeting.

1.2 Invoices and Progress Reports

AECOM will prepare monthly invoices and progress reports in incremental timeframes not to exceed 60 days. Our progress reports will include earned value reports to monitor schedule and budget.

1.3 Project Schedule

AECOM will use the project schedule included in this Scope of Services and update it on a monthly basis after the initial meeting with the City. The schedule will be updated using Microsoft (MS) Project and be presented in Gantt chart format. We will also provide an easy-to-read milestone schedule of key deliverables for the City and task leaders.

Task 1 Deliverables:

- Project Execution Plan

EXHIBIT A-1: SCOPE OF SERVICES

- Meeting Agendas and Meeting Minutes
- Invoices and Progress Reports
- Project Schedule in Gantt Chart Format
- Milestone Schedule

Task 1 Assumptions:

- From an assumed NTP date of March 2017 through an assumed project completion date of August 2018, a total of 18 meetings with the City are assumed; nine (9) in-person meetings and nine (9) held via WebEx. Additional meetings for other purposes, such as for preparation of community meetings, are covered under separate tasks described in this work plan.

Task 2 - Data Collection and Analysis & Existing Conditions Report

2.1 Review Existing Studies, Plans, and Reports

The AECOM team will review the pertinent reports on the City's website including the 2016 General Plan and El Camino Real and Downtown Specific Plan. This will assure that the alternatives developed by the team are consistent with the City's plans and standards developed to date. We will also gather and review any pertinent traffic-related information, such as traffic volumes, accident data and speed surveys.

In addition, the AECOM team will conduct an initial field review and additional site visits, as-needed. Photographs of key features will be taken during each visit for future reference. The field reviews will help the AECOM team understand the unique features that may affect the layout of the alternatives.

2.2 Topographic Survey and Right-of-Way Mapping

2.2.1 Ground Control Survey

Our subconsultant, Towill, Inc. (Towill) will establish and target approximately five (5) horizontal and vertical ground control points necessary for photogrammetric mapping. A combination of global positioning system (GPS) technology and "conventional" land surveying equipment and techniques (traversing using a total station instrument and differential leveling using an automatic or digital level) will be employed to establish horizontal and vertical control.

Towill will establish horizontal coordinates referenced to the California Coordinate System of 1983 (CCS83, 2010), Zone 3 and elevations referenced to the North American Vertical Datum of 1988; unless other datums are specified prior to the commencement of the project.

2.2.2 Surface Utility Field Survey

Towill will locate safely accessible surface utilities within the project limits. Surface utilities that will be located may include sewer manholes and cleanouts, storm drain manholes and catch basins, water valves, gas valves, electric boxes and hand-holes, telephone boxes, cable television boxes, and other visible surface indications of utilities, including potholing stakes.

Towill will measure the invert elevations for storm and sanitary manholes and for catch basins that can be opened with a reasonable effort using common hand tools. "Dip sheets" will be prepared for each invert measured. The "dip sheet" will include a sketch of the structure and the incoming and outgoing pipes. Surface utilities located in the field will be incorporated into our digital maps using the appropriate symbol. Each utility will be annotated with a unique identification code.

2.2.3 Aerial Photography

Towill will obtain natural color, vertical, stereo aerial photography of the project area using a precision, calibrated, cartographic camera equipped with a six-inch focal length lens and forward motion compensation (FMC). The photography will be taken at an altitude of 1,200 feet above the mean elevation of the terrain, resulting in an average scale of photography of 1:2400 (1" = 200'). The photography will consist of one (1) line with two (2) exposures (one stereo model).

EXHIBIT A-1: SCOPE OF SERVICES

2.2.4 Digital Planimetric and Topographic Mapping

Towill will compile a digital topographic map at a scale of 1" = 20' with a contour interval of one foot for the project area. Breaklines and spot elevations will be digitized to create a digital terrain model (DTM). Contours will be generated from a DTM. Planimetric features – such as buildings, roads, fences, vegetation, and the like – will be digitized at elevations that provide the best horizontal accuracy, which may or may not be at ground level. Planimetric features digitized will be typical for a map scale of 1" = 20'.

The final topographic map data will conform to Towill's standards unless the City provides alternate CAD standards prior to the commencement of the project.

2.2.5 Digital Orthophotography

We will prepare color digital orthophotography of the project area at a scale of 1" = 50' with a pixel ground resolution of 0.25-foot (200 pixels per inch). The orthophoto limits shall correspond to the topographic mapping limits. In accordance with standard mapping practice, images will be rectified at ground level. Therefore, the top of above-ground features (rooftops, tops of trees, etc.) may not necessarily appear in their correct horizontal positions. The digital orthophoto will be georeferenced to the project horizontal datum for use with AutoCAD.

2.2.6 Boundary and Easement Surveys

The existing property ownership and easements will be created using coordinate geometry (COGO) based on the record information provided to Towill. We will attempt to locate up to three property corners referenced within these documents for use in referencing these parcels to the project horizontal datum for incorporation into the mapping produced under Task 2.2.4. If title reports are provided, easements will also be shown.

2.3 Utility Research and Coordination

AECOM has previously compiled utility as-builts of the project area. These were obtained for the Ravenswood Avenue Railroad Crossing Project. We will contact additional utility companies, as needed, to complete our utility investigation. The ultimate goal is to establish which utilities can be protected-in-place and which ones will need to be relocated for each of the alternatives. The as-builts and Towill's utility field survey will be the basis of the existing utilities shown on the 30% plans.

2.3.1 Utility Potholing

The AECOM team will also positively identify underground utilities in the vicinity of the crossing and its foundation locations. Up to eight (8) vacuum potholes and up to four (4) electronic probes will be performed.

Removal of the pavement will be done using air tools as needed and the potholes will be excavated using high pressure air and vacuum extraction. After the utility is exposed, the type, size, and depth of the utility will be recorded. A pothole field data sheet will be prepared.

A stake or nail will be placed over each pothole and a mark with an appropriate color of paint to indicate the type of utility and the direction/alignment of the line. Backfilling will be done using controlled density fill. Permanent concrete repair work, such as cutting and removal and restoration, as well as permit fees are not included.

2.4 Environmental Conditions

AECOM has already conducted an extensive review of environmental documentation, regulatory requirements, and public concerns in the project area. The team will update the description of environmental conditions and clearance requirements based on the refined crossing alternatives, additional information from the survey and geotechnical assessment, and recommendations for the design and construction.

2.5 Geotechnical Investigation

AECOM will prepare a Geotechnical Investigation Report. Drilling and sampling of three borings and one cone penetration test (CPT) will be performed. One groundwater monitoring well will be installed as well.

Laboratory testing will ensue and this will be followed up with an engineering analysis. The report will include a summary of the subsurface explorations data, including a soil profile, a log of test borings, laboratory results and ground water

EXHIBIT A-1: SCOPE OF SERVICES

elevation data. Recommendations for the following will also be included: the undercrossing and overcrossing's structure and foundation, retaining walls, temporary shoring and dewatering. In addition, construction considerations will be included.

Potential geotechnical/geologic risks will be discussed, including slope/trench stability, geology, seismic-related impacts, erosion and groundwater conditions. Mitigation measures will also be provided.

2.6 Existing Conditions Report

AECOM will prepare a report that summarizes our findings of the site's conditions including the geological conditions, the existing utilities, property lines, and traffic conditions on Alma Street and the El Camino/Middle Avenue intersection. We will also discuss with the City if future existing conditions, such as the Middle Plaza Development Project should be included in this report. The report will also describe any conditions that may impact or provide an opportunity for any of the alternatives.

Task 2 Deliverables:

- One (1) summary of the ground (photo) control coordinates and brief descriptions of the points. The summary will include the primary control monuments used as the basis for our horizontal and vertical surveys.
- One (1) Excel spreadsheet containing the unique identification code, x, y, z coordinates and a brief description for each utility surveyed.
- One (1) set of 8 ½" x 11" dip sheets; one for each manhole or catch basin located.
- One (1) set of 1000 dpi copies of the imagery in JPEG format.
- One (1) set of AutoCAD drawing files containing the digital planimetric/topographic map and digital terrain data.
- One (1) set of TIFF image files with corresponding TFW files.
- One (1) AutoCAD design file of the existing property ownership.
- Draft & Final Existing Conditions Report
- Draft & Final Geotechnical Investigation Report
- Pothole Field Data Sheets

Task 2 Assumptions:

- This project will not follow the Caltrans ABC protocol for surveying and aerial mapping.
- Towill's scope includes surveying of utility pothole markings under the following assumptions: The potholing does not occur within Caltrain's right-of-way, it takes place prior to Towill's field survey work and only one mobilization will be required.
- The extent of the topographical mapping area is based on the limits shown in Attachment A of the RFP.
- The City will provide all of the necessary deeds and/or preliminary title reports for this task.
- Re-establishment of property corners, found to be missing or damaged, during the course of the surveying work will not be required.
- Record of Survey will not be required.
- Removal of aerial targets or other paint marks created by the surveyor is not required.
- For the geotechnical borings, it is assumed that the site is accessible by a truck-mounted drill rig.
- Drill cuttings to be stored on site; analytical testing and disposal are included, assuming non-hazardous materials.
- The City or Caltrain to provide access/right of entry permit to boring locations.
- Analysis of borings for hazardous materials is not included.
- A ground motion report is not included.
- Drilling permit fees for the geotechnical borings are included in our cost proposal. These fees will be paid by AECOM to San Mateo County and reimbursed by the City.
- Existing traffic counts will be based on readily-available information provided by the City.
- Existing and future volumes, level of service (LOS) and delays of the Middle Avenue/El Camino Real intersection will be based on the 500 El Camino Real Development Project's Infill Environmental Impact Report.

EXHIBIT A-1: SCOPE OF SERVICES

Task 3 - Community Engagement

3.1 Community Engagement Plan

The AECOM team will develop a plan that will list the goals of the anticipated community, stakeholder, commission and council meetings for the project. The plan will include a timeline and the expected outreach plan and responsibilities of team members for each of the meetings. For example, the plan will indicate how the community will be contacted for each meeting, and who will be responsible for meeting summaries and information uploaded to the project's website.

3.2 Community Meetings

The AECOM team, led by Eileen Goodwin, will facilitate and attend each of the three community meetings. In addition, we will prepare a presentation, develop exhibit boards and generate a summary of each meeting. We will also develop answers to "Frequently Asked Questions" (FAQs). This will not only assure the meetings stay on topic, but it will also minimize the time spent answering some of the same questions over again. Topics for the meetings will include the existing conditions and constraints, the relationship of the crossing alternatives to the local streets and intersections, and the proposed Middle Plaza layout.

3.3 Commission Presentation

The AECOM team will present the developed alternatives to the Complete Streets Commission. We will also prepare the presentation materials and a meeting summary of the meeting.

3.4 City Council Presentation

The AECOM team will present a summary of the four alternatives and an evaluation of each to the Menlo Park City Council to gain their concurrence on a preferred alternative.

3.5 Interagency Coordination

The AECOM team will present the developed alternatives to other agencies, as requested. We anticipate one coordination meeting with Caltrain, one with the Menlo Park Fire Protection District and the Menlo Park Police Department and one with Caltrans. Coordination with Caltrain will be particularly critical because obtaining consensus from them will help assure that the City will be able to obtain CPUC approval of a new railroad crossing. We will prepare presentation materials and a meeting summary for each meeting.

3.6 Maintain Database of Community Comments and Stakeholders

The AECOM team will maintain a list of community and stakeholder comments and answers to questions, when applicable. Answers to commonly asked questions will be included in the project's FAQs.

3.7 Develop Web Content

The AECOM team will develop commonly requested information, such as a project "Fact Sheet", still image renderings, a milestone schedule, upcoming community meetings and FAQs.

3.8 3D Animation of the Preferred Alternative (Optional Task)

Due to the success and positive feedback from the public on other similar projects, we recommend including the development of a three-dimensional animation of the preferred alternative. This would be particularly invaluable at the City Council meeting where council members' concurrence on the preferred alternative will be requested.

Task 3 Deliverables:

- Community Engagement Plan
- Meeting Materials (PowerPoint presentation and Exhibit Boards)
- Meeting Summaries
- Project Fact Sheet
- Answers to FAQs

EXHIBIT A-1: SCOPE OF SERVICES

Task 3 Assumptions:

- The cost proposal assumes three (3) community meetings, one (1) commission meeting, one (1) City Council meeting and three (3) interagency meetings.
- AECOM will develop and manage an email list of interested community members.
- The City will be responsible for meeting notifications (email blasts, flyers, mailers, etc.) and reserving the venues for each community meeting.

Task 4 - Identify and Develop Grade Separation Conceptual Designs

4.1 Development of Conceptual Designs

The AECOM team will develop a site plan, profile/elevation and typical section drawings for each of the four crossing alternatives. The drawings will provide enough detail to allow for the discussion of the pros and cons and the evaluation of each alternative described in Task 5. The development of the alternatives will be based on the data gathered in Task 2, such as information from the geotechnical investigation report. The drawings will also allow for the development of a planning-level cost estimate.

4.2 Development of Access Connections

The AECOM team will develop pedestrian and bicycle crossing safety improvements on Alma Street and at the El Camino/Middle Avenue intersection. These improvements may include features, such as pavement markings, rapid flashing beacons and advanced warning signage to alert motorists. For each alternative, we will also look into how the crossing integrates into the design and layout of the proposed Middle Plaza at 500 El Camino Real.

4.3 Still Image Renderings

In addition to the engineering drawings described in Task 4.1, the AECOM Team will prepare still image renderings of each alternative for use in the meetings described in Task 3.

Task 4 Deliverables:

- Preliminary Engineering Drawings of Each Alternative
- Exhibits showing improvements on Alma Street and the El Camino/Middle Avenue intersection
- 3D Renderings of Each Alternative

Task 4 Assumptions:

- Up to three (3) engineering drawings of each alternative.
- Up to two (2) exhibits for pedestrian and bicycle crossing improvements; one on Alma Street, one at the El Camino Real/Middle Avenue intersection.
- Up to three (3) 3D renderings of each alternative.

Task 5 - Evaluation of Crossing Conceptual Designs & Selection of Preferred Alternative

5.1 Development of Evaluation Criteria

The AECOM team will create a comprehensive list of criteria that the four alternatives will be evaluated on. The criteria will include the following: ease of access by users, aesthetics and visual impacts to the community, impacts to utilities, impacts to the railroad operations during construction, ease of construction over or under an operating railroad, required property acquisitions and/or easements, drainage requirements, environmental impacts, structural feasibility and risks, and overall cost.

5.2 Evaluation of Crossing Alternatives and Recommendation

After all of the evaluation criteria are compiled, the AECOM team will collaborate with the City to weigh each criteria and create a method to score each alternative, which will allow the team to ultimately decide on a preferred alternative. The weights of each criteria and the scoring system will allow the team to better explain to the community, key stakeholders and the City Council why the preferred alternative was chosen over the others.

EXHIBIT A-1: SCOPE OF SERVICES

Task 5 Deliverables:

- Evaluation Matrix
- Narrative of the Evaluation of the Alternatives

Task 6 - Environmental Clearance and Documentation

Environmental conditions in the proposed project area have been studied extensively for the Downtown Specific Plan and in-progress Middle Plaza at 500 El Camino Real Project. The project area is highly urbanized and has low potential for impacts from the proposed project. AECOM will determine the potential effects of the preferred alternative and prepare a succinct Initial Study/Mitigated Negative Declaration (IS/MND) that satisfies the California Environmental Quality Act (CEQA). The IS/MND will leverage approved environmental documentation from the Downtown Specific Plan and Middle Plaza at 500 El Camino Real Project to the maximum extent possible.

As an optional scope item, AECOM will also identify any additional clearances needed to satisfy the National Environmental Policy Act (NEPA). This is noted as optional task in our cost proposal.

The proposed project area is mostly within the area covered by the Downtown Specific Plan Environmental Impact Report (EIR), and some of the EIR's resource study areas such as Biology and Transportation fully encompass the expected project footprint. AECOM will prepare the following to support the IS/MND resource area discussions as needed.

Aesthetic Resources: AECOM will analyze the changes in views that residents, motorists, and nearby businesses may experience from the bicycle/pedestrian crossing structure and approaches, including potential effects from daytime shadows and nighttime light, glare, or urban sky glow. The analysis will incorporate renderings developed as part of Task 4 and help demonstrate that the proposed project will not adversely affect the existing setting, an important conclusion for gaining environmental document approval.

Air Quality: While consistent with 2010 Clean Air Plan Transportation Control Measures to support pedestrian and bicycle networks, the project has the potential to expose pedestrian and bicyclists to elevated concentrations of diesel particulate matter, including PM_{2.5}, from Caltrain and Union Pacific Railroad operations. The air quality assessment will address the potential for exposure in excess of Bay Area Air Quality Management District limits (in accordance with Mitigation Measure AIR-7) and identify any appropriate mitigation beyond that already included in the Downtown Specific Plan EIR.

Cultural Resources: Historical resources in the project area have already been surveyed as part of the Downtown Specific Plan and the City's 1990 historic buildings survey. The project vicinity contains historic architectural resources, which are likely far enough away that no project-related impacts would occur. Subsurface excavation for an undercrossing structure or overcrossing supports would have the potential to encounter previously unrecorded archaeological or paleontological resources. Consistent with Downtown Specific Plan Mitigation Measure CUL-2A, AECOM will prepare a site-specific cultural resources study that includes an updated records search, pedestrian survey of the project area, development of a historic context, and sensitivity assessment for buried prehistoric and historic-period deposits, in accordance with federal and state requirements. Native American outreach will be conducted in compliance with California Assembly Bill 52 (2015). Subsurface testing and a treatment plan can be provided as additional scope items.

Public Services and Utilities: AECOM will address the potential effects to recreation use at Burgess Park from the crossing's eastern approach, as a result of temporary construction activities and potential permanent changes to recreation fields.

Transportation, Circulation and Parking: The Downtown Specific Plan EIR did not include analysis of potential conflict points between vehicles, bicycles, and pedestrians from the proposed crossing facility. AECOM will prepare a limited analysis at appropriate study intersections to address operating conditions with respect to pedestrian and bicycle circulation.

EXHIBIT A-1: SCOPE OF SERVICES

Evaluation of potential impacts and mitigation for other resource areas appears to be covered by the Downtown Specific Plan EIR and would be referenced in the IS/MND.

AECOM will submit an administrative draft IS/MND to the City and address any comments from City reviewers. When authorized by the City, we will provide a public draft IS/MND for posting on the City website and Notice of Completion for filing with the State Clearinghouse. After the public review period, AECOM will compile and address public comments in coordination with the City, and provide a final IS/MND, Notice of Intent to adopt a Mitigated Negative Declaration, and Notice of Determination.

Task 6 Deliverables:

- Draft & Final IS/MND
- Notice of Intent
- Notice of Determination

Task 6 Assumptions:

- The IS/MND will evaluate a single preferred project alternative as developed in Task 5.
- A freestanding Cultural Resources Study will be prepared to support the IS/MND. The remaining studies to deliver in Task 6 will be incorporated into the IS/MND and are not proposed as freestanding reports. If needed, technical analyses for air quality and traffic can be provided in memo format.
- Preparation of additional studies to satisfy NEPA and/or Caltrans documentation requirements can be provided as additional services.
- This scope includes responding to up to 50 pages of comments on the public draft IS/MND.
- A PDF for web upload and up to 10 printed copies each of the draft IS/MND and the final IS/MND will be provided for the City to distribute to the public.
- One AECOM Environmental team member will attend up to three community meetings and up to three meetings with the City.
- CEQA document filing fees, including the California Department of Fish and Wildlife filing fee, will be paid by the City.

Task 7 - 30% Construction Design Documents

7.1 30% Construction Drawings

After completion of Task 6 or as directed by the City, the AECOM team will develop 30%-level engineering drawings of the preferred alternative. We anticipate approximately 18 drawings:

- Title/Cover Sheet (1)
- Existing Conditions Plan (1)
- Site Plan (1)
- Typical Cross Sections (1)
- Grading and Drainage Plan & Details (2)
- Utility Plans (2)
- Construction Details (2)
- Signing and Pavement Delineation (1)
- Structural Plans (3)
- Construction Staging (1)
- Electrical Plans (2)
- Mechanical Plan (1)

7.2 30% Technical Specifications

The AECOM team will develop unedited, 30%-level technical specifications.

EXHIBIT A-1: SCOPE OF SERVICES

7.3 30% Engineer's Cost Estimate

The AECOM team will develop a 30%-level cost estimate with an appropriate contingency percentage. We will include construction and construction management, right-of-way related items (property acquisitions, temporary construction easements, utility relocations, etc.), permits, CPUC and/or other filing fees, and allowance for City administration and inspection of the project.

Task 7 Deliverables:

- Draft and Final 30% PS&E Package

Task 7 Assumptions:

- Our cost proposal is based on the 18 drawings listed in Task 7.1.
- The 30% structural drawings do not include seismic design calculations.
- Up to one round of comments from the City.
- The boilerplate specifications will be based on Caltrans standard specifications, or another boilerplate provided by the City.
- Right of way engineering services will not be provided. Cost estimates for right-of-way-related items, such as acquisitions and temporary construction easements will be based on values mutually-agreed upon by AECOM and the City.

Task 8 -Project Report

8.1 Draft Project Report

A comprehensive Draft Project Report (DPR) will be prepared, which will include a written summary and attachments, where appropriate, and the elements completed in Tasks 2 through 7. The report will also include the project's history and background and summarize the project's purpose and need.

8.2 Final Project Report

After comments (two rounds maximum) are received from the City and Caltrain, AECOM will provide written responses to all comments and submit the Final PR to the City for final signature and approval. The Final PR will also include any special requirements needed to advance the project and a discussion about future funding sources and a table outlining a funding plan for final design, right-of-way, utility relocations, construction, and any support costs associated with these items.

Task 8 Deliverables:

- Draft and Final Project Report

Task 8 Assumptions:

- Unless otherwise noted by the City, AECOM will follow Caltrans' latest template for a Project Report.
- Up to two rounds of comments from the City and Caltrain. For example, AECOM will submit the PR a maximum of three times; once in "Draft" format, once in "Draft Final" format and lastly in "Final" format for approval and signature.

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Caltrain Corridor

Project Location

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STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-060-CC

Consent Calendar:

Authorize the City Manager to amend the contract amount for the 2016-17 Public Works maintenance services contracts up to the City Council amended budget amount

Recommendation

Staff recommends the City Council authorize the City Manager to amend the contracts for Public Works maintenance services with the listed contractors (Attachment A) up to budgeted amount in Fiscal Year (FY) 2016-17.

Policy Issues

Without a modification to the contracting authority, the City cannot spend the budgeted amount to utilize existing contracts for unseen conditions and maintenance repairs that are not part of the base contract.

Background

In order to provide services to residents and to maintain City facilities, staff utilizes contractors to supplement staff. For each one of these contracts, staff has gone through a procurement and bidding process. Also, the Council has approved each of these contracts. Contracts for these services have a base cost including an annual inflation factor, however, costs for emergency work or extra work are not part of the base cost. Each year, as a part of the annual budget process, staff budgets the cost for these contracts including increases based on the inflation factor contained in the contract and contingency to pay for emergency work and/or work which are not part of the base cost. Staff desires to formalize the authorization of the City Manager to amend contracts up to and above the base work which includes the contingency budget approved by the City Council as part of the annual budget approval.

Analysis

The Public Works Department relies on a number of contracts with different vendors in order to provide City services and service City facilities. These contracts are described in Attachment A and total base cost annually of approximately \$1.7 million of which the City has approved budget amount of approximately \$2.1 million and are funded by various funds. This amount does not include contracts that fall below the current City Manager's signing authority. Staff is requesting the Council to authorize the City Manager to amend the contracts up to the City Council amended budget for FY 2016-17. Services range from street tree maintenance to custodial service to street light maintenance. An example of work that is not part of the base work is when a large City tree needs to be removed and City staff is busy with other routine work or if there are extended vacancies. In such events, staff will utilize the tree maintenance contractor to remove the tree. Another example is when the janitorial service contractor does extra work to clean up after a major party at the Arrillaga Family Recreation Center. For 2017-18 and future fiscal years, staff will seek Council approval

for the City Manager to execute annual maintenance and service contracts up to the Council amended budget as part of the annual budget adoption resolutions.

The listed contracts are in good standing with the City and are scheduled to remain in effect through the remainder of this fiscal year. The recommendation will allow staff to utilize their services as needed if the budget is available without modifying the existing contract terms.

Once contracts are amended, staff will be able to increase existing purchase orders and have the contractors perform as needed, again within the approved budget.

Impact on City Resources

There is no additional impact on City resources associated with this action because funds were approved as part of the FY 2016-17 adopted City budget. The contract amount and funding sources vary for each service, however staff will only utilize amounts available in the approved budget for the year.

Environmental Review

Environmental review is not required for this action.

Public Notice

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

Attachments

A. Public Works Maintenance Service Contracts

Report prepared by:
Eren Romero, Business Manager

Reviewed by:
Justin Murphy, Public Works Director

ATTACHMENT A - PUBLIC WORKS MAINTENANCE SERVICE CONTRACTS		
Service	Contractor	Budget Amount
Bedwell-Bayfront Park Leachate Collection System Monitoring and Maintenance	CB&I Environmental & Infrastructure, Inc.	\$ 137,000.00
Citywide Striping and Signage	Chrisp Company	\$ 92,340.00
Citywide Striping and Signage	Quality Striping	
Flare Operations and Maintenance	Gas Recovery System aka Fortistar	\$ 65,000.00
General Services at Bedwell Bayfront Park	Universal Building Services & Supply Co.	\$ 43,000.00
Herbicide Free Parks	Ecological Concerns	\$ 100,000.00
HVAC - Preventative Maintenance	MTECH	\$ 157,500.00
Janitorial Services at Various City Facilities	Significant Cleaning Services	\$ 320,000.00
Median & Right-of-way Maintenance	Gachina Landscape Management	\$ 232,966.00
On-call water emergency services	Express Plumbing	\$ 270,000.00
On-call water emergency services	Farallon Company	
On-call water emergency services	Casey Construction	
Storm Drain Cleaning Services	ABC Service	\$ 70,000.00
Street Sweeping Services	Contract Sweeping Services	\$ 145,000.00
Traffic signal & Street light Maintenance Services	Cal-West Lighting and Signal Maintenance	\$ 186,710.00
Tree Maintenance Service	West Coast Arborist, Inc.	\$ 299,000.00

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STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-055-CC

Consent Calendar:

Award a construction contract to Day's Generator Service for the Administration Building Emergency Generator Replacement Project

Recommendation

Staff recommends that the City Council award a construction contract to Day's Generator Service in the amount of \$185,200 for the Administration Building Emergency Generator Replacement Project and authorize a total construction budget of \$241,200 for construction and contingencies.

Policy Issues

This project is consistent with General Plan Safety Element policy S1.33 Continued Functioning of Utilities and Critical Use Facilities (Essential Service Buildings). Encourage local public utilities and service providers to locate and design facilities and systems to ensure continued service in emergency conditions. Project is also included in the City Council's 2017 Work Plan.

Background

The emergency generator provides electrical power to the Administration Building and the Police Station should the electrical power from PG&E be temporarily interrupted. During a PG&E power outage, the generator supports the operation of the Police Dispatch 911 system and other City services that are essential during an emergency. The existing generator is over 30 years old and is at the end of its service life.

Analysis

The project provides for replacing the existing emergency generator with a new 200 kilowatt generator. The new generator will be relocated from the existing generator location in an alcove adjacent to the lower parking lot up to the landscape area outside of police dispatch near the police antenna. The relocation is necessary because the new generator is physically larger and will not fit in the alcove. Staff reviewed multiple locations to place the generator and the proposed location provided the least amount of disruption to existing operations. The new generator will be fueled by the existing underground diesel tank in the lower parking lot. The new generator also will include a sound attenuating enclosure. In terms of aesthetics, the generator will be screened from public view by a fence and/or landscaping as part of a subsequent project once the generator project and the upcoming antenna replacement project are complete.

On February 7, 2017, four bids were submitted and opened for the Administration Building Emergency Generator. The lowest bidder was Day's Generator Service, with a bid amount of \$185,200. Staff has verified the background and references of Day's Generator Service, and is satisfied with its past performance.

Impact on City Resources

The construction contract budget consists of following:

Cost Category	Amount
Construction contract	\$185,200
Contingency (15%)	\$28,000
Management and Inspection	\$28,000
Total Construction	\$241,200

Environmental Review

The project is categorically exempt under Class 1 of the current State of California Environmental Quality Act Guidelines, which allows minor alterations and replacement of existing facilities.

Public Notice

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

Attachments

- A. Bid Summary

Report prepared by:
Sam Rohlfs, Associate Engineer

Reviewed by:
Michael Zimmermann, Senior Civil Engineer



BID SUMMARY

Administration Building Emergency Generator

Apparent Low Bidder

Bid Opening: Tuesday, February 7, 2017 at 2:30 PM

	COMPANY	BID
1	Day's Generator Service	\$185,200.00
2	SilMan Construction	\$198,112.02
3	Anthem Builder's, Inc.	\$265,862.82
4	Alpha Bay Builder's Inc.	\$360,200.00

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STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-054-CC

Consent Calendar:

Reject all bids for the Sand Hill Reservoir No. 2 Roof Replacement Project

Recommendation

Staff recommends that the City Council reject all bids received for the Sand Hill Reservoir No.2 Road Replacement project.

Policy Issues

This project is consistent with the 2016 General Plan goal to promote the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park's residents, businesses, workers, and visitors. In addition, the Project is also included in the City Council's 2017 Work Plan.

The proposed project is consistent with the Open Space/ Conservation, Noise and Safety Element of the Menlo Park General Plan, Goal OSC5, which states: "Maintaining and improving water quality is essential to protect public health, wildlife, and watersheds, and to ensure opportunities for public recreation and economic development in Menlo Park."

Background

The City of Menlo Park Municipal Water District owns and operates two water reservoirs with a total capacity of 5.5 million gallons near Sand Hill Road, west of Interstate 280, in unincorporated San Mateo County. Potable water is pumped into the reservoirs and distributed to Menlo Park Municipal Water District customers in the Sharon Heights area.

Reservoir No. 2 was originally built in 1997 and its roof is now at the end of its useful life. The roof has started sagging and water is ponding on the flat roof. Staff investigated the roof and the structural connections to some of the joist are coming loose and water is penetrating through the roof causing the wood to start to rot. Reservoir No. 1 was built in the 1960's and its roof was reconstructed in 2006.

Analysis

The project will replace the existing deteriorating roof system with a more durable polyvinyl chloride (PVC) membrane roof system which has a 25-year warranty. The project's original scope of work included replacing the roof plywood board decking, wood joists and panelized joist hangers, and installing four new water quality sampling ports and two new turbine ventilators that will improve air circulation.

In addition to the original scope of work, staff added the installation of mixers at both Reservoir No. 1 and No. 2 to improve overall water quality and eliminate the need for manual adjustments. The mixers would be installed in the middle at the bottom of each reservoir to help circulate the water within the entire tank, top to

bottom, which would help reduce residual loss in the tanks, and circulate the current dead ends to eliminate thermal stratification and reduce nitrification.

The reservoir mixers require power, so the project's scope of work also includes installing solar panels on Reservoir Roof No. 2 since there is no electricity near the facility. The solar panels will provide power to both reservoirs.

On January 3, 2017, staff released the project bid, and on February 2, 2017, staff received five bids as shown in Attachment A. The engineers estimate for the project is \$950,000. The low bidder, Andy's Roofing Company Inc. with a bid amount of \$907,315, withdrew their bid as a result of a clerical error. This resulted in Stronger Building Services with a \$1,505,000 bid as the next lowest bidder.

In talking with contractors who bid on the project, they indicated that the structural wood specified in the specifications is expensive due to limited availability of structural wood and limited local sawmills able to produce the cuts required for the project. Staff has discussed with our structural engineer the reengineering of the wood structure by changing the wood structure design and determined this will reduce the cost of the project.

Staff recommends that all construction bids be rejected since they are significantly over budget. Staff will modify the scope of work and re-advertise the modified project.

Impact on City Resources

This CIP project was originally funded in FY 2009-10. Staff anticipates the next round of bid proposals would be less costly based on recommended modifications to the project scope listed above. However, depending on the bid results, additional City budget still may be needed for the Project.

Environmental Review

The project is categorically exempt under Class 1 of the current State of California Environmental Quality Act Guidelines, which allows minor alterations and replacement of existing facilities.

Public Notice

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

Attachments

A. Bid Summary

Report prepared by:
Sally Salman, Assistant Engineer

Report reviewed by:
Pam Lowe, Senior Civil Engineer



BID SUMMARY

Sand Hill Reservoir 2 Roof Replacement

Apparent Low Bidder

Bid Opening: Thursday, February 2, 2017 at 2:00

	COMPANY	BID
1	Andy's Roofing Company Inc.	\$907,315.00
2	Stronger Buiding Services	\$1,505,000.00
3	Thompson Builders Corporation	\$1,597,000.00
4	Southwest Construction & Property Management	\$1,977,400.00
5	Valentine Corporation	\$1,997,369.00

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STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-057-CC

Consent Calendar:

**Authorize the Mayor to sign a Letter of Support
for the South Bay Salt Pond Restoration Project**

Recommendation

Authorize the Mayor to sign a Letter of Support for the South Bay Salt Pond Restoration Project to support Ducks Unlimited, a sub-consultant to the California State Coastal Conservancy (CSCC), for a grant application to the National Oceanic and Atmospheric Administration (NOAA) to assist with the final design and construction of the restoration project.

Policy Issues

The South Bay Salt Pond Restoration Project is consistent with Open Space Goal LU-6 and Policy LU-6.7 Habitat Preservation of the General Plan's Land Use Element.

GOAL LU-6

Preserve open-space lands for recreation; protect natural resources and air and water quality; and protect and enhance scenic qualities.

Policy LU-6.7 Habitat Preservation

Collaborate with neighboring jurisdictions to preserve and enhance the Bay, shoreline, San Francisquito Creek, and other wildlife habitat and ecologically fragile areas to the maximum extent possible.

Background

The South Bay Salt Pond Restoration Project (Project) consists of the restoration and enhancement of 15,100 acres of salt ponds to tidal wetland habitat, making it the largest tidal restoration project on the West Coast. The Project focuses on the restoration of three (3) salt pond complexes, which include Eden Landing in the East Bay, the Alviso pond cluster extending from the City of Mountain View to the City of Fremont, and the Ravenswood pond cluster located in the City of Menlo Park. Approximately 9,600 acres of the salt ponds in the Ravenswood and Alviso complexes were acquired by the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS) in 2003. The remaining 5,500 acres, located in the Eden Landing complex, were acquired by CDFG, also in 2003.

In 2009, CDFG, USFWS, and CSCC adopted a 50-year, multi-phased approach to the restoration plan. The overall goal of the restoration effort includes the conversion of 90% of the salt ponds to tidal marsh, while retaining 10% as managed ponds. Construction of the Phase 1 work began in 2008 and was completed in 2016. In the Ravenswood pond cluster, the Phase 1 effort included the enhancement of 240 acres of salt ponds (Pond SF-2) and the installation of interpretive displays and 0.7 miles of trails near the Dumbarton Bridge.

Planning of the Phase 2 project began in 2010. The Ravenswood cluster consists of a number of ponds (R3, R4, R5, and S5) that are located east of Bedwell Bayfront Park (Park). The ponds are surrounded by levees, include the All-American Canal, and are bordered by State Route (SR) 84 to the south, Ravenswood Slough to the east, and Greco Island and the San Francisco Bay to the north. For the Ravenswood pond cluster, the Phase 2 Draft Environmental Impact Statement / Environmental Impact Report (DEIS/R) issued in July 2015 evaluated four options which include the breaching of existing levees for the conversion of the salt ponds to tidal marsh, varying types of enhancements for habitat, the raising of existing levees to maintain or improve the existing level of flood protection, and the incorporation of trails and interpretive areas for public use. The City provided comments on the Phase 2 DEIS/R on October 29, 2015. In April 2016, the Final EIS/R was issued, which identified the Preferred Alternative (Attachment B) that consists of the following:

- Breaching of the outer levee to open Pond R4 to tidal flows;
- Lowering of a section of the outer levee along Pond R4 for spillover during high tides;
- Partial removal of the levee between R5/S5;
- Raising of the levees along R4 and R3;
- Enhancement of Ponds R5/S5 to shallow water areas;
- Water control structures between Ponds R3/S5, R5/R4, S5/Flood Slough, and R3/Ravenswood Slough;
- Creation of a habitat transition in Pond R4;
- New access from the Bay Trail (from SR 84 near Chilco Street) to the Park along Ponds R3 and R4; and
- Gate and sign at the Bay Trail (from SR 84 near Chilco Street) and the new access point to the pond complex.

The 30% design for the Phase 2 Project is currently underway. The preliminary design drawings will be used to secure the necessary permits for the work. Construction of the Project is expected to begin in the spring of 2018 and will last five (5) months. However, the USFWS has a current permit for levee maintenance, which will be used to begin the levee work prior to the construction of the full restoration effort. The intent is for USFWS to begin raising the levees once the RWQCB approves the Water Quality Assurance Plan that is currently under review. The levee work is expected to begin this summer.

Analysis

The Preferred Alternative meets the program's objectives by promoting the restoration of native habitat and supporting the diversity of species that depend on it. The alternative also improves public access as it incorporates a new path that would connect to the Bay Trail. While the Preferred Alternative does not include the option to use two of the ponds for stormwater storage from the Bayfront Canal and Atherton Channel for flood protection at this time, the project will include features that will facilitate the use of two of the ponds for this purpose in the future. Staff is continuing to work with CSCC, the City of Redwood City and San Mateo County on the development of the stormwater storage option.

Acting as the project's grantee and sub-consultant to the CSCC, Ducks Unlimited will take the preliminary design up to completion and prepare the contract documents to publicly bid the project. Once a contractor is selected, Ducks Unlimited will manage the construction of the restoration project. To acquire additional needed funds for the project, Ducks Unlimited is currently in the process of applying for a grant to the NOAA Coastal Resilience Program for the design and construction of the project. The City's letter would express full support for Ducks Unlimited's grant application.

Impact on City Resources

There are no impacts to City resources.

Environmental Review

In April 2016, the Final EIS/R on the project was issued by USFWS and CSCC. The CSCC Board certified the EIS/R on May 26, 2016.

Public Notice

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

Attachments

- A. Letter of Support to NOAA for Ducks Unlimited Grant Application for Design and Construction of the South Bay Salt Pond Restoration Project
- B. Preferred Alternative

Report prepared by:
Azalea Mitch, Senior Civil Engineer

Reviewed by:
Justin Murphy, Public Works Director

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March 14, 2016

Christopher Doley, Division Chief
NOAA Restoration Center
NOAA Fisheries
1315 East-West Highway, Rm. 14853
Silver Spring, MD 20910

**RE: South Bay Salt Pond Restoration Project, Ducks Unlimited Grant
Application - Letter of Support**

Dear Mr. Doley:

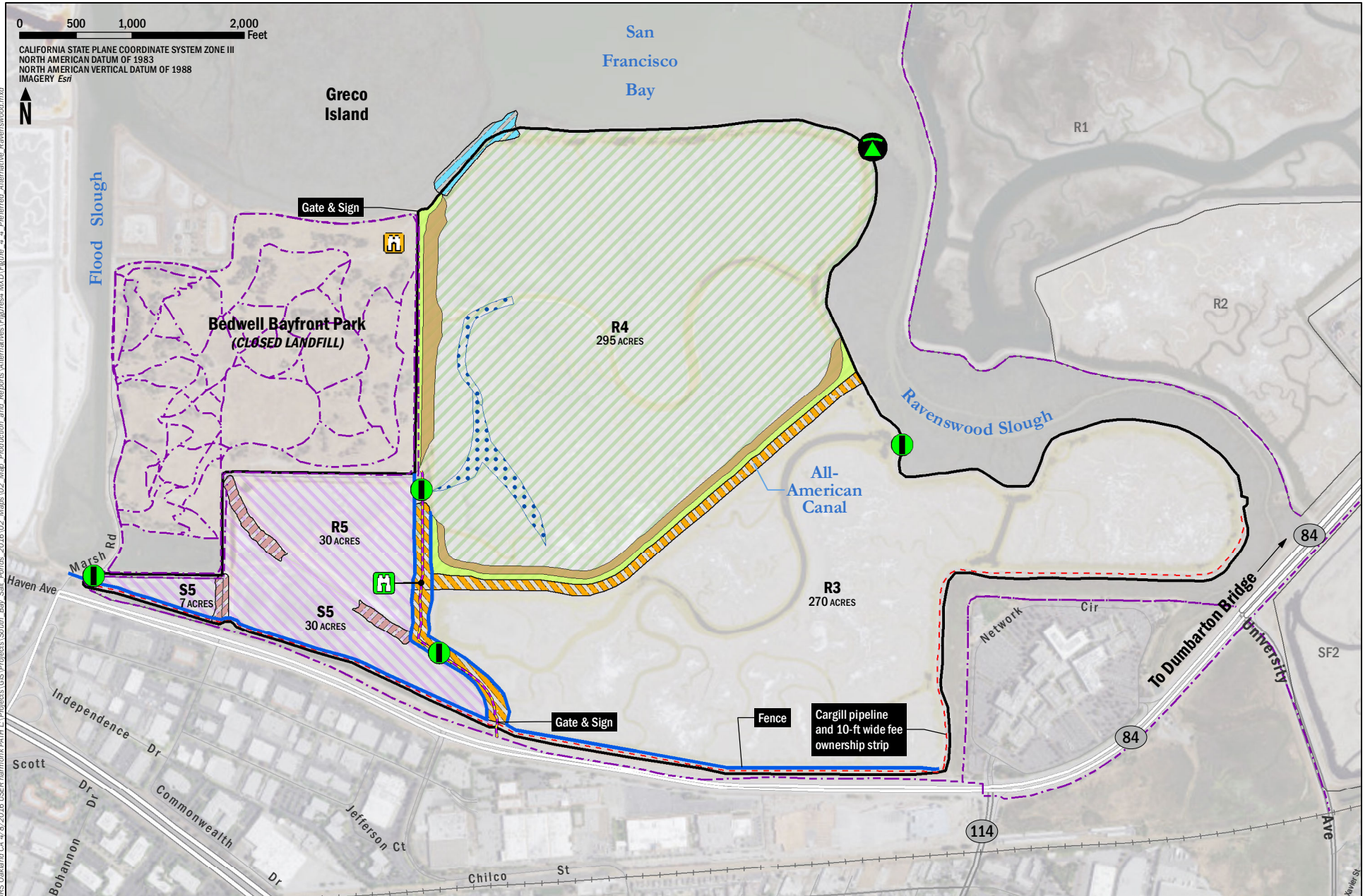
The South Bay Salt Pond Restoration (SBSPR) Project - Ravenswood Complex is located in the City of Menlo Park. Adjacent to the City's Bedwell Bayfront Park, the Ravenswood Complex is an integral part of the City's shoreline and provides important environmental benefits to its unique ecological setting. Over the years, the City has worked with the SBSPR Project Management Team on the development of mutually beneficial solutions that focus on tidal restoration while maintaining existing flood protection levels. The SBSPR Project is important to the City and the ecosystem of the San Francisco Bay. For these reasons, we would like to express our full support to Ducks Unlimited's grant application to design and provide construction support for the restoration effort in the Ravenswood Complex.

Sincerely,

Kiersten Keith
Mayor

Cc: John Bourgeois, California State Coastal Conservancy
Natalie Washburn, Ducks Unlimited

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LEGEND

Proposed breach	Viewing platform	Railroad	Cargill pipeline	Lowered levee	Pilot channel	Pond boundary	Transition Zone Habitat
Proposed water control structure	Existing viewing platform	Existing trail	Fence	Improved levee	Tidal marsh	High marsh habitat	Intertidal habitat
		Phase 2 trail		Removed levee	Managed pond		

*Pending property rights/easements

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STAFF REPORT

City Council
Meeting Date: 3/14/2017
Staff Report Number: 17-061-CC

Consent Calendar: Review and consider adopting a resolution approving a Standard Industrial/Commercial Single-Tenant Lease – Net with Xuereb Enterprises, Inc., a California corporation, for the premises commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park, with Guaranty by Sylvia Xuereb, and a Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor

Recommendation

Staff recommends that the City Council adopt a resolution approving a Standard Industrial/Commercial Single-Tenant Lease – Net with Xuereb Enterprises, Inc., a California corporation, for the premises commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park (the “Premises”), with Guaranty by Sylvia Xuereb, and a Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor.

Policy Issues

Consider whether the City of Menlo Park should adopt a resolution approving a new triple net lease with Xuereb Enterprises, Inc., a California corporation, for the premises commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park, with Guaranty by Sylvia Xuereb, and a Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor.

Background

The City and Footsteps Preschool, Inc., a California corporation, (“Footsteps”) entered into that certain Lease (the “Lease”) dated October 1, 2009, for the Premises for a term of five (5) years with an option to extend the term for an additional five (5) years to September 30, 2019. Footsteps timely exercised its option and extended the term.

Footsteps assigned all of its rights and obligations under the Lease as Lessee to Building Kidz, Inc., a California corporation, (“Building Kidz”) by that certain Assignment and Assumption of Lease dated March 1, 2015. Building Kidz has been operating the preschool since that date with Sylvia Xuereb running the school for Building Kidz.

Vineeta Bhandari, the principal shareholder of Building Kidz, executed that certain Guaranty of Lease dated March 1, 2015.

Building Kidz is selling its business operated at the Premises to Xuereb Enterprises, Inc., a California corporation, ("New Tenant").

New Tenant desires to enter into a new Lease for the Premises for a new term of five (5) years with an option to extend the term for an additional five (5) years. Sylvia Xuereb, the principal shareholder of New Tenant, will guarantee said Lease.

Sylvia Xuereb has many years of experience in running and operating child care/pre-school programs and has been running the program at Willow Oaks Park for the past several years.

Analysis

The Council previously provided direction to the City Attorney in closed session to negotiate a new lease with the proposed franchisee on market conditions. Previously the City was responsible for most repairs and maintenance of the building. This Lease is a modified triple net lease with the New Tenant responsible for all maintenance and repairs and all other operating expenses, except for property taxes which are nominal and casualty insurance. The New Tenant is responsible for liability insurance for the property and its operations.

Impact on City Resources

The new lease will be at fair market rent, an increase from \$2,577.59 per month to \$3,750.00 per month and will have annual rent increases of the greater of 3% per annum of the previous Base Rent or the annual increase in the CPI, All Items, All Urban Consumers for the SF/Oak/SJ Metropolitan area. The City will receive increased rent in excess of \$14,000.00 per year and will have savings resulting from the New Tenant assuming all maintenance and repair expenses.

Environmental Review

This subject is not deemed a project under the California Environmental Quality Act.

Public Notice

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

Attachments

- A. Resolution of the City Council of the City of Menlo Park Approving a Standard Industrial/Commercial Single-Tenant Lease – Net with Xuereb Enterprises, Inc., a California corporation, for the Premises Commonly Known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park (the "Premises"), with Guaranty by Sylvia Xuereb, and a Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor
- B. Standard Industrial/Commercial Single-Tenant Lease – Net
- C. Guaranty of Lease
- D. Lease Termination Agreement

Report prepared by:
City Attorney's Office

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING A STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – NET WITH XUEREB ENTERPRISES, INC., WITH GUARANTY, AND APPROVING A LEASE TERMINATION AGREEMENT WITH BUILDING KIDZ, INC.

WHEREAS, the City and Footsteps Preschool, Inc., a California corporation, (“Footsteps”) entered into that certain Lease (the “Lease”) dated October 1, 2009, for the Premises for a term of five (5) years with an option to extend the term for an additional five (5) years to September 30, 2019. Footsteps timely exercised its option and extended the term; and

WHEREAS, Footsteps assigned all of its rights and obligations under the Lease as Lessee to Building Kidz, Inc., a California corporation, (“Building Kidz”) by that certain Assignment and Assumption of Lease dated March 1, 2015. Building Kidz has been operating the preschool since that date with Sylvia Xuereb running the school for Building Kidz; and

WHEREAS, Vineeta Bhandari, the principal shareholder of Building Kidz, executed that certain Guaranty of Lease dated March 1, 2015; and

WHEREAS, Building Kidz is selling its business operated at the Premises to Xuereb Enterprises, Inc., a California corporation, (“New Tenant”); and

WHEREAS, New Tenant desires to enter into a new Lease for the Premises for a new term of five (5) years with an option to extend the term for an additional five (5) years. Sylvia Xuereb, the principal shareholder of New Tenant, will guarantee said Lease.

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 therefor do hereby:

1. Approves the Standard Industrial/Commercial Single-Tenant Lease – Net with Xuereb Enterprises, Inc., a California corporation, in the form attached hereto as Exhibit A;
2. Approves the Guaranty of Lease by Sylvia Xuereb, in the form attached hereto as Exhibit B; and
3. Approves the Lease Termination Agreement with Building Kidz, Inc., a California corporation, with Vineeta Bhandari, as Guarantor, in the form attached hereto as Exhibit C.

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 14th day of March, 2017, 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 14th day of March, 2017.

Pamela Aguilar, CMC
City Clerk



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only March 15, 2017

is made by and between CITY OF MENLO PARK, a municipal corporation ("Lessor") and XUEREB ENTERPRISES, INC., a California corporation ("Lessee"),

(collectively the "Parties," or individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park, located in the County of San Mateo, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) The Willow Oaks Park Recreation Building consisting of approximately 1,350 square feet and fenced area containing approximately 2,454 square feet as shown on Exhibit A and B ("Premises"). (See also Paragraph 2)

1.3 Term: Five (5) years and one-half months ("Original Term") commencing March 15, 2017 ("Commencement Date") and ending March 31, 2022 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: if the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$3,750.00 per month ("Base Rent"), payable on the 1st day of each month commencing April 1, 2017. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph

1.6 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$1,875.00 for the period March 15, 2017 - March 31, 2017
(b) Security Deposit: \$7,500.00 ("Security Deposit"). (See also Paragraph 5)
(c) Association Fees: \$N/A for the period
(d) Other: \$N/A for
(e) Total Due Upon Execution of this Lease: \$9,375.00

1.7 Agreed Use: Pre-school/child care per the terms and provisions of existing use permit - See Addendum Paragraph 53. (See also Paragraph 6)

1.8 Insuring Party: Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- [] N/A represents Lessor exclusively ("Lessor's Broker");
[] represents Lessee exclusively ("Lessee's Broker"); or
[] represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of or % of the total Base

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Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by SYLVIA XUEREB ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 51 through 55;
- a plot plan depicting the Premises;
- a current set of the Rules and Regulations;
- a Work Letter;
- other (specify): _____

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** ~~Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.~~

2.3 **Compliance.** ~~Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:~~

~~(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease~~

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~~the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.~~

~~(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.~~

~~(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.~~

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, nor Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. ~~In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.~~

~~**2.5 Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not

delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

~~4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.~~

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent.~~ Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor

shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a)

below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises),

including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a

workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

~~8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.~~

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 ~~4,000,000~~ per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar

insurance carried by Lessor, whose insurance shall be considered excess insurance only.

~~(b) Carried by Lessor.~~ Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

~~8.3 Property Insurance - Building, Improvements and Rental Value.~~

~~(a) Building and Improvements.~~ The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

~~(b) Rental Value.~~ The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

~~(c) Adjacent Premises.~~ If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any

deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires remediation.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's

responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return

to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

~~10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment, real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.~~

~~10.2 Payment of Taxes. In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.~~

~~10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.~~

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base

Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and

against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at

the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. ~~_____~~ **Brokerage Fees.**

~~_____ 15.1 _____~~ **Additional Commission.** ~~In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~_____ 15.2 _____~~ **Assumption of Obligations.** ~~Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third-party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third-party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

~~_____ 15.3 _____~~ **Representations and Indemnities of Broker Relationships.** ~~Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.~~

16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel

Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. ~~Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.~~

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. ~~Disclosures Regarding The Nature of a Real Estate Agency Relationship.~~

~~(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:~~

~~(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.~~

~~(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.~~

~~(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.~~

~~(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.~~

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if

prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "**For Sale**" signs at any time and ordinary "**For Lease**" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All

signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any Option, as defined below, then the following provisions shall apply:

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers,

customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" with 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

is is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:

Have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the

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INITIALS

INITIALS

inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: <u>Menlo Park, CA</u>	Executed at: <u>Menlo Park, CA</u>
On: <u>March</u> , 2017	On: <u>March</u> , 2017

By LESSOR:	BY LESSEE:
<u>CITY OF MENLO PARK</u>	<u>XUEREB ENTERPRISES, INC.</u>

By: _____	By: _____
Name Printed: <u>Alex D. McIntyre</u>	Name Printed: <u>Sylvia Xuereb</u>
Title: <u>City Manager</u>	Title: <u>President</u>
By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Address: <u>701 Laurel Street,</u>	Address: <u>1420 El Camino Real, #3,</u>
<u>Menlo Park, CA 94025</u>	<u>Burlingame, CA 94010</u>
Telephone: <u>(650) 330-6610</u>	Telephone: <u>(650) 281-1658</u>
Facsimile: <u>()</u>	Facsimile: <u>()</u>
Email: _____	Email: _____
Email: _____	Email: _____
Federal ID No. _____	Federal ID No. _____

BROKER: _____

BROKER: _____

 Attn: _____
 Title: _____
 Address: _____

 Telephone: (____) _____
 Facsimile: (____) _____
 Email: _____
 Federal ID No. _____
 Broker/Agent BRE License #: _____

 Attn: _____
 Title: _____
 Address: _____

 Telephone: (____) _____
 Facsimile: (____) _____
 Email: _____
 Federal ID No. _____
 Broker/Agent BRE License #: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.


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CITY OF MENLO PARK

THE WILLOW OAKS PARK RECREATION BUILDING

LOCATION MAP

DRAWN: RAO	DATE:	SCALE: 1" = 100'	ACAD FILENAME: WILSCHOOL
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EXHIBIT A

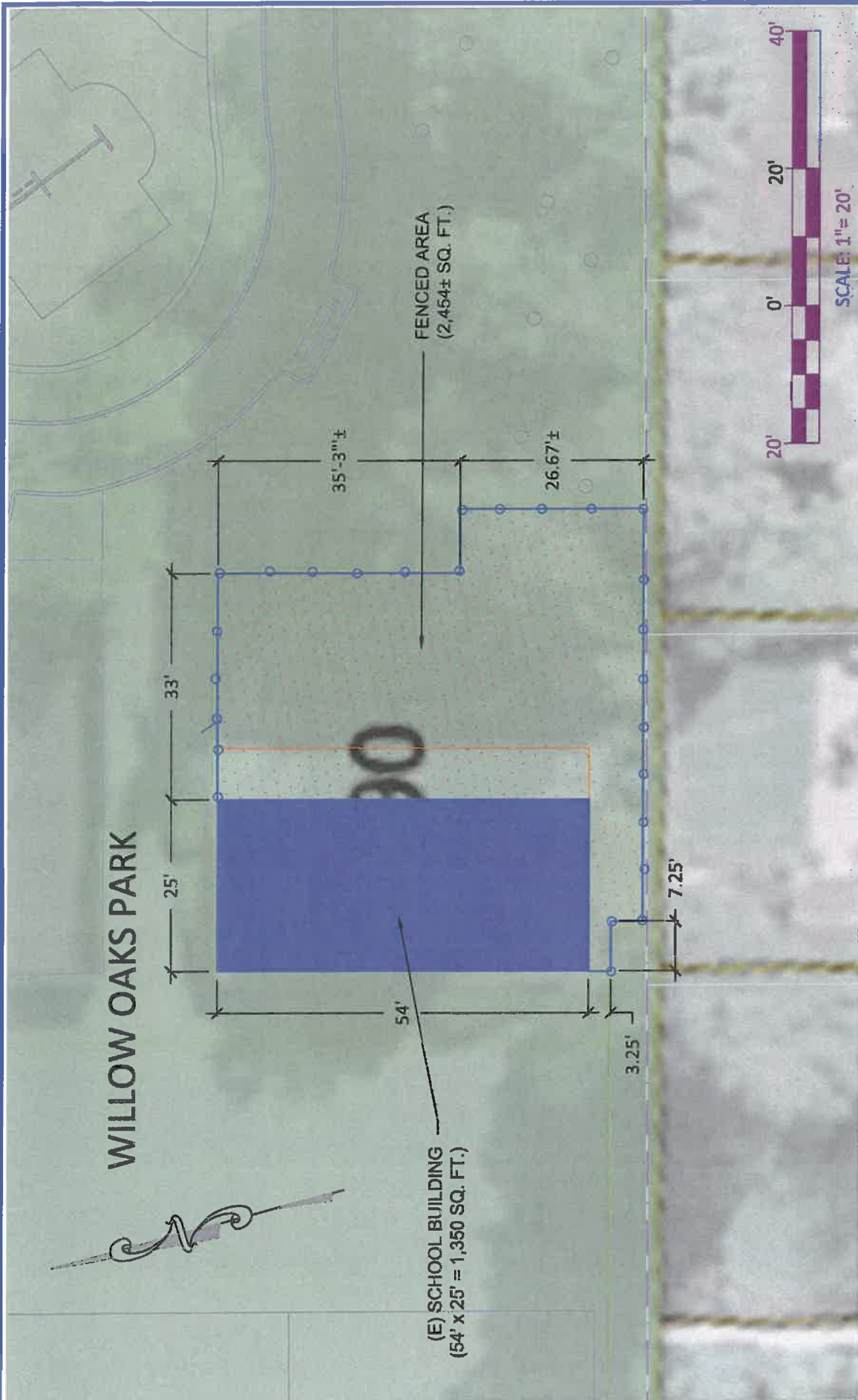


EXHIBIT B



CITY OF MENLO PARK

THE WILLOW OAKS PARK RECREATION BUILDING

SITE PLAN

DRAWN: RAO

DATE:

SCALE: 1" = 20'

ACAD FILENAME: WLSCHOOL

ADDENDUM TO
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – NET

The Willow Oaks Park Recreation Building,
490 Willow Road, Menlo Park, CA

This Addendum is made a part of the Standard Industrial/Commercial Single-Tenant Lease – Net dated for reference purposes only March 15, 2017, by and between CITY OF MENLO PARK, a municipal corporation, as Lessor, and XUEREB ENTERPRISES, INC., a California corporation, as Lessee. If any conflicts exist between the Lease and this Addendum, the terms of this Addendum shall govern.

51. **Annual Rent Adjustment.** Beginning on April 1, 2018, and on April 1 of each year thereafter, the Base Rent payable shall increase by the greater of three percent (3%) of the previous rent or the annual increase in the CPI, All Items, All Urban Consumers for the SF/Oak/SJ Metropolitan area.

52. **Option to Extend Term.** Lessee shall have one (1) option to extend the Term for five (5) years on the same terms and conditions, except for Base Rent, which shall be subject to adjustment as set forth in Paragraph 51 above. Lessee shall give Lessor written notice of exercise of option to extend the Term not less than six (6) months nor more than nine (9) months prior to the expiration of the Lease, or the Term of the Lease shall terminate.

53. **Use.** The Use of the Premises shall be in accordance with the terms and provisions of the use permit approved by the Menlo Park Planning Commission on August 18, 1980, which limits the hours of operation to 8:00am to 5:30pm, with staggered arrival/drop off (8:00am, 8:30am, and 9:00am), with no more than five (5) cars at the site at any time with drop off using the Willow Oaks Park parking lot, and with no more than thirty (30) students and two (2) staff members onsite at any time.

54. **“AS IS.”** Notwithstanding any provision in this Lease to the contrary, the Premises shall be delivered in its present "AS IS" condition. Lessee acknowledges that Sylvia Xuereb, President of Lessee, has been working full-time for the prior tenant/operator at the Premises and is familiar with the condition of the Premises. Lessor gives no warranty, express or implied, with regard to, but not necessarily limited to, the following issues: Compliance of the building with current building codes, the Americans With Disabilities Act, the suitability of the Premises for its intended use, etc. Lessee accepts the Premises in its existing condition and shall not require Lessor to improve, alter, maintain or repair the Premises or any part thereof.

55. **Property Taxes; Casualty Insurance.** Notwithstanding any other provision set forth in the Lease, Lessee shall have no obligation to pay or reimburse Lessor for real property taxes or casualty insurance premiums.

LESSOR:

DATED: March ____, 2017

CITY OF MENLO PARK,

By: _____
Alex D. McIntyre,
City Manager

LESSEE:

DATED: March ____, 2017

XUEREB ENTERPRISES, INC.

By: _____
Sylvia Xuereb,
President



AIR COMMERCIAL REAL ESTATE ASSOCIATION GUARANTY OF LEASE

WHEREAS, CITY OF MENLO PARK, a municipal corporation, hereinafter "Lessor", and XUEREB ENTERPRISES, INC., a California corporation, hereinafter "Lessee", are about to execute a document entitled "Lease" dated March 15, 2017 concerning the premises commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, Menlo Park, CA wherein Lessor will lease the premises to Lessee, and

WHEREAS, SYLVIA XUEREB hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to do and provide the same to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased

premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorney's fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: Menlo Park, CA

On: March, 2017

Address: 1420 El Camino Real, #3

Burlingame, CA 94010

SYLVIA XUEREB

"GUARANTORS"

LEASE TERMINATION AGREEMENT

This Agreement is made by and between CITY OF MENLO PARK, a municipal corporation, as "Lessor" and BUILDING KIDS, INC., a California corporation, as "Lessee," and VINEETA BHANDARI, as "Guarantor," with respect to that certain property commonly known as The Willow Oaks Park Recreation Building, 490 Willow Road, California (the "Premises").

RECITALS

WHEREAS, Lessor and Lessee's predecessor FOOTSTEPS PRESCHOOL, INC., a California corporation, entered into that certain Lease (the "Lease") dated October 1, 2009, for the Premises; and

WHEREAS, Lessee's predecessor FOOTSTEPS PRESCHOOL, INC., a California corporation, assigned all of its rights and obligations under the Lease as Lessee to Lessee by that certain Assignment and Assumption of Lease dated March 1, 2015; and

WHEREAS, Guarantor executed that certain Guaranty of Lease dated March 1, 2015; and

WHEREAS, Lessee is selling its business operated at the Premises to XUEREB ENTERPRISES, INC., a California corporation, ("New Tenant"); and

WHEREAS, the New Tenant desires to enter into a new Lease for the Premises.

NOW, THEREFORE, the parties agree as follows:

1. Subject to approval of a new Lease by the CITY OF MENLO PARK with the New Tenant, this Lease is hereby terminated upon the effective date of the new lease, except for the provisions of the Lease which survive the termination of the Lease. Notwithstanding the foregoing, Lessee/Guarantor shall be responsible for their obligations or any claims made by any third party for any damages caused by Lessee prior to the termination of the Lease.

2. Lessor hereby releases Lessee and Guarantor from all liability with respect to any liability for rent and NNN charges accruing after the effective date of the new lease. Within thirty (30) days of the effective date of the new lease, Lessor shall refund to Lessee the Security Deposit held by Lessor and any overpayment of rent for the month of March 2017, if any.

3. Except as provided herein, Lessor and Lessee/Guarantor each hereby release and forever discharge the other in their respective officers, directors, employees, agents, attorneys, and assigns, and each of them from and against any and all claims, demands, causes of action,

obligations, damages, and liabilities of any nature whatsoever whether or not known, suspected, or claimed arising from or relating to the Lease.

4. In the event that any dispute or controversy arising out of this agreement results in litigation or arbitration, the prevailing party in such litigation or arbitration shall be entitled to recover reasonable attorneys' fees incurred.

5. Each covenant and condition contained in this Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement, their respective heirs, personal representatives, assigns and successors in interest.

6. This is the entire agreement between the parties hereto with respect to the subject matters contained hereto.

7. To facilitate execution, this Agreement may be executed in counterparts. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

LESSOR:

DATED: March ____, 2017

CITY OF MENLO PARK

By: _____
Alex D. McIntyre, City Manager

LESSEE:

DATED: March ____, 2017

BUILDING KIDS, INC.

By: _____
Vineeta Bhandari, President

GUARANTOR:

DATED: March ____, 2017

VINEETA BHANDARI



STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-051-CC

Regular Business:

Consider authorizing the City to join amicus briefs and/or other pleadings in *County of Santa Clara v. Trump*, Case No. 5:17-cv-00574 (N.D. Cal.) and *City and County of San Francisco v. Trump*, Case No 3:17-cv-00485 (N.D. Cal.) challenging President Trump's executive order threatening to withhold federal funds from so-called "sanctuary jurisdictions"

Recommendation

Consider authorizing City to join amicus briefs and/or other pleadings in County of Santa Clara v. Trump, Case No. 5:17-cv-00574 (N.D. Cal.) and City and County of San Francisco v. Trump, Case No 3:17-cv-00485 (N.D. Cal.) challenging President Trump's executive order threatening to withhold federal funds from so-called "sanctuary jurisdictions."

Policy Issues

Should the City join amicus briefs and/or other pleadings in County of Santa Clara v. Trump, Case No. 5:17-cv-00574 (N.D. Cal.) and City and County of San Francisco v. Trump, Case No 3:17-cv-00485 (N.D. Cal.) challenging President Trump's executive order threatening to withhold federal funds from so-called "sanctuary jurisdictions"?

Background

On January 25, 2017, the President issued an Executive Order entitled "Enhancing Public Safety in the Interior of the United States" Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). This Executive Order sets forth the Administration's policy to withhold federal funds from so-called "sanctuary jurisdictions" and, among other things, provides the Attorney General with unfettered and unreviewable discretion to take enforcement action against any jurisdiction that "hinders" enforcement of federal law.

After the Executive Order was issued, the City and County of San Francisco and the County of Santa Clara filed suit in federal court in the Northern District of California seeking declaratory and injunctive relief. See City and County of San Francisco v. Trump, Case No. 3:17-cv-00485 (N.D. Cal.); County of Santa Clara v. Trump, Case No. 5:17-cv-00574 (N.D. Cal.). Both cases are currently pending before Judge William H. Orrick.

Lieff Cabraser Heimann & Bernstein, LLP is developing a city and county amicus brief in support of this litigation.

Analysis

If the Council chooses to become a signatory on the amicus brief, it would do so only so long as the amicus brief does not portray signatories as “sanctuary jurisdictions” since Menlo Park has not taken a position on this issue yet. It is currently planned that this topic will come before the City Council at its April 4th meeting.

Signing onto the amicus brief would be subject to final review and approval by the Mayor and the City Attorney when the amicus brief is ready for final approval and signature prior to March 22nd.

Impact on City Resources

Joining the amicus brief will be at no cost to the City.

Environmental Review

This subject is not deemed a project under the California Environmental Quality Act.

Public Notice

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

Attachments

None

Report prepared by:
City Attorney's Office



STAFF REPORT

City Council

Meeting Date:

3/14/2017

Staff Report Number:

17-063-CC

Regular Business:

**Approval of performance bonus for City Manager
Alexander D. McIntyre**

Recommendation

Consider approval of a performance based cash bonus in the amount of \$4,400.00 to Alexander D. McIntyre (hereinafter, "McIntyre").

Policy Issues

There are no direct policy issues presented by the proposed performance bonus.

Background

The City Council completed a review of McIntyre's performance in closed session on August 23, 2016. At the September 13, 2016 City Council meeting, Council approved direction to review McIntyre's performance at the end of six (6) months.

Analysis

On February 28, 2017, City Council completed a six month evaluation of McIntyre's performance. Upon consideration of City-wide progress on the Council's priority projects, the Council now desires to approve a one-time non-PERSable cash bonus to McIntyre in the amount of \$4,400.00.

Impact on City Resources

There is sufficient funding in the Fiscal Year 2016-17 budget to cover the proposed performance bonus.

Environmental Review

No environmental review is required.

Public Notice

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

Attachments

None

Staff Report #: 17-063-CC

Report prepared by:
Lenka Diaz, Human Resources Manager



STAFF REPORT

City Council
Meeting Date: 3/14/2017
Staff Report Number: 17-056-CC

Informational Item: **Update on the Water System Master Plan (WSMP) and staffing for operations and maintenance functions**

Recommendation

This is an informational item only. No City Council action is required at this time. A Study Session on the recommended staffing levels from the WSMP is scheduled for March 28, 2017.

Policy Issues

There are no policy issues associated with this update.

Background

The City of Menlo Park Municipal Water Department (MPMWD) provides water to approximately 16,000 customers through 4,000 service connections. The remainder of the City receives water from the California Water Company (Cal Water), the O'Connor Tract Cooperative Water Company, and the Palo Alto Park Mutual Water Company (Attachment A). All of the water provided in the MPMWD's service area is purchased from the San Francisco Public Utilities.

In 2000, the MPMWD completed a Water System Evaluation which recommended capital improvements and a long-term maintenance plan for the water distribution system. However, this study is dated and was limited to a hydraulic analysis of the system. In May 2015, the City Council identified the development of the WSMP as a priority project and approved a budget of \$887,220 for the development of the comprehensive study. The WSMP, which is included in the 2017 Council Work Plan is on track for completion by the end of this year. The scope of work of the WSMP is summarized below.

System Inventory and Mapping

The Consultant will complete an inventory of the MPMWD's water distribution system, acquire global positioning data on all the valves and water meters, and update the existing GIS maps.

System Evaluation

Based on the updated system conditions, the consultant will develop a hydraulic model, complete a system wide condition analysis, and provide a vulnerability and risk assessment of the water distribution system.

Advanced Metering Infrastructure

Currently, water meters are read manually. The consultant will evaluate technological advances in the water distribution industry and provide recommendations for the implementation of smart water meters and an advanced communications network.

Operations and Maintenance

In order to optimize the operational efficiency and reliability of the water distribution system, the Consultant will evaluate water quality requirements, monitoring and control deficiencies, water and energy efficiency, as well as emergency planning.

Staffing Levels

As part of this task, the Consultant will conduct a comprehensive analysis of the MPMWD's current operations, services, and organizational structure and assess the staffing level needs required for the MPMWD to provide safe and efficient services.

Short-term and Long-term Capital and Maintenance Improvement Recommendations

Based on the findings, the Consultant will develop and prioritize the recommended improvement projects, provide time adjusted project costs, and provide a schedule for the 5-year, 10-year, 20-year, and 25-year planning horizons.

Water Reuse Alternatives

As part of this task, the Consultant will identify water reuse alternatives that could be implemented by the MPMWD to promote water efficiency. In particular, the consultant will identify the feasibility of implementing graywater systems and recycled water use options.

Analysis

As part of the scope of work noted above, the Consultant has completed a number of tasks, including a comprehensive analysis of the MPMWD's current operations, services and organizational structure. This analysis assessed the staffing level needs required for the provision of safe and efficient services and the implementation of operational and preventive maintenance standards established by the American Water Works Association (AWWA). Preventive maintenance involves the regular inspection and exercise of equipment to lessen the likelihood of failure. In addition, the Consultant gathered organizational and staffing level information from municipal water agencies of similar size to the MPMWD as a basis for comparison. To supplement this effort, staff also acquired staffing level information from neighboring agencies, while larger in size.

The findings indicate that, based on AWWA guidelines and the comparison to the cities included in the study, the MPMWD is understaffed. As a result, preventive maintenance programs and best management practices set by AWWA are not being implemented. Since many of the MPMWD's water mains consists of aging asbestos cement lines that are over 60 years old, staff have to routinely respond to emergencies associated with piping failures and leaks during days, nights and weekends. The reactive nature of the operation, in combination to the existing staff levels, prevents staff from implementing the needed maintenance tasks based on guidelines established by AWWA. In order to provide safe and efficient services and maintain the existing infrastructure based on AWWA standards, the Consultant is recommending the addition of 4 water operator positions. In addition, the MPMWD has been in the process of drilling a well for emergency water supply. The well, expected to be completed by the end of the year, will require testing and maintenance on a routine basis. With a total staff of 7, the MPMWD would be able to implement a preventive maintenance program and would have staffing levels that are comparable to those of neighboring agencies and the cities of similar size included in the study. Staff also believes that with the additional staff of 4, the testing and operational requirements of the well would be met. The additional positions would be funded through the Water Fund through revenues received from water sales. The findings of the Consultant's staffing level assessment and options for Council consideration will be presented as a study session on March 28, 2017.

Public Notice

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

Attachments

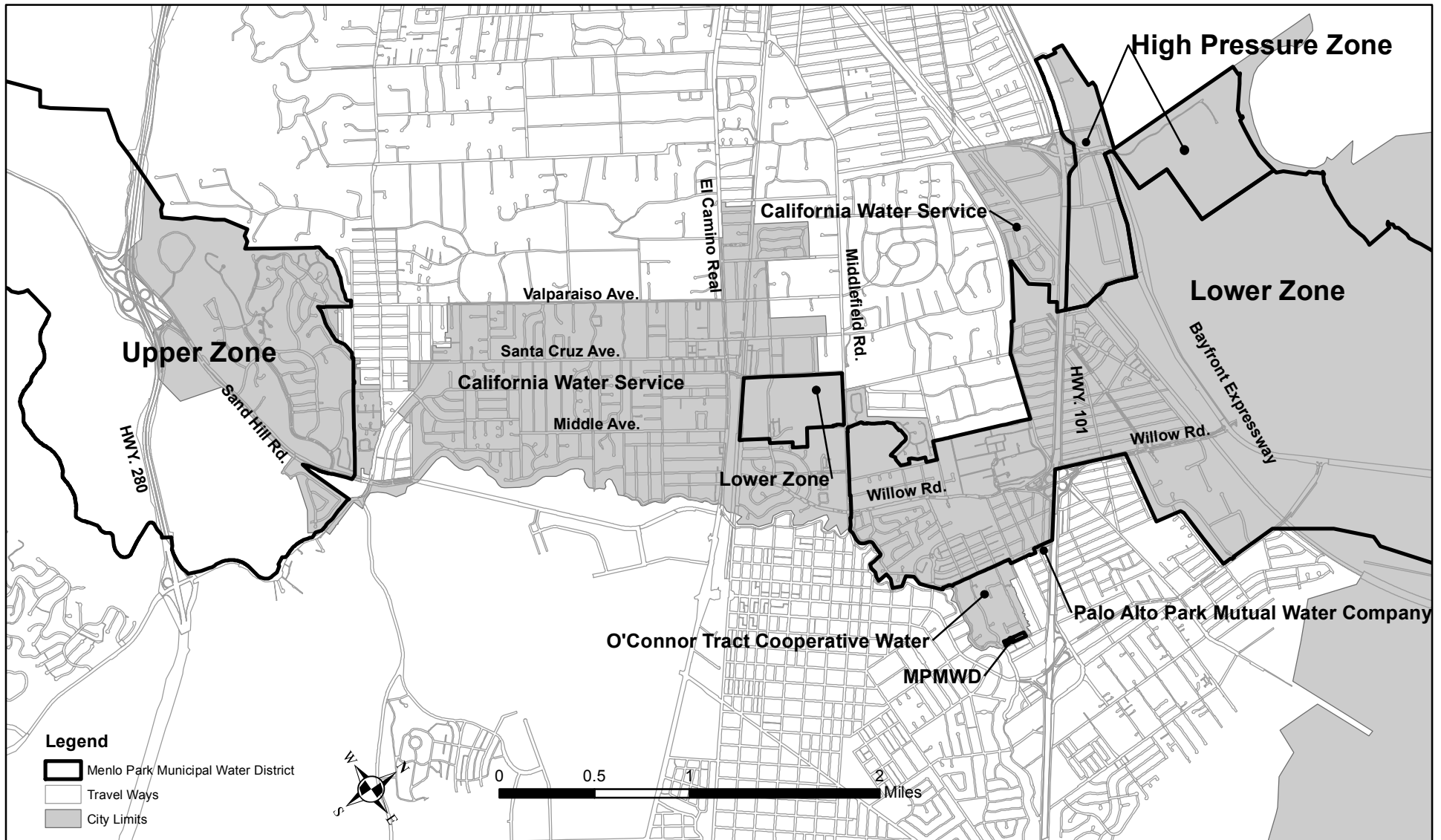
A. Water Providers within the City of Menlo Park

Report prepared by:
Azalea Mitch, Senior Civil Engineer

Reviewed by:
Justin Murphy, Public Works Director

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Water Districts Within the City of Menlo Park



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STAFF REPORT

City Council Meeting Date: 3/14/2017
Staff Report Number: 17-062-CC

Informational Item: Review of the City’s Investment Portfolio as of December 31, 2016

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

The City and the Successor Agency funds are invested in full compliance with the City’s Investment Policy and State Law, which emphasize safety, liquidity and yield.

Background

The City’s investment policy requires a quarterly investment report to the City Council, which includes all financial investments of the City and provides information on the investment type, value and yield for all securities.

Analysis

Investment Portfolio as of December 31, 2016

The historical (book) value of the City’s total portfolio at the end of December was \$113 million. Cash is invested in accordance with the City’s Investment Policy, which strives to attain the highest yield obtainable following established criteria for safety and liquidity. The make-up of the portfolio can be seen in Table 1:

Table 1: Recap of Securities Held			
Security	Historical Cost	Fair Value	% of Portfolio
LAIF (cash)	\$51,619,469	\$51,619,469	45.8%
Corporate Bonds	\$19,911,892	\$19,727,980	17.5%
Government Agencies	\$31,488,761	\$31,373,594	27.8%
Government Bonds	\$9,977,695	\$9,982,285	8.9%
Government Mortgage Backed	\$14,496	\$13,659	0.0%
Total	\$113,012,313	\$112,716,986	100.0%

The Local Agency Investment Fund (LAIF) is considered a safe investment as it provides the liquidity of a money market fund. The majority of the remaining securities are prudent and secure short-term investments (1-3 years), bearing a higher interest rate than LAIF and provide investment diversification.

As can be seen in Table 1, the fair value (market value) of the City's securities was \$295,327 less than the historical cost at the end of December. This is referred to as an unrealized loss, and is due to market values fluctuating from one period to another. It is important to note that any unrealized loss or gain does not represent an actual cash transaction to the City, as the City generally holds securities to maturity to avoid market risk.

Economic Conditions in the U.S. as of Quarter Ended December 31, 2016

Interest rates increased across the yield curve in December, supported by positive economic releases and action by the Federal Reserve. In addition, the market continues to anticipate future stimulus from changes in policies related to spending, trade and taxes.

The payroll report for November was released on December 2nd, showing that the unemployment rate fell to 4.6% from 4.9% and the underemployment rate declined to 9.3% from 9.5%. The November payroll data reflected that 178,000 jobs were added.

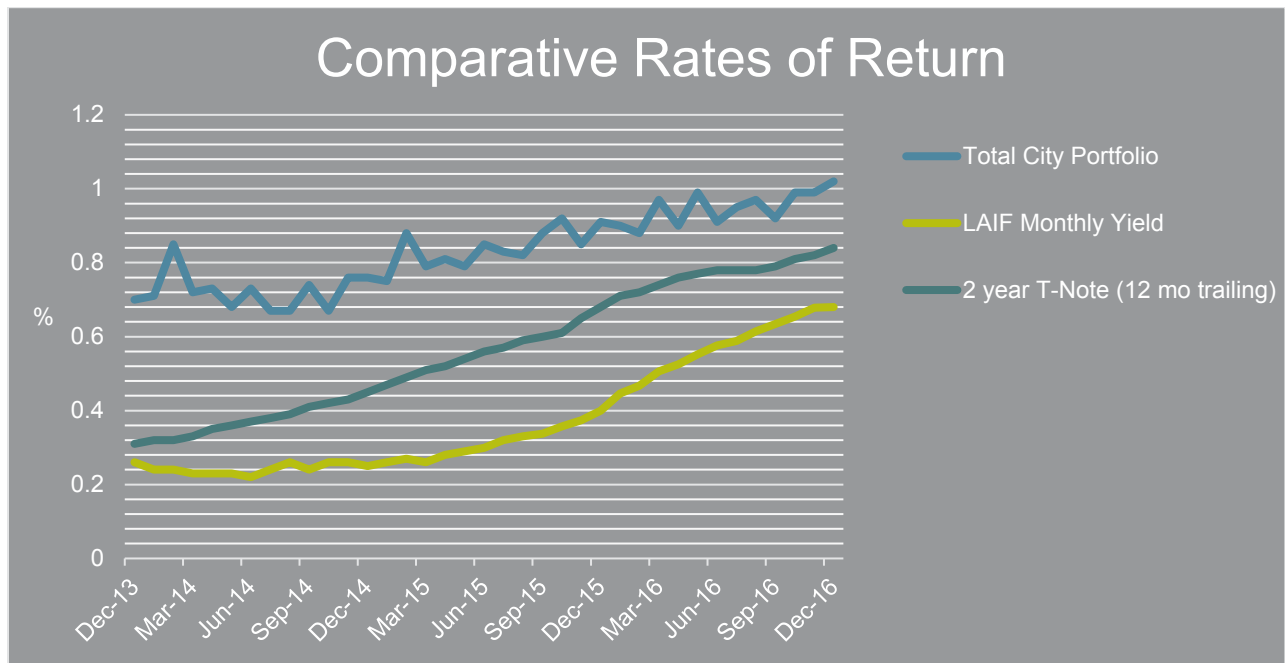
The final estimate of US Gross Domestic Product (GDP) for the third quarter was released on December 22nd. The GDP report showed 3.5% growth in the third quarter, which was revised up from the 3.2% prior estimate.

Investment Yield

The annualized return on the City's portfolio as of December 31, 2016, was 1.02% net of fees. This quarter's return is up from the previous quarter which had a net return of 0.92%. The current quarter's return is higher than both the 2-year Treasury note paying 0.84% and the rate of return earned through LAIF over the past quarter which was 0.68%.

Table 2: Investment Yield		
Term	September 30, 2016	December 31, 2016
3-month	0.22	0.3
6-month	0.34	0.41
2-year	0.79	0.84
5-year	1.33	1.34

As previously stated, approximately 40 percent of the portfolio resides in the City's LAIF account, yielding 0.68 percent for the quarter ended December 31, 2016. While LAIF is a good investment option for funds needed for liquidity, the City's investment of excess funds in other types of securities is made in an effort to enhance yields, as evidenced by the chart below, which shows the difference between the yield on the City's portfolio and the LAIF monthly yield.



Fees paid to Insight Investment (totaling \$12,245 for the quarter ended December 31, 2016) are deducted from investment earnings before calculating the City’s net rate of return. Staff continues to work with the City’s investment advisors to meet the City’s investment objectives and rearrange the portfolio for maximum yield while providing safety for the principal amount.

Investment Transactions in the Third Quarter

During the fourth quarter of 2016, staff obtained guidance from the City’s investment advisors (Insight Investments) to make prudent investment decisions that follow the City’s investment policy. Insight continues to look for opportunities to further diversify the City’s portfolio by purchasing investments with longer maturity dates.

Table 3 on the following page, includes all of the investment transactions that occurred during the fourth quarter of 2016.

Table 3: Investment Transactions						
Date	Transaction	Description	Term	% Yield		Principal
10/17/2016	CALL	FREDDIE MAC FG		4.20	6.00	\$ 11,485
10/11/2016	PURCHASE	FANNIE MAE		3.23	1.20	998,750
10/11/2016	PURCHASE	FEDERAL HOME LOAN BANK		2.99	1.13	999,000
10/11/2016	CALL	FEDERAL FARM CREDIT BANK		1.98	0.60	1,000,233
10/11/2016	CALL	FANNIE MAE		1.50	0.75	1,000,618
11/15/2016	CALL	FREDDIE MAC FG		4.20	6.00	9,337
11/16/2016	PURCHASE	FEDERAL FARM CREDIT BANK		3.24	1.45	2,004,900
11/14/2016	MATURITY	BANK OF AMERICA NA		2.11	1.13	2,000,000
11/30/2016	PURCHASE	FREDDIE MAC		3.25	1.25	1,487,625
11/30/2016	PURCHASE	USA TREASURY		3.17	1.25	1,492,383
11/30/2016	CALL	USA TREASURY		2.95	0.88	2,002,578
11/30/2016	CALL	USA TREASURY		2.80	0.88	1,000,977
12/15/2016	CALL	FREDDIE MAC FG		4.20	6.00	7,878

Impact on City Resources

Due to the liquidity of LAIF accounts, the City has more than sufficient funds available to meet its expenditure requirements for the next six months.

Environmental Review

There is no Environmental Review Impact

Public Notice

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

Attachments

- A. Quarterly Consolidated Portfolio report for the quarter ended December 30, 2016.
- B. Insight Investments report for the quarter ended December 30, 2016.
- C. LAIF Quarterly report for the period ended December 30, 2016.

Report prepared by:
Rosendo Rodriguez, Finance and Budget Manger

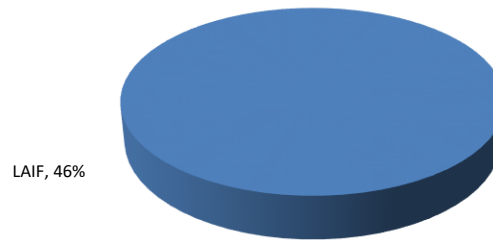
City of Menlo Park Quarterly Consolidated Portfolio Report December 31, 2016

City Managed Assets % Return

LAIF	\$	51,619,469	46%	0.68%
Total Internally Managed	\$	51,619,469	46%	

Weighted Average Yield **0.68%**

	Days
Effective Average Duration - Internal	1
Weighted Average Maturity - Internal	1

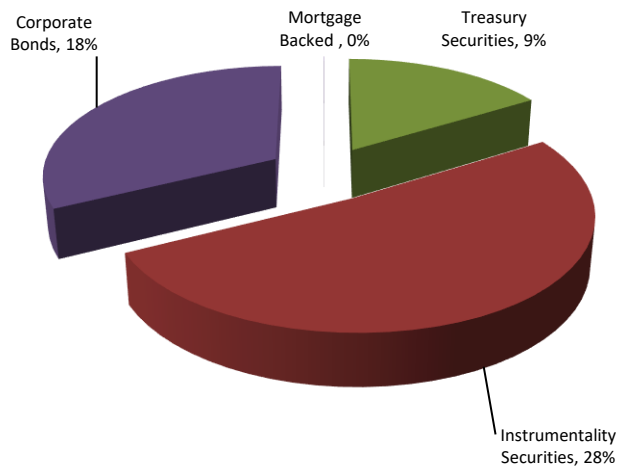


Advisor Managed Assets % Return

Treasury Securities	\$	9,982,285	9%	0.95%
Instrumentality Securities	\$	31,373,594	28%	1.09%
Corporate Bonds	\$	19,727,980	18%	1.12%
Mortgage Backed	\$	13,659	0%	2.31%
Total Externally Managed	\$	61,097,517	54%	

Weighted Average Yield **1.08%**

	Years
Effective Average Duration - External	1.29
Weighted Average Maturity - External	1.37

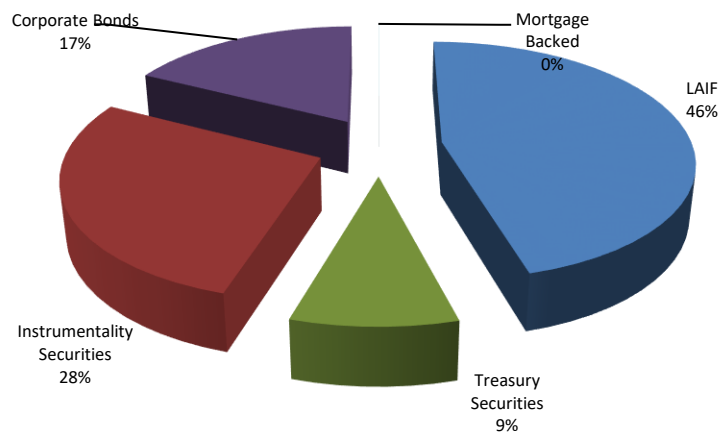


Total Portfolio Assets % Return

LAIF	\$	51,619,469	46%	0.68%
Treasury Securities	\$	9,982,285	9%	0.95%
Instrumentality Securities	\$	31,373,594	28%	1.09%
Corporate Bonds	\$	19,727,980	18%	1.12%
Mortgage Backed	\$	13,659	0%	2.31%
Total Portfolio Assets	\$	112,716,986		

Weighted Average Yield **0.90%**

	Years
Effective Average Duration - Total	1.16
Weighted Average Maturity - Total	1.20



Portfolio Change

Beginning Balance	\$	103,934,420
Ending Balance	\$	112,716,986

* Note: All data for external assets was provided by the client and is believed to be accurate.
Insight Investment does not manage the external assets and this report is provided for the client's use.
Market values are presented.

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CITY OF MENLO PARK

December 2016

➤ A BNY MELLON COMPANYSM



ACTIVITY AND PERFORMANCE SUMMARY

For the period October 1, 2016 - December 31, 2016

<u>Amortized Cost Basis Activity Summary</u>		
Opening balance		61,313,502.95
Income received	165,906.85	
Total receipts		165,906.85
Expenses paid	(291.67)	
Total disbursements		(291.67)
Interportfolio transfers	(216,063.26)	
Total Interportfolio transfers		(216,063.26)
Realized gain (loss)		3,696.76
Total amortization expense		(27,688.24)
Total OID/MKT accretion income		6,635.38
Return of capital		0.00
Closing balance		61,245,698.77
Ending fair value		61,097,517.20
Unrealized gain (loss)		(148,181.57)

<u>Detail of Amortized Cost Basis Return</u>				
	Interest earned	Accretion (amortization)	Realized gain (loss)	Total income
Corporate Bonds	75,282.53	(16,115.33)	0.00	59,167.20
Government Agencies	85,121.02	(5,831.14)	1,228.10	80,517.98
Government Bonds	23,270.06	978.72	2,652.62	26,901.40
Government Mortgage Backed Securities	337.00	(85.11)	(183.96)	67.93
Total	184,010.61	(21,052.86)	3,696.76	166,654.51

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* Three month trailing
Fed Funds	0.40	0.21	0.11
Overnight Repo	0.45	0.23	0.10
Merrill Lynch 3m US Treas Bill	0.30	0.17	0.10
Merrill Lynch 6m US Treas Bill	0.41	0.23	0.13
ML 1 Year US Treasury Note	0.61	0.33	0.19
ML 2 Year US Treasury Note	0.84	0.44	0.25
ML 5 Year US Treasury Note	1.34	0.69	0.40

* rates reflected are cumulative

<u>Summary of Amortized Cost Basis Return for the Period</u>	
	Total portfolio
Interest earned	184,010.61
Accretion (amortization)	(21,052.86)
Realized gain (loss) on sales	3,696.76
Total income on portfolio	166,654.51
Average daily amortized cost	61,236,889.06
Period return (%)	0.27
YTD return (%)	1.03
Weighted average final maturity in days	500

ACTIVITY AND PERFORMANCE SUMMARY

For the period October 1, 2016 - December 31, 2016

<u>Fair Value Basis Activity Summary</u>		
Opening balance		61,389,960.38
Income received	165,906.85	
Total receipts		165,906.85
Expenses paid	(291.67)	
Total disbursements		(291.67)
Interportfolio transfers	(216,063.26)	
Total Interportfolio transfers		(216,063.26)
Unrealized gain (loss) on security movements		0.00
Return of capital		0.00
Change in fair value for the period		(241,995.10)
Ending fair value		61,097,517.20

<u>Detail of Fair Value Basis Return</u>			
	Interest earned	Change in fair value	Total income
Corporate Bonds	75,282.53	(40,158.48)	35,124.05
Government Agencies	85,121.02	(174,737.07)	(89,616.05)
Government Bonds	23,270.06	(26,881.12)	(3,611.06)
Government Mortgage Backed Securities	337.00	(218.43)	118.57
Total	184,010.61	(241,995.10)	(57,984.49)

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* Three month trailing
Fed Funds	0.40	0.21	0.11
Overnight Repo	0.45	0.23	0.10
Merrill Lynch 3m US Treas Bill	0.33	0.18	0.09
Merrill Lynch 6m US Treas Bill	0.67	0.26	0.13
ML 1 Year US Treasury Note	0.76	0.10	0.05
ML US Treasury 1-3	0.89	(0.54)	(0.43)
ML US Treasury 1-5	1.09	(1.27)	(1.09)

* rates reflected are cumulative

<u>Summary of Fair Value Basis Return for the Period</u>	
	Total portfolio
Interest earned	184,010.61
Change in fair value	(241,995.10)
Total income on portfolio	(57,984.49)
Average daily total value *	61,349,975.93
Period return (%)	(0.09)
YTD return (%)	1.11
Weighted average final maturity in days	500

* Total value equals market value and accrued interest

ADDITIONAL INFORMATION

As of December 31, 2016

Past performance is not a guide to future performance. The value of investments and any income from them will fluctuate and is not guaranteed (this may partly be due to exchange rate changes) and investors may not get back the amount invested. Transactions in foreign securities may be executed and settled in local markets. Performance comparisons will be affected by changes in interest rates. Investment returns fluctuate due to changes in market conditions. Investment involves risk, including the possible loss of principal. No assurance can be given that the performance objectives of a given strategy will be achieved. The information contained herein is for your reference only and is being provided in response to your specific request and has been obtained from sources believed to be reliable; however, no representation is made regarding its accuracy or completeness. This document must not be used for the purpose of an offer or solicitation in any jurisdiction or in any circumstances in which such offer or solicitation is unlawful or otherwise not permitted. This document should not be duplicated, amended, or forwarded to a third party without consent from Insight. This is a marketing document intended for professional clients only and should not be made available to or relied upon by retail clients.

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Where indicated, performance numbers used in the analysis are gross returns. The performance reflects the reinvestment of all dividends and income. CAMC and CISC charge management fees on all portfolios managed and these fees will reduce the returns on the portfolios. For example, assume that \$30 million is invested in an account with either CAMC or CISC, and this account achieves a 5.0% annual return compounded monthly, gross of fees, for a period of five years. At the end of five years that account would have grown to \$38,500,760 before the deduction of management fees. Assuming management fees of 0.25% per year are deducted monthly from the account, the value at the end of the five year period would be \$38,022,447. Actual fees for new accounts are dependent on size and subject to negotiation. CAMCS and CISC's investment advisory fees are discussed in Part 2A of the Firms Form ADV.

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For trading activity the Clearing broker will be reflected. In certain cases the Clearing broker will differ from the Executing broker.

In calculating ratings distributions and weighted average portfolio quality, Insight assigns U.S Treasury and U.S agency securities a quality rating based on the methodology used within the respective benchmark index. When Moodys, S&P and Fitch rate a security, Bank of America and Merrill Lynch indexes assign a simple weighted average statistic while Barclays indexes assign the median statistic. Insight assigns all other securities the lower of Moodys and S&P ratings.

Information about the indices shown here is provided to allow for comparison of the performance of the strategy to that of certain well-known and widely recognized indices. There is no representation that such index is an appropriate benchmark for such comparison. You cannot invest directly in an index and the indices represented do not take into account trading commissions and/or other brokerage or custodial costs. The volatility of the indices may be materially different from that of the strategy. In addition, the strategys holdings may differ substantially from the securities that comprise the indices shown.

The BofA Merrill Lynch 3 Mo US T-Bill index is an unmanaged market index of U.S. Treasury securities maturing in 90 days that assumes reinvestment of all income.

The BofA Merrill Lynch 6 Mo US T-Bill index measures the performance of Treasury bills with time to maturity of less than 6 months.

The BofA Merrill Lynch Current 1-Year US Treasury Index is a one-security index comprised of the most recently issued 1-year US Treasury note. The index is rebalanced monthly. In order to qualify for inclusion, a 1-year note must be auctioned on or before the third business day before the last business day of the month.

The BofA Merrill Lynch Current 3-Year US Treasury Index is a one-security index comprised of the most recently issued 3-year US Treasury note. The index is rebalanced monthly. In order to qualify for inclusion, a 3-year note must be auctioned on or before the third business day before the last business day of the month.

The BofA Merrill Lynch Current 5-Year US Treasury Index is a one-security index comprised of the most recently issued 5-year US Treasury note. The index is rebalanced monthly. In order to qualify for inclusion, a 5-year note must be auctioned on or before the third business day before the last business day of the month.

The BofA Merrill Lynch 1-3 US Year Treasury Index is an unmanaged index that tracks the performance of the direct sovereign debt of the U.S. Government having a maturity of at least one year and less than three years.

The BofA Merrill Lynch 1-5 US Year Treasury Index is an unmanaged index that tracks the performance of the direct sovereign debt of the U.S. Government having a maturity of at least one year and less than five years.

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ADDITIONAL INFORMATION

As of December 31, 2016

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BETTY T. YEE

California State Controller

LOCAL AGENCY INVESTMENT FUND
REMITTANCE ADVICE

Agency Name

MENLO PARK

As of 01/13/2017, your Local Agency Investment Fund account has been directly credited with the interest earned on your deposits for the quarter ending 12/31/2016.

Earnings Ratio		.00001851848158529
Interest Rate		0.68%
Dollar Day Total	\$	4,019,016,040.52
Quarter End Principal Balance	\$	51,619,469.03
Quarterly Interest Earned	\$	74,426.07

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